DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

June 2021
Issue: 13

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

Greetings from Darda Advisors!

We are pleased to present to you the thirteenth edition of DA Tax Alert, our monthly update on recent developments in the field of Indirect tax laws. This issue covers updates for the month of May 2021.

During the month of May 2021, GST Council meeting conducted which announced certain relief measures and further there were certain changes under Goods and Service Tax, Customs and other; non-permissibility of blocking of credit ledger beyond 1 year, non applicability of service tax on takeaways, Covid-19 related relaxations, extension of RCMC and others.

In the thirteenth edition of our DA Tax Alert- Indirect Tax, we look at the tumultuous and dynamic aspects under indirect tax laws and analyze the multiple changes in the indirect tax regime introduced during the month of May 2021.

The endeavor is to collate and share relevant amendments, updates, articles, and case laws under indirect tax laws with all the Corporate stakeholders.

We hope you will find it interesting, informative, and insightful. Please help us grow and learn by sharing your valuable feedback and comments for improvement.

We trust this edition of our monthly publication would be an interesting read.

Regards
D.Vineet Suman
Co-founder and Managing Partner

GST COMPLIANCE CALENDAR

JUNE 2021

10
GSTR-7
TDS DEDUCTOR

10
GSTR-8
TCS DEDUCTOR

11
GSTR 1
NORMAL TAXPAYER (MONTHLY)

13
GSTR 6
INPUT SERVICE DISTRIBUTOR

20
GSTR 5A
OIDAR SERVICE PROVIDER

20
GSTR-3B
NORMAL TAXPAYER

20
GSTR 5
NON-RESIDENT TAXABLE PERSON

30
ITC-04
REGISTERED PRINCIPALS

- Blocking of credit under Rule 86A(3) of CGST Rules beyond one year is not permissible
- Manual GST returns filing is not permitted – Kar HC
- Best Judgment Assessment to be allowed only with adequate reasoning
- GST is applicable on commission and not on entire value of horse racing – Relevant Rules and Circulars ultra vires – Kar HC
- Concessional rate of GST shall not apply to the sub-contractor who is sub-contracted from a subcontractor
- Composite supply provided to municipal corporation not eligible for Pure Service exemption
- Enduring right to access to the pathway land liable to GST
- Amnesty schemes and late fee waiver related
- Return and extension of date related
- Cumulative application of rule 36(4)
- Extension of time limit of compliances
- GSTN Portal Updates

Blocking of credit under Rule 86A(3) of CGST Rules beyond one year is not permissible

The writ petition is filed by the applicant against the blocking of electronic credit ledger beyond one year as in light of the mandate under Rule 86-A(3) of the CGST Rules, 2017, blocking of the electronic credit ledger shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction. It was submitted that till date, the credit ledger is blocked and accordingly, the same acts to the prejudice of the applicant. The Honorable High Court observed and held that:

- Without entering into the merits of the order blocking of the electronic credit ledger, in light of Rule 86-A(3), restriction in blocking of the electronic credit ledger cannot be extended beyond the period of one year from the date of imposing such restriction and accordingly, in light of blocking having been made on 21 January 2020, its continuance in the present instant is impermissible in law.
- Accordingly, it is declared that the action of the respondents in continuing the blocking of electronic credit ledger is set aside. Consequential orders and restoring credit to the electronic credit ledger to be made forthwith. However, it is clarified that respondents are at liberty to take such action as is permissible in law in connection with the assessment proceedings.

DA Comments:

When the law permits specific time for any restriction, the same should be followed in spirit by the revenue authorities to avoid litigations and trouble to taxpayers

Manual GST returns filing is not permitted – Kar HC

The company is registered taxpayer under GST and admittedly failed to file its returns prescribed under the GST law and discharge its liability for the period from September 2018 till date. Further, the registration under the GST law was cancelled. The assessment orders were passed from time to time under Section 62 of the CGST Act quantifying the tax liability and directing to file its returns and discharge the arrears. The appeal filed at first level appellate authority was dismissed on the ground that statutory pre-deposit was not made as provided under Section 107 of the CGST Act. The Company filed various writ petitions on cancellation of GST registration and assessment orders.

The learned Single Judge has granted an interim order staying the operation of cancellation of registration, permitting to file manual returns for the backlog period and reserving liberty to the revenue to consider the request of for permission to pay the arrears of tax and instalments. Against the single judge order, the revenue filed the writ appeal and the Honorable High Court held that:

- GST laws do not permit for filing of manual returns. There is no facility under the law to accept manual returns and by allowing to file returns manually will certainly unsettle the entire scheme of GST and, therefore, on this ground alone, the interim order passed by the Single Judge deserves to be set aside.
- Registration of respondent is not in existence. The registration was cancelled for non-filing of its returns for a continuous period of more than two years and by granting an interim order, respondent has been permitted to continue its business as a registered dealer even though the law prescribes that a person, who does not file returns for a continuous period of 6 months, is liable to be deregistered.
- Respondent himself has admitted in the writ petition that it has not filed returns in form GSTRN-3B since 2018 and, therefore, the interim order passed by the Single Judge deserves to bet aside and the matter, in fact, deserves to be heard finally on merits. Therefore, unless and until its liability is satisfied, such an interim order should not have been granted in the peculiar facts and circumstances of the case.
- The impugned interim order passed by the Single Judge dated 17 February 021 deserves to be set aside and accordingly, it is set aside. However, the Single Judge is requested to decide the matter on merits, as expeditiously as possible

Manual GST returns filing is not permitted – Kar HC

DA Comments:

CBIC need to provide one time relief for initial tax periods when there was technical issue on GST portal. In this case, single judge has given interim relief based on absence of natural justice which has been upheld in various legal precedents.

UOI and others vs Aditya Auto Engineering Pvt Ltd and others [2021-TIOL-1231-HC-KAR-GST]

Best Judgment Assessment to be allowed only with adequate reasoning

The appellant did not file GSTR-3B return and notice was issued under Section 46 of the Telangana GST Act, 2017 warning the petitioner that if it did not file its return within 15 days, tax liability would be assessed under Section 62 of the Act based on the relevant material available along with interest and penalty. The appellant did not comply with the request to file GSTR-3B return, and best judgment under Section 62 of the Act was made through the impugned order by multiplying 3 times the average tax paid with 100% penalty. The writ petition is filed for which the Honorable High Court observed and held that:

In this view of the matter, since the impugned order appears to be prima facie arbitrary and contrary to the provisions of the Telangana GST Act, 2017, the impugned order is set aside; the matter is remitted back to the 1st respondent for fresh consideration; the 1st respondent shall issue notice to the petitioner indicating the method of assessment under the best judgment assessment provision contained in Section 62 of the said Act; grant a personal hearing to the petitioner; and then pass a reasoned order both with regard to levy of tax but also with regard to interest and penalty afresh within eight (8) weeks from the date of receipt of a copy of this order.

