

DA TAX ALERT INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

July 2021
Issue: 14

**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 fourteenth 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 June 2021.

India is celebrating 4th year of GST implementation and we need to deep dive on expectations, perceptions & realities from the new law.

During the month of June 2021, the implementation of GST Council decisions and further meeting also held on rate change and further there were certain changes under Goods and Service Tax, Customs and other; question on GST leviability on intermediary services when exported, question of ITC reversal due to mis-match between GSTR 2A and GSTR 3B, service tax applicability on notice pay recovery, revival of SEIS for FY 2019-20 and DGFT's benefits on hold due to system update and others.

In the fourteenth 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 June 2021.

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

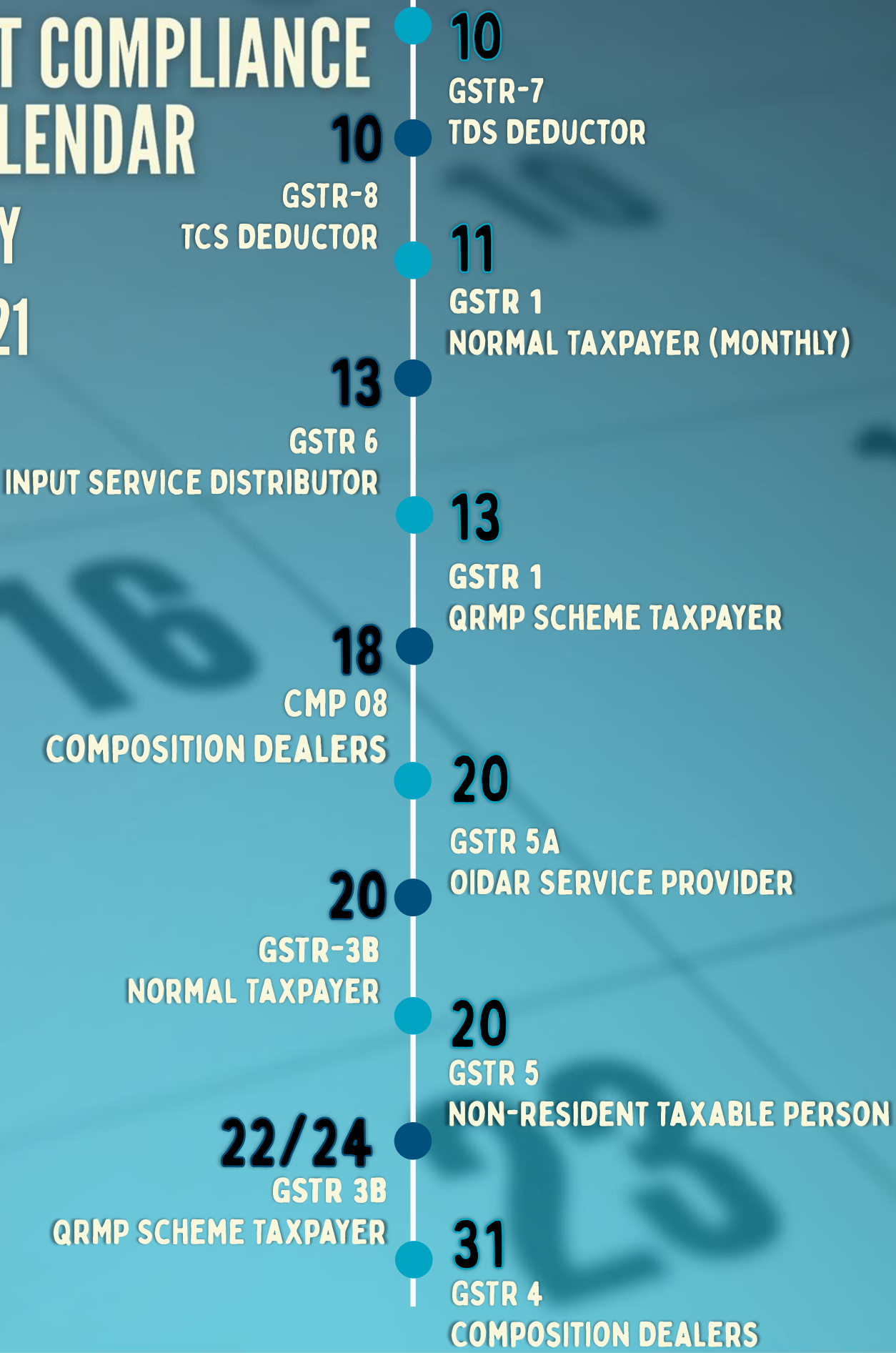
We hope you will find it interesting, informative, and insightful. Please help us grow and learn by sharing your valuable feedback and comments for improvement.

