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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

August 2021
Issue: 15

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 fifteenth 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 August 2021.

During the month of July 2021, there were certain changes under Goods and Service Tax, Customs and other; liquidated damages not liable to service tax, GSTR 9C not required from FY 2020-21, Intermediary Services not considered as export of services and thus liable to GST, Auto-Renewal of AEO-T1 validity and others.

In the fifteenth 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 July 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.

Your support has helped us grow. We are extremely thankful for your cooperation. We are completing two years of our journey on 5 August 2021. Looking forward for your continuous support and cooperation.

Regards
D.Vineet Suman
Co-founder and Managing Partner

PLI Schemes-Reinforcing Telangana as the 'Manufacturing Hub'

The Federation of Telangana Chambers of Commerce and Industry

PLI Schemes - Reinforcing Telangana as the 'Manufacturing Hub'

Thursday 5th August, 2021 | 4.00pm | Click Here for Register

The Production Linked Incentive (PLI) scheme, aimed to boost domestic manufacturing under the government's Aatmanirbhar Bharat initiative, was introduced in March 2020. In Budget 2021-22, 13 sectors were identified for an outlay of INR 1.97 lakh crore. So far, the PLI scheme has been approved and under process/processed for nine sectors: advance chemistry cell (ACC) battery, white goods, electronic or technology products (IT Hardware, Large Scale Electronics Products), API and pharmaceuticals drugs, telecom and networking products, food processing and high-efficiency solar PV modules. The Cabinet approval is pending for Textiles (MMF and Technical Textiles), Specialty Steel, Auto and Auto Components and special scheme for Semi-Conductor Fab and Display Fab.

The scheme is aimed at

- Offering incentives to promote manufacturing at home
- Encouraging investments both from within and outside India
- Substituting imports of specified products
- Introducing non-tariff measures to make imports difficult

CHIEF GUEST

Sri Jayesh Ranjan, I.A.S,
Principal Secretary, Industries and Commerce, IT E&C, Government of Telangana

SPEAKERS

Mr. Mihir Parekh
Director – Textiles, Government of Telangana

Mr. CA Vineet Suman Darda
Co-founder and Managing Partner, Darda Advisors LLP

K.Bhasker Reddy
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Registration link - https://lnkd.in/gtqFf6q

GST COMPLIANCE CALENDAR

AUGUST 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

- Blockage of Input Tax Credit beyond 1 year is not allowed
- Intermediary Services not considered as export of services and thus liable to GST
- Search and Seizure not on the basis of provision of GST law is unlawful
- Section 42 of CGST Act cannot be invoked on wrongful claim of ITC
- GST registration mandatory whether the transaction is done for pecuniary benefit or not
- Order to be quashed issued in violation of principle of natural justice
- Monthly maintenance beyond prescribed amount is only liable to GST – Madras High Court
- GSTR 9 & 9C related amendments
- Clarification regarding extension of limitation under GST Law

Blockage of Input Tax Credit beyond 1 year is not allowed

The Company's input tax credit in its electronic trading ledger was provisionally blocked by adjudicating authority on the ground that they had availed input tax credit based on fake invoices issued by non-existing firms. The said blockage was made on 15 January 2020 under Rule 86(A)(1) of CGST Rules, 2017.

Thus, feeling aggrieved, the company has filed this writ petition, against continuation of blockage for more than a year. The learned counsel submitted that the outer limit for disallowing debit of electronic credit ledger is one year, as has been prescribed in Sub Rule (3) of Rule 86(A) of the CGST Rules which starts running from the date of imposing such restriction and since the input tax credit ledger of the petitioner was blocked on 15 January 2020, therefore, in view of subrule 3 of Rule 86(A) of the CGST Rules, the period of one year expired on 14 January 2021, consequently, continuance of blockage of petitioner's input tax credit ledger after 14 January 2021 is not supported by law.

The Honorable High Court observed and held that:

- In view of the admission by the respondents, through their counsel, that continuance of blockage of petitioner's electronic credit ledger cannot continue beyond one year, the writ petition stands allowed.
- Respondent is directed to forthwith unblock input tax credit availed by the petitioner in its electronic credit ledger. However, this order will not preclude the respondents from taking such action against the petitioner, as is permissible under law.

DA Comments:

The expectations by adjudicating authority is to comply with GST provision so that the cost and resources of Revenue and assessee are not blocked for litigations at various levels. When the GST law does not allow the blockage of ITC beyond one year, there should be automated deblockage to avoid hardship to assessee.

M/s Vimal Petrothin Pvt Ltd Vs CCGST And Others [2021-TIOL-1412-HC-UKHAND-GST]

Intermediary Services not considered as export of services and thus liable to GST

The Company is going to be engaged in supplying services by way of arranging sales of goods for various overseas manufacturers/ traders and following business activities to be undertaken by him may be briefly summarised as under:

i. To locate prospective overseas/Indian buyers and know their requirement of goods;

ii. To arrange sales of the said goods from the foreign manufacturers/ traders to the prospective buyers;

iii. Goods are delivered to the buyers directly by the suppliers located outside the country;

iv. No prior agreement is made by the applicant with the overseas manufacturers/ traders for arranging such sales;

v. The applicant receives consideration in the form of commission in convertible foreign exchange from the overseas suppliers.