DA Comments:

The best judgment assessment is an alternate for Revenue authorities to finalise the assessment which can be passed only with adequate reasoning.

M/S Golden Mesh Industries vs ACST 2021-TIOL-1127-HC-TELANGANA-GST

GST is applicable on commission and not on entire value of horse racing – Relevant Rules and Circulars ultra vires – Kar HC

The petitioners are carrying on the business of a race club, which includes lay-out and preparing any land for running of horse races, steeplechases of races of any other kind and for any kind of athletic sports. The petitioners particularly conduct horse racing and facilitates betting by the punters. The petitioners by themselves do not bet, but only facilitates punters in their betting activity. The price money is distributed by the petitioners to the winning punter and out of the amount Commission is set apart to be taken by the petitioners. The writ petitions is filed inter alia to challenge the legislative intent of making the petitioners liable to pay GST on the entire bet amount received by the totalisator and declare the amendments dated 25 January 2018 which inserted Rule 31A(3) to the CGST Rules as being ultra vires the CGST Act. The Honorable High Court observed and held that:

'Totalisator' has been interpreted by English Courts and the Apex Court to mean a fixed commission which is earned irrespective of the outcome of the race and cannot be seen to be indulging in a betting activity.

What is the function performed by the totalisator has been considered by the Apex Court in the judgments referred to. Therefore, a totalisator does not indulge in betting. In my opinion, betting is neither in the course of business nor in furtherance of business of a race club for the purposes of the Act. As stated hereinabove, petitioners hold the amount received in the totalisator for a brief period in its fiduciary capacity. Once the race is over the money is distributed to the winners of the stake.

The nexus, therefore, between the measure of tax and the taxable event even under Rule 31A(3) can at best be supply of a totalisator service. Rule 31A(3) in the form that it is, perforates the nexus between the measure of tax and the taxable event as the fully paid value into the totalisator is directed to be assessed for payment of GST under the Act. Therefore it becomes necessary to consider Rule 31A(3) qua the activity of the petitioners and that becomes kernel of the entire issue. Apex Court has clearly held that the measure to which the rate of tax is to be applied to a taxable person must have a nexus to the taxable event and not dehors it.

Rule 31A(3) completely wipeout the distinction between the bookmakers and a totalisator by making the petitioners liable to pay tax on 100% of the bet value. It is the bookmakers who indulge in betting and receiving consideration depending on the outcome of the race, irrespective of the result. In contrast, the race club provides totalisator service and receives commission for providing such service. Therefore, there is no supply of goods/bets by the petitioners as defined under the Act.

GST is applicable on commission and not on entire value of horse racing – Relevant Rules and Circulars ultra vires – Kar HC

One who supplies the goods is liable to pay tax. The impugned Rule make the petitioners a 'supplier' of bets which the petitioners do not and are not the supplier of bets and therefore, cannot be held liable to pay tax under the Act, as the service or supply that the petitioners do is only a totalisator component. The petitioners do not supply bets to the punters.

The consideration that the petitioners receive for supply of service of the totalisator is only the commission. Therefore, the consideration component of supply is also not specified by the impugned Rule which directs payment of tax on the whole bet amount. The commission is only the consideration received by the race club on the transaction. The commission so received by the petitioners is not in respect of or in response to an inducement of supply of betting transaction. Therefore, Rule 31A(3) insofar as it declares that the value of actionable claim in the form of chance to win in a horse race of a race club to be 100% of the face value of the bet is beyond the scope of the Act. This is also, inter alia , in the light of the fact that the activity of the petitioners being a game of skill and not a game of chance as is held by the Apex Court in the case of K.R.Lakshmanan ([(1996) 2 SCC 226])

Rule 31A(3) travels beyond what is conferred upon the Rule making authority under Section 9 which is the charging section, by way of an amendment to the Rule. The totalisator is brought under a taxable event without it being so defined under the Act nor power being conferred in terms of the charging section which renders the Rule being made beyond the provisions of the Act.

Therefore, Rule 31A(3) which does not conform to the provisions of the Act will have to be held ultra vires the enabling Act and consequently opens itself for being struck down. In view of the preceding analysis, Bench answer the issues that arose for its consideration in favour of the petitioners striking down Rule 31A(3) of the CGST Rules and Rule 31A of the KSGST Rules as being contrary to the CGST Act and hold that the petitioners are liable for payment of GST on the commission that they receive for the service that they render through the totalisator and not on the total amount collected in the totalisator.

GST is applicable on commission and not on entire value of betting – Relevant Rules and Circulars ultra vires – Kar HC

DA Comments:

The judgment question the relevant rules based on facts of the case and taxable event and its coverage which open the pandora box for various such issues still prevail under GST

Bangalore Turf Club Ltd vs State of Karnataka and others [2021-TIOL-1271-HC-KAR-GST]

Concessional rate of GST shall not apply to the sub-contractor who is sub-contracted from a subcontractor

The applicant is engaged in the business of execution of works contracts relating to electrical works and electrical infrastructure has been allocated electrical subcontractor works by the first sub-contractor which in turn is sub-contracted by main contractor, who have been awarded the contract by State PSU. The applicant sought the advance ruling whether all the requirements of clause(ix) of serial No.3 of the notification 11/2017-Central Tax (Rate), dated 28 June 2017 (as amended) are fulfilled to avail the concessional rate on the supply of works contract service made to the first sub-contractor. The AAR observed and held that:

- In the instant case, it is seen that there is no privity of contract between the applicant and M/s. Karnataka Neeravari Nigam Ltd. The original contract is awarded by M/s. Karnataka Neeravari Nigam Limited to M/s. Ocean Constructions (India) Private Limited. Hence as per the notification, any subcontractor providing services to Main contractor by executing the works mentioned in the serial number 3 of clause (iii) and clause (vi) which is exclusively covered under the clause (ix) of serial no.3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) will be exempted from payment of GST subject to M/s. Karnataka Neeravari Nigam Limited is qualified to be called as a Government Entity.
- As there is no privity of contract between the applicant and M/s. Ocean Constructions (India) Private Limited and the contract is between the applicant and M/s. Shaaz Electricals, the services provided by the applicant is not covered under the said entry.