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

JULY 2021





- Levy of GST on intermediary may not lead to double taxation!
- Amount collected by the Revenue without the authority of law to be refunded without any period of limitation under GST law
- ITC reversal not required in relation to loss arising from manufacturing process
- ITC cannot be denied due to GSTR 2A and GSTR 3B mismatch
- Tax Invoice to be considered as "Contract" for TDS purpose
- Various clarifications issued by CBIC
- Waiver of penalty in case of non compliance of QR code on invoice
- GSTN Portal Updates
- GST Revenue Collection in June 2021-Rs.1.02 lakh Cr.

Levy of GST on intermediary may not a lead to double taxation!

The Company filed writ petition under Article 226 of the Constitution of India, that section 13(8)(b) and section 8(2) of the IGST Act, 2017 are ultra vires articles 14, 19, 245, 246, 246A, 269A and 286 of the Constitution of India and also ultra vires the provisions of the CGST Act, 2017, IGST Act, 2017 and MGST Act, 2017. The two judges bench given different view and now the matter referred to Chief Justice of High Court. The Honorable judges observed and held that:

In Favour (By Honorable Judge)

- The fact that GST is a destination-based consumption tax; it is a value added tax; it is a tax on services provided and consumed within the territory of India having no extra territorial operation or nexus ...
- The service was complete when the report was delivered to the foreign client. Since the delivery of the report to the foreign client was considered to be an essential part of the service, the demand of service tax was set aside. [SGS India Pvt. Ltd., 2014 (34) STR 554 (Bom.)]
- The overseas foreign customer of the petitioner falls within the definition of 'recipient of supply' in terms of section 2(93) of the CGST Act read with section 2(14) of the IGST Act. Therefore, it is an 'export of service' as defined under section 2(6) of the IGST Act read with section 13(2) thereof. It

would also be an export of service in terms of the expression 'export' as is understood in ordinary common parlance . Evidently and there is no dispute that the supply takes place outside the State of Maharashtra and outside India in the course of export.

- However, by artificially creating a deeming provision in the form of section 13(8)(b) of the IGST Act, where the location of the recipient of service provided by an intermediary is outside India, the place of supply has been treated as the location of the supplier i.e., in India. This runs contrary to the scheme of the CGST Act as well as the IGST Act besides being beyond the charging sections of both the Acts.
- Nonetheless there is an express bar under clause (1) of Article 286 that no law of a state shall impose or authorize imposition of a tax on the supply of goods or services or both where such supply takes place in the course of import into or export out of the territory of India.
- We have no hesitation in holding that section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 is ultra vires the said Act besides being unconstitutional

Levy of GST on intermediary may not a lead to double taxation!

Against (by Honorable Judge)

- A plain reading of Article 245, makes it clear that the impugned section in no way violates this provision as from the plain language of the said section it is clear that the same do not seek extra territorial operation nor seek to levy tax on service recipient outside India. All that Section 13(8)(b) does is to provide for place of supply in respect of intermediary services where the service recipient is outside India (as in the case of the Petitioner), to be the location of the supplier of services. Therefore, there is no question of extra territorial legislation here.
- When the Constitution has empowered the Parliament to formulate principles determining the place of supply, in my view, Section 13(8)(b) cannot be said to be ultra vires the charging section as Section 13(8)(b) does not violate the levy on the supply made by the intermediary, particularly in view of Section 7, which designates such supplies to be inter State supplies. And which power to designate inter State supply also comes from Articles 246A, 269A(1) read with 269A(5) as discussed earlier.
- With respect to the second assertion that the same supply would be taxed by foreign service recipient in his hands in the importing country, that in my view is also not really tenable in the eyes of law as IGST is not extra territorial and generally speaking a commission paid by the recipient of service outside India would be entitled to get deduction of such payment of commission by way of expenses and therefore, it would not be a case of double Taxation
- The impugned provision does not in any manner deem an export of service to be a local apply whereas Section 13 pertains to place of supply and Section 7 pertains to the nature of inter state supply as enacted by the Parliament pursuant to Article 246A read with Article 269A of the Constitution. Both the Sections as discussed have different purposes.
- It appears that Petitioner has failed to appreciate that the Parliament has power to legislate on place of supply and on interstate supply of goods and services pursuant to Article 269A read with Article 246A and Article 286 of the Constitution of India, by virtue of which the IGST Act and Section 13(8)(b) have been enacted.
- As stated earlier Section 8 deals with nature of supply whereas Section 13 deals with place of supply and the attempt to artificially link Section 8(2) with Section 13(8)(b) is misplaced and unfounded as discussed earlier. In my considered opinion, Section 13 (8) (b) cannot be linked with Section 8 (2) of the IGST Act. Therefore, in my view, the challenge with reference to the charging sections of Acts which operate

Levy of GST on intermediary may not a lead to double taxation!

in different fields in respect of supplies of different natures appears to be unnecessary.