The advance ruling sought by AAR on whether such services would be considered as export of services as per clause (6) of section 2 of the IGST Act, 2017. The AAR observed and held that:

- It therefore appears that the applicant being supplier of services by way of arranging or facilitating sales of goods for various overseas suppliers and admittedly the same is not being done on his own account, satisfies all the conditions to be an intermediary as defined in clause (13) of section 2 of the IGST Act, 2017.
- We have already discussed that the applicant is found to be an 'intermediary' as defined in clause (13) of section 2 of the IGST Act, 2017.So, the place of supply shall be determined under sub-section (8) of section 13 of IGST Act, 2017 which shall be the location of the supplier of services i.e., in West Bengal for the present case. As a result, the supply shall be treated as an intra-State supply in terms of sub-section (2) of section 8 of the IGST Act, 2017 and tax will be levied accordingly.
- This transaction will, therefore, not be covered within the definition of export of services as provided in Section 2(6) of IGST Act, 2017 as it is not satisfying one of the conditions of place of supply being outside India, as enumerated in Section 2(6)(iii) of the IGST Act, 2017 and consequently shall not be treated as zero-rated supply as provided in section 16 of the IGST Act, 2017.

Intermediary Services not considered as export of services and thus liable to GST

DA Comments:

The constitutional validity of the Place of Supply for intermediary services is challenged at Mumbai High Court and pending for Larger Bench decision due to difference in opinion of Honorable judges. We have covered the same in our July edition.

Teretex Trading Pvt Ltd [2021-TIOL-154-AAR-GST (West Bengal AAR)]

Search and Seizure not on the basis of provision of GST law is unlawful

The Petitioner seeks relief of:

- Setting aside and quashing the order of prohibition whereby goods inventoried in panchnama have been detained by respondent;
- To release the goods detained under the aforementioned prohibition order;
- To declare the search conducted on the premises as illegal since it did not align with the provisions of Section 67 of the Act, 2017; to award costs.

The Honorable High Court observed and held that:

- The officers concerned should bear in mind that the search and seizure power conferred upon them, is an intrusive power, which needs to be wielded with utmost care and caution. The legislature has, therefore, consciously ring-fenced this power by inserting the controlling provision, i.e., "reasons to believe".
- Because Bench has concluded that the authorization accorded by the Additional Commissioner is legally untenable, this facet of the case [order of prohibition and seizure] need not be, dwelled upon any further. However, the respondents would do well, in future, to bear in mind that prescribed forms i.e. GST IN - 02 and GST IN - 03 are for guidance, and that necessary modification is made while passing orders depending upon who is conducting search and seizure.
- Search and seizure conducted by CGST Delhi North Commissionerate are declared unlawful. Consequently, both the orders of seizure and prohibition dated 05 March 2021 are set aside.
- Writ petition and pending applications are disposed of. There shall, however, be no order as to costs.

DA Comments:

The said case has rightly held that any search and seizure performed without following the GST law is unlawful and untenable.

M/s R J Trading Company vs CCGST [2021-TIOL-1552-HC-DEL-GST]

Section 42 of CGST Act cannot be invoked on wrongful claim of ITC

Under CGST Act, Section 42 deals with "Matching, Reversal and Reclaim of Input Tax Credit (Chapter IX – Returns)". In the said case, the writ petition is filed to challenge levying interest under Section 50 of the CGST Act relating to both interest on cash remittances as well as remittances by way of adjustment of electronic credit register for which the Honorable High Court of Madras observed and held that:

- As far as the second limb of the levy is concerned, it is covered by a decision in the case of Maansarovar Motors Private Limited [2020-TIOL-1846-HC-MAD-GST] and in the light of the aforesaid decision, the levy to this extent is to be set aside and it is hence accordingly set aside.
- The provisions of Section 42 can only be invoked in a situation where the mismatch is on account of the error in the database of the revenue or a mistake that has been occasioned at the end of the revenue. In a case where the claim of ITC by an assessee is erroneous, as in this case, then the question of Section 42 does not arise at all, since it is not the case of mismatch but one of wrongful claim of ITC –
- As far as the levy of interest on belated cash remittance is concerned, it is compensatory and mandatory and the levy is upheld to this extent.

DA Comments:

The objective and scope of section 42 has been rightly defined in the said case and the same should be appropriately considered by the adjudicating authorities to avoid hardships to assessees.

M/s F1 Auto Components Pvt Ltd vs STO [2021-TIOL-1509-HC-MAD-GST]

GST registration mandatory whether the transaction is done for pecuniary benefit or not

The petitioner is a Charitable Trust and are running a medical store where medicines are sold at a lower rate and the motive of the trust is not profit and accordingly sought a ruling from the AAR on the following questions viz.

- Whether GST Registration is required for medical store run by Charitable Trust?
- Whether medical Store providing medicines at a lower rate amounts to supply of goods?

The AAR [2020-TIOL-125-AAR-GST] had concluded that the applicant is making taxable supply from its medical store and hence as and when aggregate turnover (of medicine) of applicant exceeds threshold limit as specified in sub-section (1) of Section 22 of the CGST Act, 2017, the applicant has to obtain registration under the relevant provisions of the CGST Act, 2017. This ruling was upheld by the AAAR and hence the present petition filed before the Honorable High Court and submitted that:

Both the lower authorities have failed to appreciate the fact that the activities carried on by the petitioner Trust by running a medical store could not be said to be a "business" within the meaning of Section 2(17) of the CGST Act, inasmuch such activities can neither be said to be a trade or commerce nor for any pecuniary benefit.

The Honorable High Court observed and held that:

- It is not disputed that the petitioners are selling the medicines, may be at a cheaper rate but for consideration in the course of their business. The submission of petitioner that such a sale could not said to be a "business" in view of the definition contained in Section 2(17) of the said Act cannot be accepted.
- From a bare reading of the said definition, it clearly emerges that any trade or commerce whether or not for a pecuniary benefit, would be included in the term 'business' as defined under Section 2(17) of the said Act. For the purpose of "business" under Section 2(17) of the Act, it is immaterial whether such a trade or commerce or such activity is for pecuniary benefit or not.
- Both the authorities have in detail considered the submissions and the issues raised by the petitioner Trust and held that the Medical Store run by the Charitable Trust would require GST Registration, and that the Medical Store providing medicines, even if supplied at lower rate would amount to supply of goods. The Court does not find any illegality or infirmity in the said orders passed by the authorities

GST registration mandatory whether the transaction is done for pecuniary benefit or not

DA Comments:

Going by the provisions of CGST Act, 2017 the Honorable High court has rightly held that whether the transaction is done for pecuniary benefit or not, it is regarded as supply.