DA Comments:

Even there is ambiguity in the law whether first level sub-contractor would be eligible for such exemption/concessional rate or not and advance rulings have given both in favour and against the assessee. In the present case, the second level sub contract obviously would not have concessional rate benefit.

M/s Hadi Power Systems [2021-TIOL-133-AAR-GST]

Composite supply provided to municipal corporation not eligible for Pure Service exemption

The question raised before AAR whether the contract to provide RO Plant and undertake O & M of the same to Greater Chennai Corporation, is a "Pure service" and eligible for the benefit of exemption provided at Serial No. 3 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 for which AAR observed and held that:

The applicant under the said contract has supplied the RO Plant and undertakes O & M of such plant. The Operation of the plant involves treatment of the raw water supplied to them to treated/purify water for dispensing the same to the designated beneficiaries of the GCC. The operation of the Plant includes providing the security for the plant and also issuance of smart cards whenever necessary.

Thus, the applicant has entered into a composite contract of supply of RO Plant along with the Operation &Maintenance of the said Plant for a period of 5 Years. The applicant at present as per the contract undertakes the O & M of the Plant. The supply under a composite contract cannot be vivisected as the supply of R.O. Plant and the O&M of the same are naturally bundled. It is not that the RO Plant can be supplied by one contractor and the O & M of the same can be done by any other contractor in as much as the tender is floated for both together. The tender and agreement are to be read as a whole, to understand the intention of such agreement.

Thus it is evident that the supplies made by the applicant is not 'pure service' but is a composite supply of purified water(goods), smart cards(goods), maintenance of RO Plant, vending machines(Service), providing security(service). The supply being not a 'Pure Service', the same is not covered by the Description of Service at S.No. 3 above.

DA Comments:

The AAR relied on the contractual terms and being both are part of single supply, the benefit of pure services exemption not provided on O&M services.

In re Unique Aqua Systems (GST AAR Tamilnadu) [Order no. 09/AAR/2021 – TN AAR]

Enduring right to access to the pathway land liable to GST

The appellant has stated that they had acquired a portion of the property (including the land which is now leased out to the owner) for public purpose. Further, the access is provided to seller of land under the agreement as without the access the Landlady would be unable to, come out to the road and make her ingress and exit to and from the house. The pathway access was a covenant running with the land and was inseparable from the acquisition of the land by them. The right to pathway is provided with the consideration.

The question raised before AAR whether the right to pathway provided to the landlady under the agreement would be eligible for exemption as the grant of access to pathway to the residential dwelling was exempt from GST under SI no 12 of Notification 12/2017 since any leasing in connection with residential property was exempted therein which held that the leasing of pathway by the appellant by way of shared access of the Non-residential property held by the appellant is taxable under GST. The appeal filed to AAAR on various grounds and main ground is:

Without prejudice to any of the grounds taken, it is submitted that the supply of easement as a taxable supply will arise, if at all, only independently of the sale and purchase of land. Any grant of easement incidental or integral to the sale and purchase of the land at the time when such sale and purchase of the land is made cannot be brought to the levy of GST as such easement would be an integral part of the immovable property which is beyond the pale of the law of GST.

The supply of easement contemplated as a service under schedule II of the CGST Act would arise, if at all, only when such supply is provided or rendered separately and independently of the sale and purchase of the land.

The AAAR observed and held that:

With respect to the Land, it is stated that any (1) lease, (2) tenancy, (3) easement, (4) license to occupy land is defined to be supply of service.

'To Occupy' do not necessarily mean to possess. If the intention of the statute is to cover the activity wherein there is transfer of space by possession, then the wordings of the statute will clearly bring out such intention. Transfer of right to use the space without the transfer of space per-se also conveys the right to occupy. In view of the above, we hold that there is no merit in this contention of the appellant.

A composite supply is one in which one or more supplies are bundled naturally and supplied in conjunction by the service provider to the recipient. In the case at hand, land is supplied by the land owner to the appellant and the access to the pathway is granted by the appellant to the land owner. The recipient and the supplier are not the same in these

Enduring right to access to the pathway land liable to GST

supplies and therefore the same is not a 'Composite supply'

In the instant case, it is not a lease of the pathway but only rights are granted to the land owner by the appellant for the shared access. It is seen that the grant of access to the pathway is a right given by them to the landowner. This activity of agreeing to grant rights for shared access of the pathway is an "act of agreeing to tolerate an act" and is classifiable under SAC 999794 under "other miscellaneous services/Agreeing to tolerate an act' as rightly held by the Lower Authority.

DA Comments:

The definition of 'Supply' has been amended and any deemed supply has to first satisfy the conditions of 'Supply' and then only can be taxable. In the present case, both AAR and AAAR considered the activity as 'deemed supply' under 'act of agreeing to tolerate an act' without appreciating the concept and meaning considered under national and international jurisprudence

M/s Chennai Metro Rail Ltd [2021-TIOL-16-AAAR-GST – TN]

Amnesty schemes and late fee waiver related

Return	Condition	Late fee capped to
GSTR 3B	For tax periods from July, 2017 to April, 2021, if furnished between 01 June 2021 to 31 August 2021	Nil tax liability - Maximum of Rs 500/- (Rs. 250/- each for CGST & SGST) per return Others- maximum of Rs 1000/- (Rs. 500/- each for CGST & SGST) per return
GSTR 1 & 3B	Nil outward Supplies in GSTR 1	Rs 500 (Rs 250 CGST + Rs 250 SGST)
	Annual Aggregate Turnover (AATO) < Rs. 1.5 Crores	Maximum of Rs 2000 (1000 CGST+1000 SGST)
	Rs. 1.5 Cr < AATO < Rs. 5 Cr	Maximum of Rs 5000 (2500 CGST+2500 SGST)
	AATO > Rs. 5 Cr	Maximum of Rs 10000 (5000 CGST+5000 SGST)
GSTR 4	Nil tax liability	Rs 500 (Rs 250 CGST + Rs 250 SGST)
	Other than nil tax liability	Rs 2000 (Rs 1000 CGST + Rs 1000 SGST)
GSTR 7		Rs.50/- per day (Rs. 25 CGST + Rs 25 SGST) Capped to a maximum of Rs 2000/- (Rs. 1,000 CGST + Rs 1,000 SGST)