- Once the Parliament has in its wisdom stipulated the place of supply in case of Intermediary Services be the location of the supplier of service, no fault can be found with the provision by artificially attempting to link it with another provision to demonstrate constitutional or legislative infraction.
- In the light of the above, I am of the view that neither Section 13(8)(b) nor Section 8 (2) of the IGST Act are unconstitutional . Also neither Section 13 (8) (b) nor Section 8 (2) of the IGST Act are ultra vires the IGST Act. Section 13 (8) (b) is also not ultra vires Section 9 of the CGST Act, 2017 or the MGST Act, 2017. Section 13(8)(b) as well as Section 8(2) of the IGST Act are constitutionally valid and operative for all purposes.

DA Comments:

Now as the matter referred to Honorable Chief Justice, it would be relevant to see whether intermediary service would be liable to GST or not.

[Dharmendra M. Jani \[2021 TIOL 1297 HC MUM GST\]](#)

Amount collected by the Revenue without the authority of law to be refunded without any period of limitation under GST law

The Company filed the refund claims of the IGST paid on the Ocean Freight under the reverse charge mechanism after the decision of the Honorable Court in the writ-applicant's own case which was connected with the main petition of Mohit Minerals (Pvt) Ltd. vs. Union of India and others [2020-TIOL-164-HC-AHM-GST], held that the Notification No. 8/2017 - Integrated Tax (Rate) dated 28 June 2017 and the Entry No. 10 of the Notification No. 10/2017 under the Integrated Tax (Rate) dated 28 June 2017 lack legislative competency and the same were accordingly declared as unconstitutional.

Upon filing of the refund claims, the jurisdictional authority issued the Deficiency Memo in both the claims separately on the premise that the refund claims were not filed within the statutory time limit as provided under Section 54 of the CGST Act inasmuch as Section 54 does not provide separate category for claiming refund of such amount, therefore, the present writ application. The Honorable High Court observed and held that:

- Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Since the amount of IGST collected by the Central Government is without authority of law, the Revenue is

obliged to refund the amount erroneously collected.

- Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and/or the GGST Act. The amount collected by the Revenue without the authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable. In such circumstances, Section 17 of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Revenue under mistake of law
- Issue is squarely covered by the decision of this Court in the case of Gokul Agro Resources Ltd. vs. Union of India [2020-TIOL-691-HC-AHM-GST], wherein this Court directed the respondent to pass an appropriate order in the refund application preferred by the assessee without raising any technical issue, within a period of four weeks [para 11]
- Writ-application succeeds and is hereby allowed - respondent is directed to process the refund claim filed in the prescribed form RFD-01 online portal for the month of February 2018 and March 2018 for an amount of Rs.93.54 lakh along with simple interest at the rate of 6% per annum

Amount collected by the Revenue without the authority of law to be refunded without any period of limitation under GST law

DA Comments:

The judgment has reiterated the principle of tax paid without the authority of law cannot be held back by the revenue authorities and to be refunded back without any period of limitation

[M/s Comsol Energy Pvt Ltd vs State Of Gujarat \[2021-TIOL-1334-HC-AHM-GST\]](#)

ITC reversal not required in relation to loss arising from manufacturing process

The company is engaged in the manufacture of MS Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars. There is a loss of a small portion of the inputs, inherent to the manufacturing process. The jurisdictional authority issued orders seeking to reverse a portion of the ITC claimed, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the CGST Act. The Writ petition is filed against the assessment orders for which Honorable High Court observed and held that:

- The situations as set out in clause (h) indicate loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.
- In the case of *Rupa & Co. Ltd. V. Cestat, Chennai* (2015 (324) ELT 295 - 2015-VIL-373-MAD-CE), a Division Bench of this Court decided a question of law in regard to the entitlement to Cenvat credit involving the measure of inputs used in the manufacturing process, in terms of the provisions of Section 9A and 2(g) of the CENVAT Credit Rules, 2002.
- In the light of the discussion as above,

I am of the view that the reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5)(h).

- The impugned orders to the above extent are set aside.

DA Comments:

The similar principle also prevailed in erstwhile CENVAT Rules and based on provisions under GST, the manufacturing loss is not covered for the purpose of reversal of ITC.