Order to be quashed issued in violation of principle of natural justice

The petitioner has sought quashing the SCN along with summary of SCN as well as summary of order which is without issuing the order u/s 73(9) of the CGST Act, 2017 in violation of the principles of natural justice and further restrain respondents from resorting to any coercive measures against the petitioner. The Honorable High Court observed and held that:

The bench fails to understand as to why the officer did not apply his mind at the time of passing of the impugned order. It is only when this Court pointed out the difference, wide enough for anyone to notice in imposing the amount of penalty, did the officer realising his mistake, agreed to rectify the same.

The Bench cautions the officer to be careful in future and not commit such mistake again, for such type of mistake not only causes harassment to the parties but also shatters faith of the people in the system.

The directions also ordered for de-freezing/de-attaching of the bank account(s) of the writ petitioner, if attached in reference to the proceedings, the subject matter of present petition and to be done immediately.

DA Comments:

When the law itself prescribe to follow principle of natural justice, the issuance of such order without following the same is harassment for the assessee which is also upheld by the Honorable High Court.

Associated Power Structures Pvt Ltd vs CST [2021-TIOL-1549-HC-PATNA-GST]

Monthly maintenance beyond prescribed amount is only liable to GST – Madras High Court

The applicant had sought a ruling from the AAR as to whether they are liable to pay GST only on the amount in excess of Rs.7500/- collected as monthly maintenance charges from the members of the Association (RWAs) or on the entire amount in the context of si. no. 77(c) of 12/2017-CTR. The AAR held that in the event the charges or share of contribution goes above Rs.7500/- per month, such service will not fit the description appearing in Sl. no. 77(c) of 12/2017-CTR and hence such service will not be exempt. Aggrieved, a Writ Petition was filed before the Madras High Court which observed and held that:

- There is no ambiguity in the language of the exemption provision in this case and, therefore, the judgment of the Supreme Court in the case of Dilip Kumar [2018-TIOL-302-SC-CUS-CB] would not be applicable to the facts and circumstances of the case.
- The intention of the notification appears clear, that is, to grant exemption in regard to the receipts from services that answer to the description set out therein. No ambiguity presents itself on a plain reading of the Entry and the intention is clear, so as to remove from the purview of taxation contribution upto an amount of Rs.7500/-
- The plain words employed in Entry 77 being, 'upto' an amount of Rs.7500/- can thus only be interpreted to state that any contribution in excess of the same would be liable to tax. [para 23]
- The term 'upto' hardly needs to be defined and connotes an upper limit. It is interchangeable with the term 'till' and means that any amount till the ceiling of Rs.7500/- would be exempt for the purposes of GST.
- The intendment of the exemption Entry in question is simply to exempt contributions till a certain specified limit. The clarification by the GST department even as early as in 2017 has taken the correct view.
- The conclusion of the AAR as well as the Circular [109/28/2019-GST dated 22.07.2019] to the effect that any contribution above Rs.7500/- would disentitle the RWA to exemption, is contrary to the express language of the Entry in question and both stand quashed.
- It is only contribution to RWA in excess of Rs.7500/- that would be taxable under GST Act.

Monthly maintenance beyond prescribed amount is only liable to GST – Madras High Court

DA Comments:

The Honorable High Court has given detailed observation to interpret 'till and 'upto' in the said case. Being the GST is collected on entire amount by RWAs, they need to further decide whether to go for refund of excess paid GST with due compliance of 'unjust enrichment'.

Greenwood Owners Association and others vs UOI and others [2021-TIOL-1505-HC-MAD-GST]

GSTR 9 & 9C related amendments

- The Govt of India has notified 01 August 2021 as the date when provisions of Section 110 and 111 of CGST Act, 2017 are to come into force.
- As per the provisions, GST Audit has been scrapped and GSTR 9C can be self-certified by taxpayers with turnover over INR 5 crores.
- Taxpayers with turnover upto INR 5 crores have been given an option to file or not to GSTR 9C.
- CBIC has amened CGST Rules, 2017 - specifying FORM GSTR 9 for registered persons except ISD, E-Commerce taxpayer, NRTP, to be filed before 31 December 2021 for the FY 2020-21. .
- FORM GSTR-9A has been specified for taxpayers registered under Composition Scheme, and FORM GSTR-9C has been specified for E-Commerce tax payers.
- FORM GSTR-9C shall also be filed till 31 December 2021 for the FY 2020-21 and has been amended to make it in line with self-certification by the taxpayers.
- CBIC has exempted the taxpayers with turnover upto 2 crores in FY 2020-21 from filing GSTR 9 for the said Financial Year.