Notification No. 19/2021 dated 1 June 2021

Notification No. 20/2021 dated 1 June 2021

Notification No. 21/2021 dated 1 June 2021

Notification No. 22/2021 dated 1 June 2021

Return and extension of date related

Return	Period	Taxpayer	Existing Due date	Extended Due date	Interest rate waiver
GSTR 1/IFF	May 2021	Normal & Quarterly	11 June 2011	28 June 2011	NA
GSTR 3B/ PMT-06	Mar 2021	Small taxpayers (aggregate turnover upto Rs. 5 crore)	22/24 Apr 2021	No extension	• 22/24 April 2021 to 6/8 May 2021 – Nil • 7/9 May 2021 -22/24 June 2021 – 9% • 23/25 June 2021 onwards - 18%
	April 2021	Small taxpayers (AT upto Rs. 5 crore)	25 May 2021	No extension	• 25 May 2021 to 9 June 2021 – Nil • 10 June 2021 to 10 July 2021 – 9% • 11 July 2021 onwards - 18%
	May 2021	Small taxpayers	25 June 2021	No extension	• 25 June 2021 to 10 July 2021 – Nil • 11 July 2021 to 26 July 2021 – 9% • 27 July 2021 onwards - 18% • No late fee till 22/24 July 2021
GSTR 3B	May 2021	Large taxpayers (AT more than Rs. 5 crore)	20 June 2021	No extension	• 20 June 2021 to 5 July 2021 – 9% • 6 July 2021 onwards - 18% • No late fee till 20 June 2021

Return and extension of date related

Return	Period	Taxpayer	Existing Due date	Extended Due date	Interest rate waiver
GSTR 4	FY 20-21	Composition Dealers	31 May 2021	31 July 2021	NA
ITC-04	Qy March 2021	Normal	31 May 2021	30 June 2021	NA

Notification No. 17/2021 dated 1 June 2021

Notification No. 25/2021 dated 1 June 2021

Notification No. 26/2021 dated 1 June 2021

Notification No. 27/2021 dated 1 June 2021

Cumulative application of rule 36(4)

Cumulative application of rule 36(4) for availing ITC for tax periods April, May and June, 2021 in the return for the period June, 2021

Notification No. 27/2021 –Central Tax dated 8 March 2021

Extension of time limit of compliances

Time limit for completion of various actions, by any authority or by any person, under the GST Act, which falls during the period from 15 April, 2021 to 29 June, 2021, to be extended upto 30 June, 2021

Notification No. 26/2021 –Central Tax dated 8 March 2021

Exemption from E-Invoicing

The Ministry of Finance, on the recommendations of GST Council, has exempted a government department and a local authority from the provision of E-invoice, irrespective of the turnover

Notification No. 23/2021 –Central Tax dated 1 June 2021

Refund related changes

- Waiver of any time period for communication of deficiencies in Form GST RFD-03 in case the refund claim has been filed by the taxpayer in Form GST RFD-01
- The applicant has also been given the option to withdraw his/her application of refund at any time before sanctioning of refund order by the department

Notification No. 15/2021 –Central Tax dated 1 June 2021

Retrospective amendment in Section 50 of CGST Act, 2017

Which requires payment of interest only on net cash liability is notified with effect from 01 June 2021. This puts the entire controversy to rest and the department can recover interest only on the cash component of liability. In other words, no interest is payable by the taxpayer for the liability paid through ITC

Notification No. 16/2021 –Central Tax dated 1 June 2021

Revocation of cancellation of registration related changes

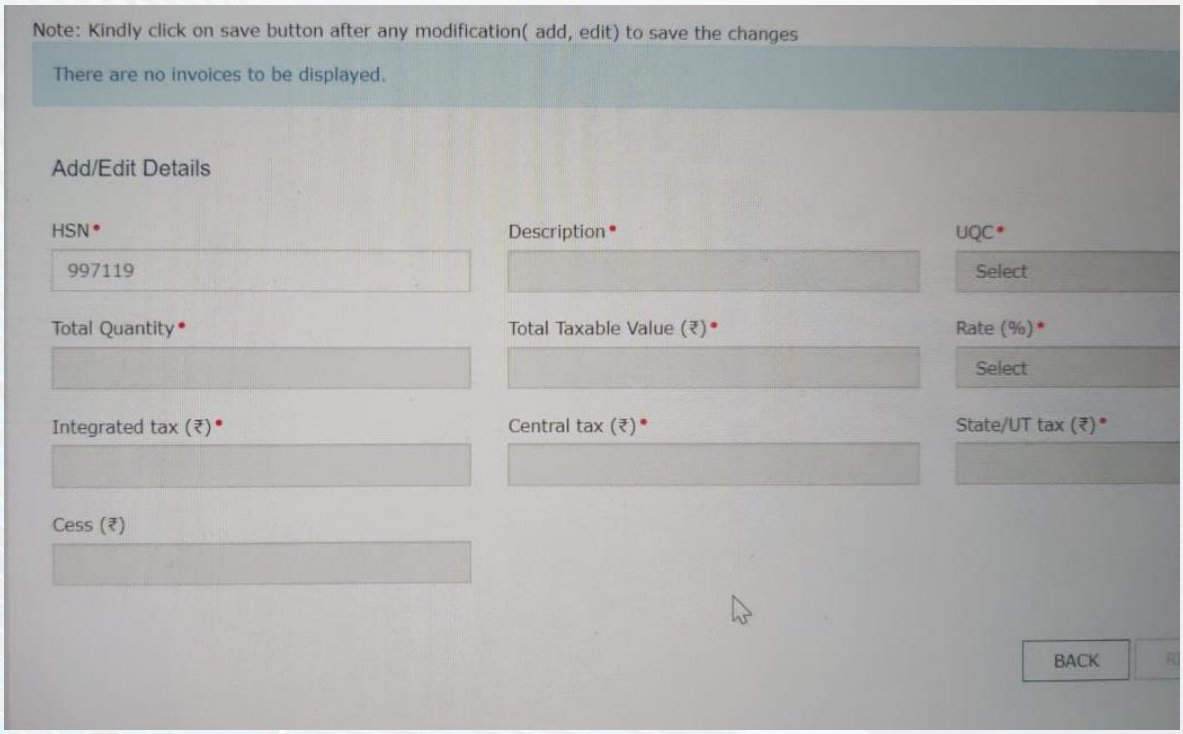
Standard Operating Procedure (SOP) for implementation of the provision of extension of time limit to apply for revocation of cancellation of registration have been issued

Circular 148/04/2021-GST dated 18 May 2021

GSTN Portal Updates

Rate of tax for each HSN/SAC

Rate of tax for each HSN/SAC furnished in HSN summary in the Return of outward supplies i.e. GSTR-1 from the return for tax period of May'21 onwards



GST Revenue Collection in March 2021-Rs.1.02 lakh Cr.