M/s ARS Steels & Alloy International Pvt Ltd [2021-VIL-484-MAD]

ITC cannot be denied due to GSTR 2A and GSTR 3B mismatch

The writ petition challenging order denying ITC on ground of mismatch of ITC availed in Form GSTR-3B with details in Form GSTR-2A is filed for the FY 2018-19 which contends that:

- Prior to insertion of Section 16(2)(aa) vide Finance Act, 2021, CGST Act has no provision which empowers the Revenue Authorities to deny credit basis matching of Forms GSTR 3B & 2A;
- Hence, the action of Authorities is in teeth of GST Council Press Release dated 4 May 2018 (released pursuant to 27th GST Council meeting stating that there shall not be automatic reversal of credit from buyer on non-payment of GST by the seller) and CBIC Circular No. 59/33/2018-GST which made it clear that refund of unutilized ITC cannot be denied where same does not match with Form GSTR-2A;
- Therefore, relying on the decision of Madras HC in DY Beathel Enterprises case, pleads that ITC cannot be denied to the recipient on account of any shortcoming on supplier's part.

The Honorable High Court admitted the writ petition and granted conditional ad interim stay on the Order and restrains Revenue to take coercive steps on assessee depositing 5% of demand within 15 days; Lists the matter in the week commencing 2 August 2021.

The specific observation is that the timely filing of returns and payment of GST to the exchequer by the suppliers is not in the control of the recipient and it is impossible for the recipient to ensure that the third-party suppliers fulfil their compliance burden under GST. The denial of ITC to the recipient on account of conditions that are impossible for the recipients to fulfil is in teeth of the settled legal principle that law cannot compel a person to perform an impossible task.

DA Comments:

The issue relates to refund for FY 2018-19 which is prior to refund circular issued in March 2020 restricting refund if matching not done of Form GSTR 2A and GSTR 3B and compliance to Rule 36(4) of CGST Rules, 2017. The requirement of matching concept for availment of ITC and Rule 36(4) is challenged in various Honorable High Courts and pending for final disposal.

[Bharat Aluminium Company Ltd vs. Union of India Ors. \[TS-286-HC\(CHAT\)-2021-GST\]](#)

Tax Invoice to be considered as "Contract" for TDS purpose

The applicant is a trust and is involved in executing civil works contract and sought advance ruling in respect of the following question:

- Interpretation of the term "a contract" for TDS applicability under section 51 of the GST Act.
- In the absence of any contract, or contract of continuous supply, whether TDS provisions under section 51 is applicable for every supply of goods and services? Or whether the single tax invoice shall be considered as "a contract" or aggregate value of purchase from a vendor for the whole year be considered as a contract?

For following scenarios and implications:

1. Value of supply exceeds the limit, but there is no existence of "a contract". However, tax invoice itself shall be considered as "a contract" and TDS shall be applied.
2. Value of total supply during the year exceeds the limit, but there is no existence of "a contract". Each tax invoice shall be considered as "a contract" and value of such supply under "a contract" not exceeds the limit. Annual value of supply from the supplier shall not be considered as supply under "a contract". No TDS provisions applicable.
3. Value of total supply under "a contract: not exceeded the threshold limit, No TDS provisions applicable

4. Value of total supply under "a contract" exceeds the limit. TDS shall be applied when the aggregate value exceeds Rs.2.50.000-00

The AAR observed and held that:

- The section 51 of CGST Act, 2017 does not mention anything about the value of the invoice, but only refers to the total value of supply under a contract. Hence the invoice is not the criteria but the supply under a contract is criteria for determining the liability to deduct the tax at source.
- The "agreement to sell" and the contract of "Sale of Goods" as envisaged in the Sale of Goods Act, 1930 also are governed under the Contract Act, 1872. Further, sale of goods is only a subset of "supply" as envisaged in Section 7(1) of the GST Act and hence all contracts covered under the Sale of Goods Act, 1930 are also contracts under the GST Acts.
- The tax deduction at source is applicable to all supplies subject to condition that the value of supply under a contract under scenario no. 3 and 4 and purchase order under scenario no. 2 is more than Rs. 2,50,000-00 and invoice value is only applicable for scenario no. 1 as the basis for determining the "value of supply" under a contract.

Tax Invoice to be considered as "Contract" for TDS purpose

DA Comments:

The Contract can be verbal or in written and thus without having written contract, tax invoice/commercial invoice to be considered for TDS purpose is rightly held by AAR.

Various clarifications issued by CBIC

Post 43rd GST Council Meeting, various clarifications were issued on the decisions taken in the meeting and other clarifications. Here is the summary table:

Issue	Clarification
Applicability of GST on supply of food in Anganwadis and Schools	It has been clarified that services provided to an educational institution (including anganwadi) by way of serving of food (catering including mid-day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations
Applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)	It has been clarified that Entry 23A of notification No. 12/2021 Central Tax (rate) does not exempt GST on deferred annuity payments in consideration of construction of roads. Hence, GST is applicable on such payments
GST on supply of various services by Central and State Board	It has been clarified that GST is exempt on services like conduct of entrance examinations and input services relating to conduct of examinations, provided by a state/central board. While GST @18% is applicable on other services (like accreditation, registration, etc.)
Rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis	It has been clarified that services in the way of construction of Ropeway on turnkey basis shall be subject to GST @ 18% as per entry at sl. No. 3(xii) of notification 11/2017-(CTR).
Applicability of GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS	It has been clarified in the case of supply of service by way of milling of wheat into wheat flour, along with fortification, by any person to a State Government for distribution of such wheat flour under Public Distribution System is exempt only if the value of goods added is less than 25% of the composite supply, else GST @5% is applicable.
Applicability of GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans	It has been clarified that Services supplied by the govt in respect of guaranteeing of loans for PSUs or other undertaking is exempt from GST.