Notification No. 29/2021- Central Tax dated 30 July 2021

Notification No. 30/2021- Central Tax dated 30 July 2021

Notification No. 31/2021- Central Tax dated 30 July 2021

Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27 April 2021

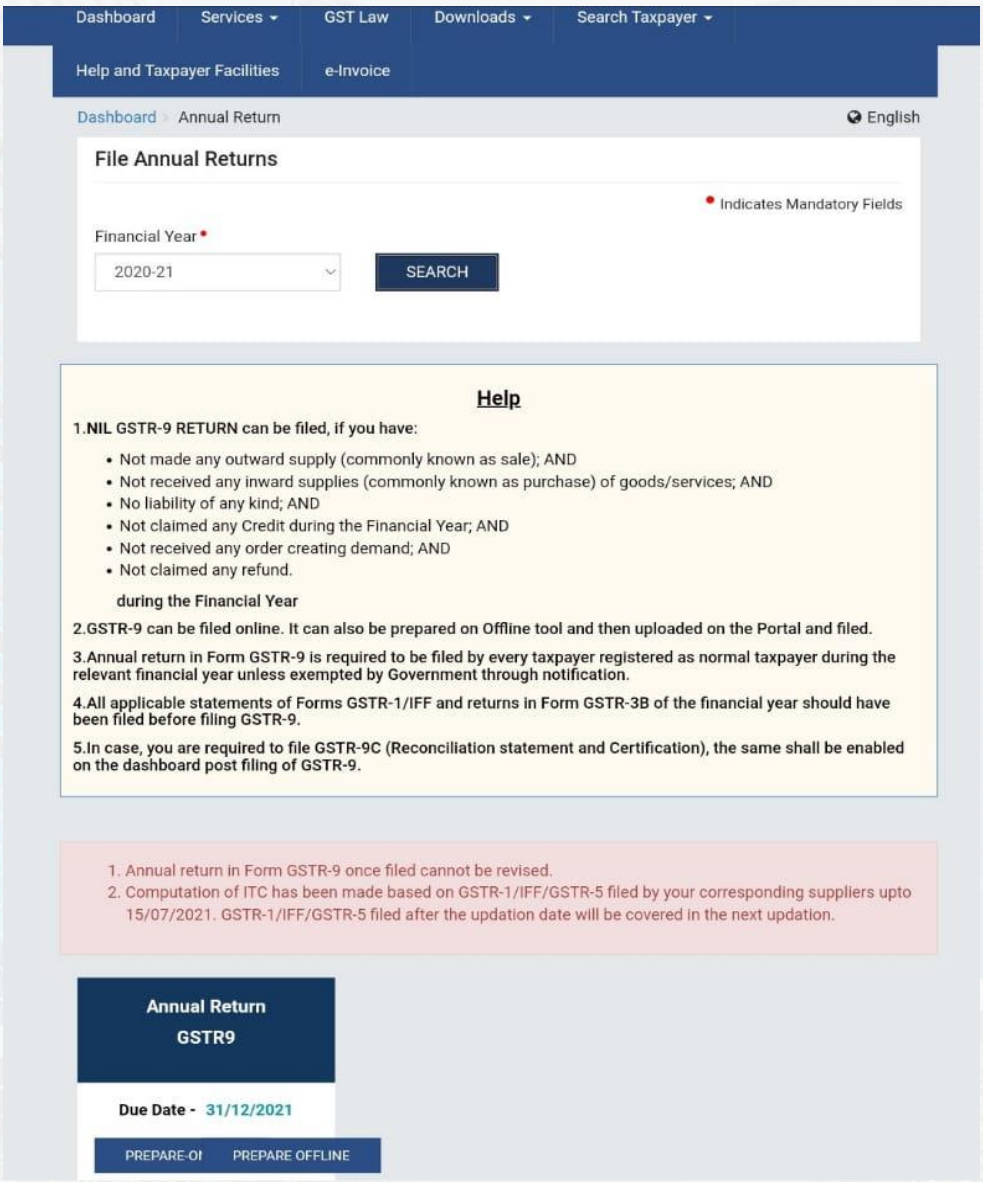
- Proceedings that need to be initiated or compliances that need to be done by the taxpayers:- Honorable SC Orders not applicable
- Quasi-Judicial proceedings by tax authorities :- Honorable SC Orders not applicable
- Appeals by taxpayers/ tax authorities against any quasi- judicial order :- Honorable SC Orders applicable
- The same is clarified especially in light of contra view in the case of Walchandnagar Industries Limited Vs CTO (Andhra Pradesh); WP 8425/2020 & 8451/2020; 11 May 2020.

Circular No. 157/13/2021-GST dated 20 July 2021

GSTN Portal Updates

GSTR-9 for FY 2020-21 has been enabled on the portal

In case GSTR-9C (Reconciliation statement and Certification) is required to be filed, the same shall be enabled on the dashboard post filing of GSTR-9, with the same due date of GSTR 9.



GSTN Portal Updates

New functionality on Annual Aggregate Turnover (AATO) deployed on GST Portal for taxpayers

GSTN has implemented a new functionality on taxpayers' dashboards with the following features:

- The taxpayers can now see the exact Annual Aggregate Turnover (AATO) for the previous FY, instead of just the two slabs of Above or Upto Rs. 5 Cr.
- The taxpayers can also see the Aggregate Turnover of the current FY based on the returns filed till date.
- The taxpayers have also now been provided with the facility of turnover update in case taxpayers feel that the system calculated turnover displayed on their dashboard varies from the turnover as per their records.
- This facility of turnover update shall be provided to all the GSTINs registered on a common PAN. All the changes by any of the GSTINs in their turnover shall be summed up for computation of Annual Aggregate Turnover for each of the GSTINs
- The taxpayer can amend the turnover twice within a period of one month from the date of roll out of this functionality. Thereafter, the figures will be sent for review of the Jurisdictional Tax Officer who then can amend the values furnished by the taxpayer.

New functionality on Annual Aggregate Turnover (AATO) deployed on GST Portal for taxpayers.