TRENDS IN GST COLLECTION IN RS. CRORE

GROSS GST COLLECTIONS
(IN RS CRORE)

Month	2021	2020
May	102,709	62,009
April	141,384	32,172
March	123,902	97,590
Feb	113,143	105,361
Jan	119,875	110,818

Source: Finance Ministry

- Service tax not applicable on take away/parcels at restaurant – Madras HC
- No notional amount under Rule 10(2) of the Customs Valuation Rules can be added to the transaction value when goods are not transported and charges are Nil
- A Taxing Statute has to be interpreted in the light of what is clearly expressed, it cannot imply anything which is not expressed – Kar HC
- Secured creditor will have precedence over the dues payable to the Commercial Tax Department – Madras HC
- No interest and penalty applicable for SCN barred by limitation
- SEZ Compliance - Due date extended till 30 June 2021
- Policy for Used/Worn clothing and Plastic recycling units in SEZs/EoUs
- Standard Operating Procedures for EOU/STP/EHTP
- Amendment of Sea Import Manifest and Transshipment (Third Amendment) Regulations, 2021
- Trade facilitation during lockdown period – Undertaking in lieu of Bond
- Extension of validity of RCMC beyond 31 March, 2021

Service tax not applicable on take away/parcels at restaurant – Madras HC

The applicants filed the writ petition on whether the liability to service tax under the Chapter V of Finance Act, 1994 ('Service tax law') on food that is 'taken away' or collected from restaurants or eateries, in parcels is applicable or not. The facts of the case is that the applicant hold service tax registration for providing restaurant services, outdoor catering services and mandap keeping services on which audit was undertaken in all the cases and the conclusion arrived at by the Department was that service tax had not been discharged in relation to 'take away/parcel services' for various periods upto June, 2017 when GST law came into force.

According to the applicants, there is no liability for sale of food at the take-away counter or by parcel as the sale of packaged food constitutes pure trading activity and there is no component of service involved therein. They rely on the definition of 'service' under Section 65B(44) of Service tax law, which excludes the transfer of title in goods by way of sale. In the light of this exclusion, parcel sales or take away food would stand outside the ambit of service tax. Further, in parcel sales, there could be no artificial splitting of transactions between one of 'service' and one of 'sale' with the attempt to bring the same under the purview of the former. The applicants rely on letter bearing No. DOF 334/3/2011-TRU dated 28 February 2011 and various legal precedents which had, according to them, clarified that service tax is not intended to cover sale of food that is collected or picked up for consumption elsewhere. The Honorable High Court observed and held that:

- Thus, not all services rendered by restaurants in the sale of food and drink are taxable and it is only certain specified situations that attract tax. Only those services commencing from the point where the food and drinks are collected for service at the table till the raising of the bill, are covered.

- In the case of take-away or food parcels, the aforesaid attributes are conspicuous by their absence. In most restaurants, there is a separate counter for collection of the take-away food parcels. Orders are received either over telephone, by e-mail, online booking or through a food delivery service such as swiggy or zomato. Once processed and readied for delivery, the parcels are brought to a separate counter and are picked up either by the customer or a delivery service. More often than not, the take-away counters are positioned away from the main dining area that may or may not be air-conditioned. In any event, the consumption of the food and drink is not in the premises of the restaurant. In the aforesaid circumstances, I am of the categoric view that the provision of food and drink to be taken-away in parcels by restaurants tantamount to the sale of food and drink and does not attract service tax under the Act.

Service tax not applicable on take away/parcels at restaurant – Madras HC

- The petitioners have brought to my notice several orders passed by the Appellate Commissioners stationed in Chennai and any other parts of the State who have taken a view that take away services would not attract liability to Service tax. I am informed that appeals have not been filed by the Department and thus the prevailing view, even within the Department is that there would be no service tax liability on take away food.
- In the light of the discussion as above, these Writ Petitions are allowed and the impugned orders quashed. No costs. Connected Miscellaneous Petitions are closed.

DA Comments:

The issue was in dispute for long and authorities may filed appeal to Apex Court as the said judgment could lead to loss of revenue and refund cases if unjust enrichment does not exist

No notional amount under Rule 10(2) of the Customs Valuation Rules can be added to the transaction value when goods are not transported and charges are Nil

The appellant is engaged in the business of air transportation services on domestic and international sectors. Generally fueling of aircraft with Aviation Turbine Fuel (ATF) is done at the airport from where the aircraft starts its journey. After return of aircraft from a foreign sector, the same aircraft may get deployed on domestic sector. In such case, the Custom duty is required to be paid on the remnant ATF in the Aircraft at the time of its conversion from international sector to domestic sector. The appellant were paying the duty on such remnant ATF after determining its quantity and value as per the guidelines prescribed by Air Cargo Complex, Mumbai Air Customs viz. Commissioner Instruction No 06/2006. However, while determining the value they were not adding any amounts towards freight and insurance as required in terms of Rule 10(2) of the Customs Valuation Rules, 2007. The first proviso to section 14(1) of Customs Act, 1962 provides for inclusion, in addition to the aforesaid price, any amount 'paid' or 'payable' for cost and services, including among others, cost of transportation to the place of importation to the extent and in the manner specified in the Rules. Rule 10(2) of the 2007 Rules, also provides for inclusion of the cost of transportation of the imported goods to the place of importation, but where the cost of transportation is not ascertainable, this rule provides such cost shall be 20% of the FOB value of the goods.