Various clarifications issued by CBIC

Issue	Clarification
<p>GST rate on laterals/parts of Sprinklers or Drip Irrigation System</p>	<p>Clarification was issued with regards to tax rate applicable on parts used solely for sprinklers or drip irrigation system. It has been stated that GST @ 12% is applicable even if the parts covered under HSN 8424 are supplied separately for sole use of sprinklers or drip irrigation system.</p>
<p>Whether Dynamic QR Code is to be provided on an invoice, issued to a person, who has obtained a Unique Identity Number as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017?</p>	<p>Any person, who has obtained a Unique Identity Number (UIN) as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017, is not a “registered person” as per the definition of registered person provided in section 2(94) of the CGST Act 2017. Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code</p>
<p>UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI ID?</p>	<p>Given that UPI ID is linked to a specific bank account of the payee/ person collecting money, separate details of bank account and IFSC may not be provided in the Dynamic QR Code.</p>
<p>In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized by the supplier on his/ her behalf), whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided?</p>	<p>Yes. In such cases where the payment is collected by some person, authorized by the supplier on his/ her behalf, the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier.</p>

Various clarifications issued by CBIC

Issue	Clarification
<p>In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?</p>	<p>No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.</p>
<p>In some instances of retail sales over the counter, the payment from the customer is received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment. In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction. Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number</p>	<p>In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice</p>

Various clarifications issued by CBIC

Issue	Clarification
<p>When part-payment has already been received by the merchant/ supplier, either in advance or by adjustment (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, what amount should be provided in the Dynamic QR Code for “invoice value”?</p>	<p>The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/supplier in respect of the said supply. When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., then the dynamic QR code may provide only the remaining amount payable by the customer/recipient against “invoice value”. The details of total invoice value, along with details/ cross reference of the part payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.</p>

[Circular No: 149/05/2021- GST dated 17 June 2021](#)

[Circular No: 150/06/2021- GST dated 17 June 2021](#)

[Circular No: 151/07/2021- GST dated 17 June 2021](#)

[Circular No: 152/08/2021- GST dated 17 June 2021](#)

[Circular No: 153/09/2021- GST dated 17 June 2021](#)

[Circular No: 154/10/2021- GST dated 17 June 2021](#)

[Circular No: 155/11/2021- GST dated 17 June 2021](#)

[Circular No: 156/12/2021- GST dated 21 June 2021](#)

Waiver of penalty in case of non compliance of QR code on invoice

The notification waives the amount of penalty payable by registered person under section 125 of the said CGST Act, 2017 for non-compliance of the provisions of notification No.14/2020 – Central Tax

dated 21 March 2020 which mandates to have Dynamic Quick Response (QR) code on an invoice, for the period between 1 December 2020 to 30 September 2021

[Notification No. 28/2021 – Central Tax dated 30 June 2021](#)

GSTN Portal Updates

No more physical visits for seeking adjournments of personal hearings

A new functionality has been introduced by GSTN on the common portal through which both adjournment and extension of time for furnishing replies can be sought for

The screenshot displays the GSTN portal interface with a sidebar menu on the left containing: NOTICE/ACKNOWLEDGEMENT, REPLIES/UNDERTAKING/REQUEST, ORDERS, and AUDIT HISTORY. The main content area is titled 'Request for Adjudgment of Personal Hearing and/or extension of due date for replying to the show cause notice'. It features two identical sections for 'Personal Hearing', each with a 'Date of Hearing' (DD/MM/YYYY) and a 'Time of Hearing' (HH:MM) selection. Below these are sections for 'Due Date of reply to SCN' (showing 27-07-2021) and 'Request for extension of due date for replying to SCN*' (DD/MM/YYYY). At the bottom, there is an 'Upload Supporting Documents' button.