27/07/2021

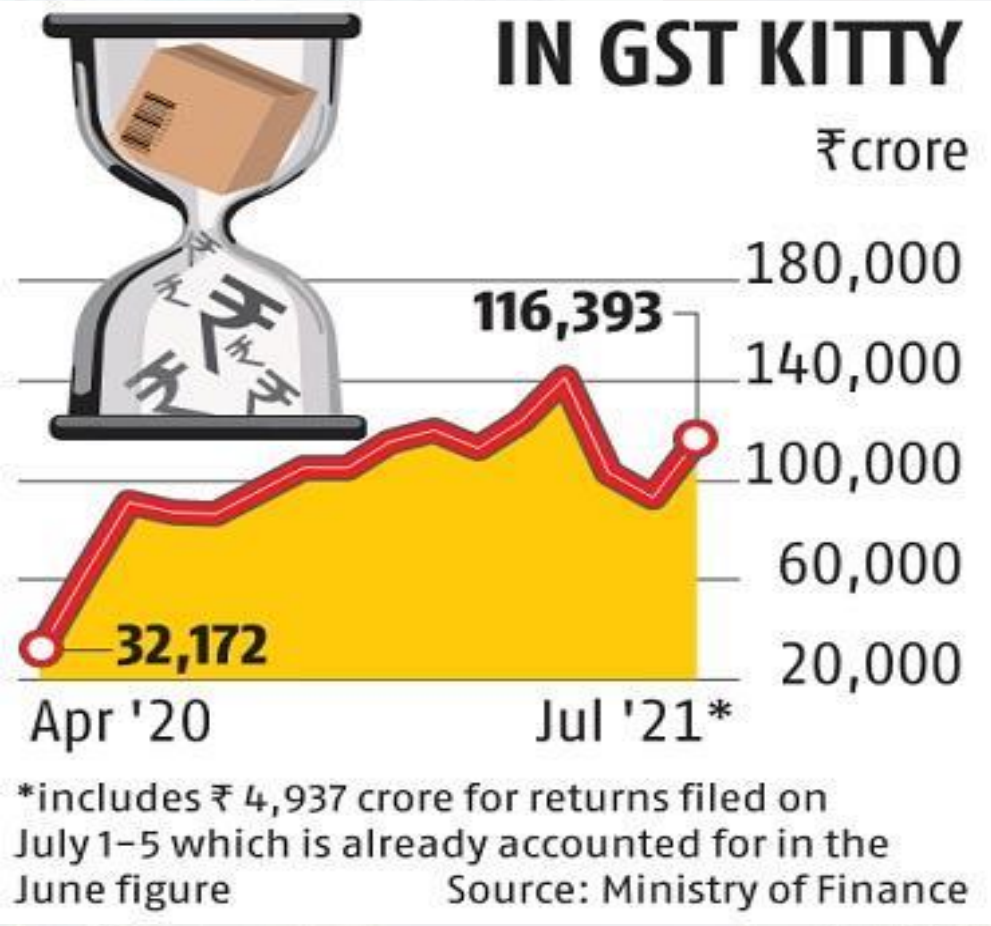
GSTN has implemented a new functionality on taxpayers' dashboards with the following features:

- The taxpayers can now see the exact Annual Aggregate Turnover (AATO) for the previous FY, instead of just the two slabs of Above or Upto Rs. 5 Cr.
- The taxpayers can also see the Aggregate Turnover of the current FY based on the returns filed till date.
- The taxpayers have also now been provided with the **facility of turnover update** in case taxpayers feel that the system calculated turnover displayed on their dashboard varies from the turnover as per their records.
- This facility of turnover update shall be provided to all the GSTINs registered on a common PAN. All the changes by any of the GSTINs in their turnover shall be summed up for computation of Annual Aggregate Turnover for each of the GSTINs
- The taxpayer can amend the turnover **twice within** a period of **one month** from the date of roll out of this functionality. Thereafter, the figures will be sent for review of the Jurisdictional Tax Officer who then can amend the values furnished by the taxpayer.

Note: For details, the taxpayers may check out the 'Advisory' section of the aforementioned functionality on their respective dashboards.

GST Revenue Collection in July 2021- Rs. 1,16,393 Cr.

TRENDS IN GST COLLECTION IN RS. CRORE



- Liquidated damages not liable to Service tax
- Extended Limitation Period applicable when "suppression' is shown to be wilful with intent to evade the payment of service tax
- Alternate remedy can be availed when an order is passed in violation of principle of natural justice
- When the facts are similar and there is a binding judgment in existence, it is bound to be followed by the adjudicating authority
- Auto-Renewal of AEO-T1 validity
- Facility of DPD to FCL consignments under Advance filed Bills of Entry
- Implementation of RMS for processing of Duty Drawback claims
- IGST on repair cost, insurance &freight, on goods re-imported
- CBIC relaxes Customs Brokers Licensing Regulations
- Extension and amendments to Sea Cargo Manifest and Transhipment Regulations, 2018
- Extension of Time Limit for filing claims under the Transport and Marketing Assistance (TMA)
- Benches of Tribunal must strictly adhere to period of limitation prescribed by Supreme Court

Liquidated damages not liable to Service tax

The dispute in all the five appeals relates to demand of service tax on liquidated damages recovered by the appellant for acts of default, like delayed or deficient supplies by various suppliers. The period involved in all the appeals is after 01 July 2012 and the case set out by the Department is that the appellant had agreed to tolerate breach of timelines stipulated in the contract; the amount imposed as liquidated damages are consideration for the act of tolerating contractual default; and that the appellant had rendered declared service of 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation or to do an act' contemplated under section 66E(e) of the Finance Act, 1994 [the Finance Act]. The Honorable CESTAT observed and held that:

- There is substance in the submission advanced by the learned counsel for the appellant that no service tax is payable on the amount collected towards liquidated damages as this issue has been decided by the Tribunal in favour of the appellant in South Eastern Coalfields.
- It is trite that an agreement has to be read as a whole so as to gather the intention of the parties. The intention of the appellant and the parties was for supply of coal; for supply of goods; and for availing various types of services. The consideration contemplated under the agreements was for such supply of coal, materials or for availing various types of services. The intention of the parties certainly was not for flouting the terms of the agreement so that the penal clauses get attracted. The penal clauses are in the nature of providing a safeguard to the commercial interest of the appellant and it cannot, by any stretch of imagination, be said that recovering any sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration. It is not the intention of the appellant to impose any penalty upon the other party nor is it the intention of the other party to get penalized.
- The recovery of liquidated damages/penalty from other party cannot be said to be towards any service per se, since neither the appellant is carrying on any activity to receive compensation nor can there be any intention of the other party to breach or violate the contract and suffer a loss. The purpose of imposing compensation or penalty is to ensure that the defaulting act is not undertaken or repeated and the same cannot be said to be towards toleration of the defaulting party. The expectation of the appellant is that the other party complies with the terms of the contract and a penalty is imposed only if there is non-compliance.