A SCN was issued demanding differential duty along with interest and equivalent penalty was imposed. The case was filed at CESTAT and due to contrary view taken in various earlier cases, the matter was referred to the President for constitution of Larger bench. The CESTAT observed and held that:

- The question that arises for consideration in this appeal is whether the ATF which is filled in the fuel tank of an aircraft is actually being transported through an aircraft. The answer clearly is that the airlines are not transporting ATF for delivery to India. ATF which is filled in the fuel tank of the aircraft is actually required to fly the aircraft and is a consumable for the airlines. It cannot, in such circumstances, be urged that ATF is being transported through the aircraft. Thus, if there is no transportation of remnant ATF, the notional cost of freight cannot be included in the value of remnant ATF.
- Section 14 contemplates a situation wherein a liability is created on the importer to pay an amount towards the cost of transportation. However, when no such liability is created in the first instance, the question of adding

No notional amount under Rule 10(2) of the Customs Valuation Rules can be added to the transaction value when goods are not transported and charges are Nil

any cost of transportation to the transaction value of the imported goods does not arise. Therefore, in order to avoid rendering rule 10(2) of the 2017 Rules ultra vires section 14(1) it must be interpreted in such a way that only an amount which is actually 'paid' or 'payable' towards the cost of transportation alone can be included in the transaction value of the imported goods. However, when no such amount is paid or payable at all, the question of adding the cost of transportation, to the value of the goods imported into India does not arise.

- It, therefore, follows that where transportation of goods is involved and cost is actually incurred or is liable to be incurred for such transportation, such cost has to be added to the transaction value, but where there is no transportation of goods nor there is any liability to incur the cost of such transport, the first proviso to section 14(1) of the Customs Act and rule 10(2) of the 2007 Rules would not be attracted.
- In the instant case, it has been found as a fact that neither the ATF is transported nor any cost is incurred. The notional value of transportation under the proviso to rule 10(2) of the 2007 Rules cannot, therefore, be added to the transaction value. The transaction value has to be determined strictly in accordance with section 14(1) of the Customs Act and rule 10(2) of the 2007 Rules.
- The proviso to rule 10(2) of the 2007 Rules uses the phrase 'cost of transportation is not ascertainable'. The dictionary meaning of "ascertain" is to discover a fact or make sure. Can it be said that if no cost is incurred at all, it should be treated as 'nil' or it should be treated as 'not ascertainable' and, therefore, 20% of FOB value should be added.
- It appears that the Division Bench wanted to add what is called in accounting parlance 'imputed costs' i.e. cost which are not paid but are derived as if they have been paid. There is no provision either in section 14(1) of the Customs Act or the 2007 Rules to add 'imputed costs' of transportation when actually no costs is incurred by the airlines for carrying its own fuel.
- So long as the Instructions do not run counter to any of the provisions of the Customs Act or the 2007 Rules and are not in conflict with any decision of a Court, they have to be followed by the Officers.
- No amount towards alleged transportation cost is required to be

No notional amount under Rule 10(2) of the Customs Valuation Rules can be added to the transaction value when goods are not transported and charges are Nil

included in the value of remnant ATF under rule 10(2) of the 2007 Rules for determining the transaction value under section 14(1) of the Customs Act

DA Comments:

The Larger Bench has correctly held that when no transportation and cost is involved, the imputed cost under Rules cannot be added under Customs transaction value

M/s Jet Airways India Ltd vs CC 2021-TIOL-293-CESTAT-MUM-LB

A Taxing Statute has to be interpreted in the light of what is clearly expressed, it cannot imply anything which is not expressed – Kar HC

The appellant is registered as a manufacturer under the Central Excise Act, 1944 and having a canteen facility in the factory as defined under the Central Excise Act, 1944 read with Rule 9 of the Central Excise Rules, 2002 which is duly registered under the Factories Act, 1948 and other labour laws. The appellant availed the credit of outdoor catering service during the period of April 2011 to September 2011 which is reversed under protest on account of certain objections raised by the department in respect of entitlement of credit based on amendment of CENVAT Credit Rules, 2004 (CENVAT Rules). The definition of 'input service' post amendment contains exclusion clause and exclusion clause was effected w.e.f., 1 April 2011. Clause (c) of the said exclusion clause specifically excludes the services provided in relation to 'outdoor catering' services.

The adjudicating authority passed the order for reversal for CENVAT credit which was further upheld by first appellate authority and CESTAT (Larger bench).

The appeal filed to the Honorable High Court and the appellant submitted that the Tribunal have erred in law and in facts in not appreciating the statutory definition of input service under the Cenvat Rules and as there is a duty casted upon the appellant to establish a canteen under the Factories Act, 1948, by no stretch of imagination the amendment which includes certain exceptionary services will disentitle the appellant company from Cenvat Credit. The Honorable High Court observed and held that:

- In the present case though the expenses incurred in respect of the canteen services for providing food and beverages in canteen maintained and run by the employer is included towards the total cost of the product and it is certainly required to establish under the Factories Act, 1948 (Section 46), but the fact remains, the canteen has been established primarily for personal use or consumption of the employees.
- There is no ambiguity in the statute and therefore, as it is a taxing statue, this Court cannot add or substitute words in the statutory provisions while interpreting the statutory provision.
- The statue does not leave any room for any other interpretation and therefore, in the considered opinion of this Court, the judgment does not help the appellant in any manner.

A Taxing Statute has to be interpreted in the light of what is clearly expressed, it cannot imply anything which is not expressed – Kar HC

- A Taxing Statute has to be strictly construed and in Taxing Statue one has to look merely at what is clearly said. Justice G.P.Singh in his land mark work on Principles of Statutory Interpretation, 14th Edition under the heading Strict Construction of Taxing Statute, has observed.
- Resultantly, this Court does not find any reason to interfere with the order passed by the Tribunal. The question of law is answered in favour of the revenue and against the assessee. The appeal stands dismissed accordingly. There is no ambiguity in the statute and therefore, as it is a taxing statue, this Court cannot add or substitute words in the statutory provisions while interpreting the statutory provision.