New functionalities added in GST portal

S.No	Module	Functionality
1	Returns	Moving the records saved in IFF, to later months of same Quarter, by taxpayers under QRMP Scheme
2		Auto population of GSTR-3B liability, for taxpayers under QRMP Scheme, from their IFF and GSTR 1
3	Refund	Filing for refund of accumulated ITC by taxpayers making exempt/ nil-rated supplies, by selecting an option of not having an LUT number in the refund application

GSTN Portal Updates

New functionalities added in GST portal

S.No	Module	Functionality
4	Ledgers	Facility to view ledger for 12 months and its download
5		Transfer of amount in cash ledger, between major/minor heads, by Temp ID holders and unregistered applicants
6		Negative liability statement made available to composition taxpayers
7	Front Office	Inclusion of common names in the HSN Directory and its download in excel format by the taxpayers

New Functionalities made available for Taxpayers on GST Portal in June, 2021

GST Revenue Collection in June 2021- Rs.92,849 Cr.

TRENDS IN GST COLLECTION IN RS. CRORE

GST REVENUES DIP BELOW INR 1 LAKH CRORE IN JUNE 2021



Notice pay recovery not liable to service tax

The matter before CESTAT whether service tax can be demanded on amount recovered by the employer from the employee for granting waiver of mandatory notice period prescribed in the agreement. the issue has been settled by the hon'ble High Court Of Madras In The Case Of Ge T & D India Limited (Formerly Alstom T & D India Limited) Versus Deputy Commissioner Of Central Excise [2020 (1) TMI 1096 – Madras High Court] where it was held that the employer cannot be said to have rendered any service per se much less a taxable service and has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit.

DA Comments:

The issue not yet settled and continue under GST too for imposition of GST on notice pay recovery. In future, there can be similar issue prevail under GST as still notice are issued by revenue authorities.

C.S.T. -Service Tax – Ahmedabad Versus Intas Pharmaceuticals [2021 (6) TMI 906 - CESTAT Ahmedabad]

Pending of similar matters not a ground to grant leave to Revenue Authority for filing appeal, recovery from officer sought

The impugned order was passed by the CESTAT on 20 May 2019 and the proposal is stated to have been sent by the applicant to the Ministry of Finance on 06 January 2020, after six months. The plea raised by the revenue authority is that similar matters are pending in Civil Appeal No. 6550/2015 and other connected matters. The Honorable Supreme Court observed and held that:

- Merely because similar matters are pending is not a ground to grant leave and take the matter when the authorities have been negligent in filing the appeal. We have repeatedly emphasized that unless the case is brought within the parameters of Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. - (2012) 3 SCC 563, we would not be inclined to condone the delay and have in fact dismissed the special leave petitions with cost categorizing them as "certificate cases" only brought before the Court to complete a formality and save the skin of the officers concerned.
- The learned counsel for the petitioner submits that more than Rs. 5 Crores is at stake. If that be, the authorities should recover it from the officer concerned.
- Before we proceed with the application further, we would like to know the steps which have been taken by the

appellant against the officers concerned! If it has not been done, then an inquiry must be held, responsibility fixed and the action taken against the officers be placed before us.

- We may only note that it has taken a year's delay apart from the 90 days period to file the special leave petition and now three months further are required to complete action against the officers concerned. So much for the anxiety about the revenue! List on 03 September 2021

DA Comments:

The timeline should be followed by assessee and revenue authorities without any further extension except in special cases which has well been observed in the said case by not allowing the appeal which has been delayed basis pending of similar cases.

PCCE vs Design Dialogues India Pvt Ltd [2021-TIOL-188-SC-CX]

Extended period of limitation cannot be invoked when there is no suppression of facts

Revenue authority questioned the order passed by the Tribunal to the extent it held that the assessee had not resorted to wilful suppression with an intent to evade payment of service tax and thus the extended period of limitation prescribed u/s 73(1) of the FA, 1994 cannot be invoked and also held that since there is no evidence of wilful suppression of facts, provisions of Section 80 of Finance Act, 1994 can be invoked to waive the penalties imposed. The Honorable High Court observed and held that:

- To justify the action of invocation of extended period of limitation, it has been stated that since, the respondent has been rendering taxable service and failed to observe statutory provisions for registration and payment of service tax, there was suppression of material facts.
- It is absurd to even suggest that the respondent had suppressed facts with an intent to evade payment of tax, and mulct it with payment of service tax by invoking the extended period of limitation.
- It also needs to be noted that organizations like respondent-NRSA are run by Scientists, Academicians and Administrators. Even if there has been any non-payment of service tax, the same cannot be alleged to be by fraud, collusion or wilful misstatement or suppression of facts.

- No substantial question of law arises for consideration in this appeal. Appellants shall pay costs of Rs. 10,000/- to Telangana High Court Legal Services Committee within six weeks

DA Comments:

The judgment has not considered invoking extended period of limitation based on facts of the case and status and objective of the assessee

CCCE vs M/s National Remote Sensing Agency [2021-TIOL-1343-HC-TELANGANA-ST]

SEIS available for FY 2019-20

Ministry of Finance has given concurrence to Department of Commerce (DoC) for continuation of SEIS (Service Export of India Scheme) for FY 2019-20 with a financial allocation of Rs. 2,061 crores

with a suitable cap on SEIS benefit. Further, necessary action of issuance of notification for implementing SEIS will be taken by DoC.