Liquidated damages not liable to Service tax

- The situation would have been different if the party purchasing coal had an option to purchase coal from 'A' or from 'B' and if in such a situation 'A' and 'B' enter into an agreement that 'A' would not supply coal to the appellant provided 'B' paid some amount to it, then in such a case, it can be said that the activity may result in a deemed service contemplated under section 66E (e)
- The activities, therefore, that are contemplated under section 66E (e), when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity.
- This decision of the Tribunal in South Eastern Coalfields was followed by the Tribunal in M.P. Poorva Kshetra Vidyut Vitran. In view of the aforesaid decisions of the Tribunal, it is not possible to sustain the view taken by the Commissioner that since BHEL did not complete the task within the time schedule, the appellant agreed to tolerate the same for a consideration in the form of liquidated damages, which would be subjected to service tax under section 66E(e) of the Finance Act.
- As service tax could not be levied, the imposition of interest and penalty also cannot be sustained.
- Thus, for all the reasons stated above, the orders are set aside and the Appeals are allowed.

DA Comments:

This decision reinforces the important point that recovery of damages for contract breaches or defaults do not involve rendition of any service and amounts received is not a consideration. The rationale equally applies for GST law also.

M/S Neyveli Lignite Corporation Limited vs CC [2021 (7) TMI 1090 - CESTAT CHENNAI]

Extended Limitation Period applicable when "suppression' is shown to be wilful with intent to evade the payment of service tax

The issue relates to taxability of 'convenience fee' charged by appellant on its customers for online booking of movie tickets under category of 'online information and database access retrieval system (OIDAR)' under section 65(105)(zh) of the Chapter V of Finance Act, 1994. The demand under extended period of limitation was made on the ground that the Department was never made aware about the collection of convenience fee while providing OIDAR services and the evasion of service tax was detected by the Department only later. The Commissioner also observed that mere suppression of facts is enough for invoking the period of limitation and there is no requirement of any intent to evade payment of service tax. The appeal filed to CESTAT which observed and held that:

It is clear that even when an appellant has suppressed facts, the extended period of limitation can be invoked only when "suppression' is shown to be wilful with intent to evade the payment of service tax.

There is no finding by Commissioner as to whether suppression of facts was wilful and in the context of intent, the Commissioner held that there is no necessity that suppression of facts has to be with an intent to evade the payment of service tax. Thus, the confirmation of demand of service tax on convenience fees is beyond the prescribed period of one year contemplated under section 73(1) of the Finance Act.

Any person who visits the website of appellant to seek information about the show timings or like information does not have to make any payment and it is only when a ticket is booked online that convenience fee is required to be paid by the user.

The substance of the transaction is, therefore, to book a ticket online and thereby engage in e-commerce. It cannot, therefore, be said that convenience fee is charged for any access/retrieval of information or database as contemplated under OIDAR service. The Board Circular dated 09.07.2001 also clarifies that ecommerce transactions do not fall within the ambit of OIDAR service. Service tax under the category of OIDAR, therefore, cannot be levied upon a user merely because he receives a code for getting a printout of the ticket from the cinema hall.

As the confirmation of demand under the two notices cannot be sustained, the imposition of penalty and interest under sections 78 and 75 of the Finance Act cannot also be sustained.

Extended Limitation Period applicable when "suppression' is shown to be wilful with intent to evade the payment of service tax

DA Comments:

It is rightly held by Honorable CESTAT that the extended limitation period is applicable when "suppression' is shown to be wilful with intent to evade the payment of service tax. The said principle can be equally applied under GST and other relevant legislation.

M/s PVR LTD vs CST [2021-TIOL-368-CESTAT-DEL]

Alternate remedy can be availed when an order is passed in violation of principle of natural justice

- The Petitioner mentions that faced with a demand, they remitted Service tax Under Protest, after objecting to the demand. That, after the decision in Supreme Court in Calcutta Club Ltd. [2019-TIOL-449-SC-ST-LB], the question of imposing the liability of service tax in respect of services rendered to members does not arise for consideration. Therefore, the petitioner sought refund of the tax remitted under protest, SCN was issued and a hearing was scheduled in respect of which an adjournment was sought and accordingly, the fresh hearing date was given on 03 March 2021 but the petitioner sought further adjournment citing the COVID pandemic The hearing was, therefore, rescheduled and an email was sent in this regard, since the petitioner failed to appear for the hearing, the matter was adjudicated ex parte. Accordingly, the petitioner filed the writ petition before the Honorable High Court which observed and held that:
- The Bench is of the considered opinion that one more opportunity can be extended to the petitioner to present its case before the respondent.
- It is true that a person who did not avail of the opportunity for hearing cannot later complain about violation of principles of natural justice. However, considering the fact that request was made citing the COVID-19 pandemic and considering the fact that E-mail fixing the date of hearing had not come to the notice of any of the office bearers of the petitioner, it is only appropriate that such opportunity is extended to the petitioner.
- It is settled law that when an order is passed in violation of the principles of natural justice, the availability of an alternative remedy is not a bar for exercise of the jurisdiction under Article 226 of the Constitution of India - Classic statement of the law by Megarry.J in John v. Rees relied upon.
- Accordingly, impugned order is set aside and the respondent is directed to adjudicate show cause notice afresh within a period of one month.