DA Comments:

The judgment stressed on the principle that a Taxing Statute has to be strictly construed and in Taxing Statue one has to look merely at what is clearly said. The said judgment can also be relied by the Revenue for the cases in Customs and GST

Toyota Kirloskar Motor Pvt Ltd vs CCT [2021-TIOL-1222-HC-KAR-CX]

Secured creditor will have precedence over the dues payable to the Commercial Tax Department – Madras HC

The issue involved in the case as who has the first right for collection of dues i.e. secured creditor or Commercial Taxes Department. The Writ petition is filed by the Bank and Honorable High Court observed and held that:

- The right of the Commercial Tax Department qua the secured creditor was subject matter of consideration by the Full Bench in the case of Assistant Commissioner (CT), Anna Salai-III Assessment Circle Vs. Indian Overseas Bank reported in (2016) 6 CTC 769 and it was held that the secured creditor namely the Bank will have precedence over the dues payable to the Commercial Tax Department.
- In the light of the above, the Sub-Registrar has to necessarily delete the schedule mentioned property attachment reflected in the encumbrance certificate at the instance of the commercial tax department. In the result, the writ petition is allowed. It is made clear that though the attachment at the instance of the first respondent Commercial Tax Department has been directed to be deleted, it will not in any manner affect the department's right to collect the dues from the default assessee by proceeding in accordance with law.

DA Comments:

The same issue could arise under GST regime when any tax payer is under IBC (Insolvency and Bankruptcy Code) and accordingly, separate litigation and proceedings from the adjudicating authority would continue

State Bank Of India vs AC (ST) and others [2021-TIOL-1188-HC-MAD-CT]

No interest and penalty applicable for SCN barred by limitation

The appellant is in appeal against the impugned order wherein interest is demanded on account of delayed payment of duty on supplementary invoice and penalty was also imposed. An audit was conducted in the year 2012. An objection was raised directing to the appellant to pay the interest but no interest was paid. Later on, on 03 September 2015, a show cause notice was issued to the appellant for demanding interest on delayed payment of differential duty on supplementary invoices by the appellant by invoking the extended period of limitation and accordingly the order was issued. The CESTAT held that:

As it was in the knowledge of the Revenue that the appellant has not paid the interest very well in January-February 2012 despite direction, but no show cause notice was issued to the appellant within one year from the said period. In these circumstances, the show cause notice issued on 03 September 2015 is barred by limitation.

Further, I find that whether for the intervening period the appellant is required to pay interest or not? the said issue has been referred by the Apex Court to larger bench itself in the case of Steel Authority of India Ltd vs. CCE, Raipur - 2015 (326) ELT 450 (SC) which shows that there were divergent views of the Hon'ble Apex Court on the issue and the said issue has been finally settled by the Hon'ble

Apex Court on 08 May 2019 reported in 2019 (366) ELT 769 (SC). Therefore, the demand of interest is not sustainable. Consequently, no penalty can be imposed on the appellant.

In result, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

DA Comments:

The limitation period is an important aspect under any of the laws and any matter which is barred by limitation cannot be further processed even other facts of the case are against the assessee

Super Threading India Pvt Ltd vs CCEST [2021-TIOL-302-CESTAT-CHD]

SEZ Compliance - Due date extended till 30 June 2021

- Quarterly Progress Report (QPR) by Developers/ Co-developers.
- SOFTEX form by IT/ITES units.
- Annual Performance Reports (APR) by SEZ units.
- Letter of Approvals (LoA) which may expire, in the cases of:
  - Developers/co-developers who are in the process of developing and operationalising the SEZ.
  - Units which are likely to complete their 5 year block for NFE assessment.
  - Units which are yet to commence operations.

Instruction no. No. K-43022/7/2020-SEZ dated 7 May 2021

Policy for Used/Worn clothing and Plastic recycling units in SEZs/EoUs

The revised policy guidelines (In SEZs were issued on 17 September 2013 and were partially amended vide policy order dated 13 February 2018. Similarly, in case of EOUs order dated 18 May 2018 was issued) for Used/ worn clothes and plastic recycling units covering:

1. Worn and Used Clothing units
   - Setting up of new units in SEZ/EOUs is not allowed.
   - Extension/renewal of LoA of existing units will be considered for a period of five years by Board of Approval.
   - Besides the NFE obligations, the units shall be required to comply with to the extent as prescribed
   - They shall be allowed to make clearance in DTA, to other SEZ units as well as EoUs as long as they fulfil the NFE and other conditions. Clearance to other SEZ units/ECUs will not be counted towards mandatory minimum physical export obligations.
2. Plastic Recycling units:
   - Extension / renewal of LoA of existing units will be considered by Board of Approval for a period of 18 months
   - DoC will propose suitable amendment in SEZ Rules to provide for setting up of
   - new units engaged in recycling of plastic as SEZ units.

Policy for Used/Worn clothing and Plastic recycling units in SEZs/EoUs

- DGFT will propose suitable amendment in FTP to provide for setting up of new units engaged in recycling plastic as EOUs.
- Besides the NFE obligations, the units shall be required to comply with as prescribed
- They shall be allowed to make clearance in DTA, other SEZ units as well as EoUs as long as they fulfil the NFE and other conditions. Clearance to other SEZ units/EOUs will not be counted towards mandatory minimum physical export obligations.

Instruction no. No. K-43014(16)/9/2020-SEZ dated 27 May 2021

Standard Operating Procedures for EOU/STP/EHTP

The Customs authority has issued certain guidelines considering gaps in compliance under EOU and recent IGCR, 2017 issued based on Finance Act, 2021. Key gaps identified are:

- Clearance of FG in DTA without reversing the Customs duty foregone on the imported raw material
- Clearance of FG in DTA without achieving NFE
- Payment of Customs duty through ITC instead of TR-6 challan
- Suppression of facts on clearance of FD in DTA
- Non payment (reversal) of custom duties on scrap beyond SION norms
- Non following the procedure of inter-unit transfer, third party exports and job work
- Debiting only 25% of duty foregone amount from B-17 bond in respect of imported raw materials

The EOU/STP/EHTP has been prescribed to follow FTP 2015-2020 and Customs regulations and accordingly Standard Operating Procedure (SOP) is prescribed covering following aspects:

Standard Operating Procedures for EOU/STP/EHTP

• Payment of Customs duty and clearance related • Procedure for import of goods, • B-17 Bond and Surety/Security • Import of goods • Procedure for indigenous goods • Time limit for utilisation of imported capital goods and inputs • DTA Sales • Inter-unit transfer • Clearance of by-products/rejects/waste/scrap etc • Procedure for re-export	• Sub-contracting • De-bonding of capital goods • Re credit • Replacement/repair of imported goods • Third Party exports • Records and returns • Exit from the scheme • Strict compliance to the provision of Customs Act and Rules

Public Notice 25/2021 dated 27 May 2021 (Office of Commissioner of Customs, Bangalore)