[D.O No. 140604A/3/2021-DBK dated 2 July 2021](#)

Applicability of Central Excise exemption on Ethanol/ Methanol blended Petrol, and High-speed diesel blended with bio-diesel, when blending is done within the refinery

CBIC clarified that exemption from Basic Excise Duty, Road and Infrastructure cess (RIC), Special Additional Excise Duty (SAED) and Agricultural and Infrastructure and Development Cess (AIDC), in all such notifications, on the blended fuel in case the blending of motor spirit (commonly known as petrol) and ethanol or methanol, is done within the refinery, is subject to the following conditions:

- Appropriate duties of excise have been paid on portion of motor spirit (commonly known as petrol) which is a specified percentage of the blend (as specified in the relevant notification);
- Appropriate GST (Central tax, State tax, Union Territory Tax or integrated tax) have been paid on portion of ethanol or methanol, as the case may be, which is which is a specified percentage of the

blend (specified in the relevant notification) and

- Ethanol/Methanol blended petrol is conforming to the Bureau of Indian Standards Specification, as specified in the relevant notification.

Thus, it is clarified that the notifications grant exemption to the ethanol/ methanol blended petrol provided that the Central Excise duty (including applicable cesses) is paid on motor spirit (petrol) and GST is paid on ethanol/methanol, used in producing the blended fuel.

The above clarification will also be applicable for High-speed diesel oil blended with alkyl esters of long chain fatty acids obtained from vegetable oils, commonly known as bio.

[Circular No. 1078/02/2021 – CX dated 22 June 2021](#)

Online filing of AEO T2 and AEO T3 applications

The AEO application processing for AEO T1 is online since December 2018 and to take this endeavour for digitization forward, in line with the government's Digital India initiative, the Board has decided to launch a new version (V 2.0) for on-boarding of AEO T2 and AEO T3 with effect from 7 July 2021. The Circular 33/2016- customs dated 22.07.2016 as amended stands suitably modified to this effect. Key aspects:

- To ensure smooth roll-out, it has been decided that till 31 July 2021, the AEO T2 & AEO T3 applicants would be allowed to physically file AEO application without registering on the AEO portal as a transition measure.

- However, from 01 August 2021, it will be mandatory for AEO T2 and AEO T3 applicants to register on the portal for AEO certification.
- The AEO T2 and AEO T3 application filed at the office of the jurisdictional Principal Chief Commissioner/ Chief Commissioner before 07 July 2021 are not required to be filed online and may continue to be processed manually, except where migration on web-application is requested by the existing AEO T2 and AEO T3 applicants, while ensuring that the AEO certification process is not delayed.

[Circular No. 13/2021- Customs dated 1 July 2021](#)

Deliberation on continuation of EOU scheme

DoC (Department of Commerce) may examine the relevance of the EOU Scheme in view of introduction of the Bonded Manufacturing Warehouse Scheme under Section 65 of the Customs Act specifically, if there is any need for continuation of the EOU Scheme.

Further, Comments/inputs on the proposal of transfer of administrative powers of EOUs from DCs to RAs of DGFT has been sought since the same would enable aligning the administration of EOUs with RAs with the policy making organisation viz. DGFT.

[File No. K-22022/8/2021-EOU \[Ministry of Commerce & Industry, Department of Commerce, EOU Section\] dated 14 June 2021](#)

Acceptance & issuance of claims under MEIS, SEIS, ROSL, ROSCTL on hold

The issuance of benefits/scrips under MEIS, SEIS, ROSL and ROSCTL Schemes would be on hold for a temporary period due to changes in the allocation procedure.

During this period, no fresh applications would be allowed to be submitted at the online IT module of DGFT for these schemes and all submitted applications pending for issuance of scrips would also be on hold.

[Trade Notice No. 08/2021-22-DGFT dated 8 July 2021](#)

Additional Checks for CoO Declaration in Bill of Entry

The additional check has been put in the system to disallow the use of the same CoO (Country of Origin) number in more than one Bill of Entry. This has been done in respect of those FTA/PTA which specify that a CoO shall be valid only for one import or importing operations and

may include one or more goods. The same CoO can however be given for multiple items in the same Bill of Entry. The changes will reflect in the system w.e.f 8 July 2021.