DA Comments:

The principle of natural justice is of utmost importance which mostly all Honorable Courts have relied upon.

Rama Varma Club vs JCCTCEC [2021-TIOL-1574-HC-KERALA-ST]

When the facts are similar and there is a binding judgment in existence, it is bound to be followed by the adjudicating authority

The petitioner re-import the aircrafts and spare parts sent outside India for repairs and maintenance and was claiming exemptions from levy of BCD, CBD and SAD under various notifications no. 50/2017-Cus. Dated 30 June 2017 providing a list of Goods which were exempted from levy of Customs Duty and IGST and another Notification No. 45/2017-Cus. was issued on the same date providing the list of Goods exempted from levy of BCD, IGST and Compensation Cess in case of re-import into India. The further consignments of the petitioners were not allowed to be released till duty is paid under protest even such issue in their own cases has been settled by CESTAT. Accordingly, the writ petition is filed before the Honorable High Court to seek appropriate directions to the Customs authority to apply the observations and the findings in the final orders of the CESTAT in respect of all consignments of the repaired Goods imported/to be imported to enable the petitioner to clear the Goods without payment of IGST, thereby extending the benefit of exemption Notification dated 30.06.2017 bearing No. 45/2017 -Cus. The Honorable High Curt observed and held that:

- Once the legal issue stands adjudicated between the parties to the list, we find no plausible or justifiable reason for compelling the Petitioner to approach the CESTAT or this Court to claim the benefit of the Exemption Notification for subsequent transactions. In fact, once the illegal action of the Respondents in depriving the Petitioner of the benefit of Exemption has been set aside by the CESTAT and the errors of law stand corrected, the action of the Respondents in once again placing a wrong interpretation on the Notification is completely unwarranted and certainly a harassment to the Petitioner.

- It is unfair on the part of the respondents to relegate the citizens unnecessarily into litigation once the matter is covered by a judicial/quasi-judicial order. Relegating a party to approach Courts or Tribunals, again and again, for interpretation of provisions of any Act or Rules or Notifications, which stand interpreted in earlier judgements is not only victimisation to the litigant but also wastage of judicial time. Moreover, the judgments which are not stayed or overruled by the higher Forums are binding on the respondents and ought to be followed wherever applicable in the facts of a given case.

When the facts are similar and there is a binding judgment in existence, it is bound to be followed by the adjudicating authority

- This principle would apply with a greater vigour in the present case where the Respondents have not preferred an appeal against the earlier two decisions of the CESTAT. There is no justifiable reason for the Respondents to have compelled the Petitioner to file the present writ petition and in fact the Respondents should have on their own volition applied the judgements of the CESTAT to the subsequent Bills of Entry filed by the Petitioner. It would be a travesty of justice if despite two orders of CESTAT, each time a fresh Bill of Entry comes up for assessment by the Department, the concerned officer would attempt to give its own subjective interpretation to the Exemption Notification. Judgements are not mere ornaments and are meant to be followed in letter and spirit.
- If the facts are similar and there is a binding judgment in existence, it is bound to be followed by the officers of the Respondents. Even if officers of the Respondents keep changing, decision making process must be consistent and in accordance with binding judgements rendered by competent Courts or Tribunals. Consistency is the virtue of the adjudicating Authority.
- Bench directs the Respondent Authority concerned to decide the representations preferred by the Petitioner, in accordance with law, rules, regulations and Government Policies and with due deference to the decisions rendered by the CESTAT, New Delhi dated 02.11.2020 as well as decision rendered by the CESTAT, New Delhi dated 15.01.2021. The representations shall be disposed as expeditiously as possible and practicable.

DA Comments:

The Honorable High Court rightly held that the judgements are not mere ornaments and are meant to be followed in letter and spirit. The same equally applies in the case of GST legislation where the number of similar cases/issues come before judicial authority.

Interglobe Aviation Ltd vs UOI AND ANR [2021-TIOL-1589-HC-DEL-GST]

Auto-Renewal of AEO-T1 validity

To reduce their compliance burden, the Board has decided to allow the facility of continuous AEO certification/auto renewal for AEO-T1 entities. Thus, these entities would no longer be required to seek periodic renewal of their AEO-T1 certification.

This facility is being made available subject to submission of annual self-declaration (enclosed) and review thereof.

It has to be filed between 1 October to 31 December each year.

All AEO-T1 entities certified on or after 01 April 2019 shall stand migrated to the auto renewal process with effect from 01 August 2021.

On the basis of the annual self-declaration, the concerned zone shall initiate a Comprehensive Compliance Review for the AEO-T1 entities (including MSME AEO-T1), as per para 5.4 of Circular No. 33/2016-Customs dated 22 July 2016, as amended;

a) The review shall be conducted on the basis of at least two annual self-declarations filed after issuance of AEO T1 certificate or from the date of last auto renewal of certification on account of successful review, whichever is later;

b) The review process has to be completed before the commencement of the due date for submission of the 3rd annual self-declaration (i.e. before 31′ October) from the date of certification or from the date of last auto renewal of certification on account of successful review, whichever is later.

c) During the review process, they may seek additional documents/information, if required for completion of the review process.