Amendment of Sea Import Manifest and Transshipment (Third Amendment) Regulations, 2021

Rule 15(2) regulation of Sea Import Manifest and Transshipment (Third Amendment) Regulations, 2021 implementation extended from 31 May 2021 to 30 June 2021

Notification No. 50/2021-Customs (N.T.) Dated 31 May 2021

Covid related exemptions on products and equipment's based on GST Council's recommendation

- IGST exempted on imports of specified COVID-19 relief material subject to specified conditions read with Notification No. 27/2021 & 28/2021 up to 31 August 2021
- IGST exemption on imports of specified donated COVID-19 relief material up to up to 31 August 2021
- Govt exempts customs duty on import of Amphotericin B till 31 August 2021 and amendment in Export Policy of Amphotericin-B injections
- Fast track approval for oxygen cylinder import for COVID relief activities in India

Notification No. 32/2021-Customs dated 31 May 2021

Ad Hoc exemption order no. 05/2021 Dated: 31 May 2021

Notification No. 31/2021-Customs dated 31 May 2021

Public Notice No. – 51/2021 dated 27 May 2021 and Instruction No. 12/2021-Customs dated 25 May 2021

Notification No. 07/2015-2020 dated: 1 June 2021

Analysis of changes under IGCR, 2017 – Circular issued

CBIC amended the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR, 2017) to boost trade facilitation based on Budget 2021 recommendation. Following aspects has been discussed in detail and analysed in the circular issued:

1. Job work:

- The facility of job work has been introduced with facility of 100% outsourcing, except for sensitive sectors such as gold, articles of Jewellery and other precious metals or stones.
- An option has been given to the importers to import capital goods for a specified purpose at a concessional rate of duty and after having put such capital goods to use for the said purpose, clear the same after payment of the differential duty and interest, at a depreciated value, with permission from the jurisdictional Customs Officer.

Analysis of changes under IGCR, 2017 – Circular issued

2. Procedure to be followed by the importer covering:
   - One time – Prior Intimation of intent to avail IGCR Benefit
   - Intimation before import
   - Clearance of goods from the port of import
   - Receipt of goods at premises of importer/job worker
   - Goods sent for job work from importer's premises
   - Receipt of goods from the job worker
   - Re-Export or clearance for home consumption
   - Quarterly return and maintenance of account
3. Maintenance of account by job worker
4. Penalty for non-compliance
5. Automation of process and compliance on ICEGAT portal
6. List of officers overseeing IGCR, 2017

Circular No. 10/2021-Customs dated 17 May 2021

Trade facilitation during lockdown period – Undertaking in lieu of Bond

The Board has decided to restore the facility of acceptance of an undertaking in lieu of bond in certain cases of customs clearance from 08 May 2021 till 30 June 2021, as was earlier done through Circular 17/2020-Cus., dated 03 April 2020 as amended by Circular No. 21/2020-Cus., dated 21 April 2020 communicated under JNCH's P. N. Number 41/2020 dated 03 April 2020 and 58/2020 dated 22 April 2020 respectively.

This relaxation is in respect of bonds prescribed under Section 18, Section 59 and Section 143, and under notifications issued in terms of Section 25 of the Customs Act, 1962. Importers /Exporters availing this facility shall ensure that the undertaking furnished in lieu of bond is duly replaced with a proper bond before the stipulated period i.e., 15 July2021.

Public Notice No. 43/2021 dated 10 May 2021

Circular No. 09/2021 dated 08 May 2021

DGFT IEC services not available from 01 June to 6 June 2021

Trade Notice No. 07/2021-22 dated 26 May 2021

Mandatory recording of information about transfer and paperless issuance of DFIA Scrips

In order to enable electronic, paperless transactions and facilitate trade, following initiative have been taken:

- Recording of transferability of DFIA is being made online
- To apply for ARO/Invalidation against the said DFIA Scrip online
- The issuance of paper copies of DFIA scrips (for EDI Ports) shall be discontinued with effect from 07 June 2021. Security Paper copies of DFIA Scrips shall continue to be issued for Non-EDI Ports.
- For transfer of DFIA, unless the same is recorded on DGFT website, the new owner (transferee) will not be able to utilize the scrip.
- Application and issuance of the DFIA scrips would in online module.
- Instruction for the same is provided

Trade Notice No. 06/2021-22 dated 25 May 2021

Online e- EPCG Committee module

The applications for seeking relaxations In terms of para 2.58 of FTP 2015-20 under the EPCG Committee would be accepted through online mode only. No manual submission of applications for the same would be allowed. The entire processing of the applications and communication of the decision of the committee would be in online mode only.

Trade Notice 05/2021-22-DGFT dated 19 May 2021

Extension of validity of RCMC beyond 31 March, 2021

The Regional Authorities (RAs) of DGFT will not insist on valid RCMC (in cases where the same has expired on or before 31 March 2021) from the applicants for any incentive/authorizations till 30 September, 2021. Further, EPCs will collect the applicable fees for the year 2021-22 on restoration of normalcy.

Trade Notice No. 04/2021-2022-DGFT dated 10 May 2021

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Goods and Services Tax

- Do not politicise GST Council: Finance Minister Nirmala Sitharaman
- GST Collection Declines In May; Holds Above ₹ 1 Lakh Crore-Mark For 8th Month In A Row
- E-way bill integrated with FasTag, RFID; GST authorities to get real-time data of commercial vehicles
- GST revenue dips, still over ₹1L cr
- 'Is the GST Council heartless?': Here's what FM Sitharaman has to say
- GST council becoming a rubber-stamp authority: PTR's maiden speech
- Late fee relief to non-filers of GST returns to help small business, add to revenue: Experts
- GST Council Meeting: Amnesty Scheme to Reduce GST Late Fee; Other Key Decisions

Customs and other

- Cipla seeks govt help on pricing, customs ahead of paying $1 billion advance for Moderna vaccine
- Solar power: Levy of basic customs duty may hit tariff trajectory
- Customs at Delhi airport seized iPhones, PS5 worth Rs 2.50 crore
- Kerala Gold smuggling case: Customs to send notice to ex-UAE Consulate officials
- India, Australia likely to resume FTA talks soon
- India to start FTA talks with UK, EU by year-end
- India Working On First Major Free Trade Pact In A Decade
- Rates for RoDTEP likely to be announced in 2 weeks: DGFT

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