[Advisory no. 17/2021- Customs issued by DGoS, ICES dated 6 July 2021](#)

Measures for improvements in Faceless Assessment

Central Board of Indirect Tax and Customs (CBIC) has recently comprehensively reviewed the implementation of Faceless Assessment and deliberated on the further measures required for expediting the pace of assessment and Customs clearance of

imported goods and for further enhancing the uniformity in assessments and anonymity with a view to reduce interface with the trade. The measures are:

Measures for improvements in Faceless Assessment

- Enhancement of facilitation levels
- Expediting assessment process
 - ❖ The working hours of all FAGs shall be uniform from 10 AM till 8 PM on any working day.
 - ❖ NACs and jurisdictional Pr. Commissioners/Commissioners of Customs shall administratively monitor that FAGs communicate the 'first decision' on the Bill of Entry within 3 working hours after its allocation.
 - ❖ Jurisdictional Pr. Chief/ Chief Commissioners of Customs shall ensure as far as possible that one Appraising Officer is given responsibility of not more than 2 (two) FAGs.
 - ❖ The total number of queries which can be raised by an Appraising Officer in respect of a Bill of Entry would now be restricted to 3 (three).
- ❖ The option to 'set-aside' 5 (five) Bills of Entry, which is already available with the Appraiser/Superintendent would henceforth not require an approval of the Deputy/Assistant Commissioners of Customs.
- Re-organisation of FAGs – Specialization
- Re-organisation of FAGs – Optimisation of workload
- Enhancing Direct Port Delivery (DPD)
- Automated generation of examination orders
- Anonymised escalation

As aforementioned, the changes stipulated in paras 3.1 to 3.5 will come into effect from 15 July 2021.

[Circular No. 14/2021-Customs dated 7 July 2021](#)

[Standing Order No. – 13/2021](#)

CBIC notifies 32 Countries for exchange of information facilitating trade

The provisions of the section 151B of Customs Act, 1962 shall apply to the Agreement or Arrangement on Cooperation and Mutual Administrative Assistance (CMAA) in Customs matters

entered with the 32 contracting State such Australia, Arab Republic of Egypt, European Community, Hongkong, Islamic Republic of Ira and others.

[Notification No. 58/2021-Customs \(N.T.\) | Dated: 1 July 2021](#)

Implementation of the Sea Cargo Manifest and Transshipment Regulations

The transition provisions of Sea Cargo Manifest and Transshipment Regulations, 2018 (SCMTR) has been extended till 31 July 2021 to enable carriers continue mandatory filing on parallel basis.

Further, CBIC has decided that following messages by the Custodian i.e., Stuffing

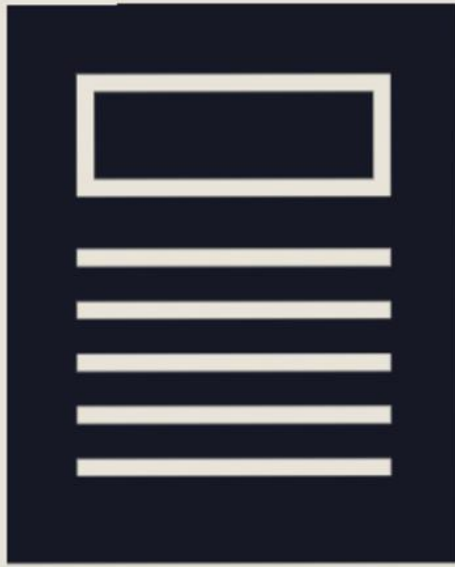
Message (SF), ASR Filing, DP Filing and AR filing by the Custodians and VCN message by the Terminal Operators will be made mandatory w.e.f. 20 July 2021. The detailed guidelines and FAQs for different categories of stakeholders are available on ICEGATE.

[Circular No. 12/2021-Customs Dated: 30 June 2021](#)

[Notification No. 56/2021-CUSTOMS \(N.T.\) Dated 30 June 2021](#)

IEC modification/update date extended up to 31 July 2021

[Notification No. 11/2015-2020 dated 1 July 2021](#)



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- GST officials tap radio frequency data to detect tax evasion, fraud
- A blip: On revenue collections of GST in June
- GST collection for June falls to Rs 92,849 crore, lowest in 10 months
- Four years of GST: The good, bad and ugly
- Hike in GST collection in recent months should be 'new normal': FM Sitharaman
- Confusion over GST on annuity from govt: Infra companies under taxman's lens
- NAA directs GST field units to collect evidence against suppliers not passing GST rate cut benefits on Covid items to customers
- CTI urges govt to bring petrol, diesel under GST to reduce fuel rates

Customs and other

- DRI carries out searches at Samsung offices over suspicion of customs duty evasion
- Measures from July 15 to improve faceless assessment in Customs
- 90 iPhone 12 Pro Worth Rs 1 Crore Seized by ACC Export Commissionerate at New Courier Terminal, Says Delhi Customs
- Kerala Gold Smuggling Case: Customs Issues Show-cause Notice to 53 People
- India, UK resolve to deepen financial services cooperation ahead of FTA talks
- India-European Union FTA: Talks to restart soon on realistic note
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