As the review process would rely on the two annual declaration bringing out the details for the last two financial years, for the AEO-T1 entities certified between 01 April 2019 and 31 December 2019, the AEO-T1 (including MSME AEO-T1) entity would be required to submit the details of the previous two financial years as their first annual self-declaration for the current year i.e. between 01 October 2021 and 31 December 2021

The AEO entities certified between 1 January to 31 December of each year shall be exempted from filing the annual declaration for that year.

Circular No. 18/2021- Customs, dated 31 July,2021

Facility of DPD to FCL consignments under Advance filed Bills of Entry

With Effect from 15 July 2021, all the advance bills of entry which are fully-facilitated (do not require assessment and/or examination) would be granted the facility of DPD and that such facility would be over and above the present system of entity based DPD extended to AEO clients.

Public Notice No. 71/2021 dated 15 July 2021

Implementation of RMS for processing of Duty Drawback claims

A Phased approach is being adopted for extending the risk-based processing of duty drawback shipping bills. NCTC will monitor and review the facilitation of duty drawback shipping bills and take required measures to enhance the facilitation levels in due course. The above measure is expected to reduce the processing time taken for drawback claims, enable quick disbursal to exporters and rationalise the Customs' workload. The above-referred risk-based processing of shipping bills with claim of duty drawback is being initiated with effect from 26 July 2021.

Circular No. 15/2021-Customs dated 15 July 2021

Public Notice No. 73/2021 dated 22 July 2021

IGST on repair cost, insurance & freight, on goods re-imported

The said notification prescribes that duties or taxes (including BCD, IGST, etc.) at the applicable rates will be payable on such imports, calculated on the value of repairs, insurance and freight, instead of the value of the goods itself. Similar concession existed in pre-GST period too, vide notification No. 94/96-Customs, dated 16-12-1996, whereby, the customs duty (BCD, additional duty of customs under section 3 of Customs Tariff Act, 1975, etc.) were payable on the value of repairs instead of the entire value of goods in such imports.

Circular No. 16/2021-Customs, dated 19 July 2021

Amendment to notification no 45/2017-customs

The following amendments are made to the principal notification,

(i) in the Table, against serial numbers 2 and 3, in column (3), for the words „Duty of customs", the words "Said duty, tax or cess" shall be substituted;

(ii) in the Explanation, after clause (c), the following clause shall be inserted, namely:

"(d) on recommendation of the GST Council, for removal of doubt, it is clarified that the goods mentioned at serial numbers 2 and 3 of the Table, are leviable

Amendment to notification no 45/2017-customs

to integrated tax and cess as leviable under the said Customs Tariff Act, besides the customs duty as specified in the said First Schedule, calculated on the value as specified in column (3), and the exemption, under said serial numbers, is only from the amount of said tax, cess and duty over and above the amount so calculated.

Notification No. 36/2021-Customs Dated: 19 July 2021

Amendment to Notification no 46/2017-customs

The following amendments are made to the principal notification,

(i) in the Table, against serial numbers 2 and 3, in column (3), for the words "Duty of customs", the words "Said duty, tax or cess" shall be substituted;

(ii) in the Explanation, after clause (c), the following clause shall be inserted, namely:

"(d) on recommendation of the GST Council, for removal of doubt, it is clarified that the goods mentioned at serial numbers 2 and 3 of the Table, are leviable to integrated tax and cess as leviable under the said Customs Tariff Act, besides the customs duty as specified in the said First Schedule, calculated on the value as specified in column (3), and the exemption, under said serial numbers, is only from the amount of said tax, cess and duty over and above the amount so calculated.

Notification No. 37/2021-Customs Dated: 19 July 2021

CBIC relaxes Customs Brokers Licensing Regulations

It has been decided to abolish renewals of Licence/Registration in Customs Brokers Licensing Regulations, 2021 and Sea Cargo Manifest and Transhipment Regulations, 2018 incorporating the following changes:

a. To provide lifetime validity of the licenses/registrations;

b. To enable provision for making the licenses/registrations invalid in case the licensee/registration holder is inactive for the period exceeding 1 year at a time;

CBIC relaxes Customs Brokers Licensing Regulations

c. To empower Principal Commissioner or Commissioner of Customs to renew a license/registration which has been invalidated due to inactivity; and

d. To provide for voluntary surrender of license/registration

Further, customs brokers can surrender the license after due payment to Central Government. The license shall be deemed invalid, if inactive for a period of one year.

Circular No. 17/2021-Customs dated 23 July 2021

Notification No. 62/2021-Customs (N.T.) dated 23 July 2021

Extension and Other amendments of Sea Cargo Manifest and Transhipment Regulations, 2018

Sea Cargo Manifest and Transhipment (Sixth Amendment) Regulations, 2021 (Regulations) shall come into force from 31 August 2021.

- Registration shall be valid unless and until revoked in terms of the provisions under regulation 3A or regulation 11
- The registration of the authorised carrier shall be deemed invalid if inactive for a period of one year.
- Authorised carrier may surrender his registration through a written request to the Jurisdictional Commissioner of Customs after he/she has paid all dues payable to the Central Government and no proceedings are pending.
- Commissioner of Customs has the power to suspend the operations of authorised carrier.

Notification No. 61/2021-Customs (N.T.), dated 23 July 2021

Notification No. 64/2021-Customs (N.T.) dated 30 July 2021

Extension of Time Limit for filing claims under the Transport and Marketing Assistance (TMA)

Now, the claims for assistance under the TMA Scheme for the quarters ending on 31 March 2020 and 30 June 2020 can be filed upto 30 September 2021.

Public Notice No. 14/2015-2020 dated 13 July 2021

Benches of Tribunal must strictly adhere to period of limitation prescribed by Supreme Court

All Benches of the Tribunal while computing the period of limitation shall strictly adhere to the aforesaid directions dated 27 April 2021 issued by the Supreme Court and should not insist for a delay condonation application to be tiled in appeals governed by the said order of the Supreme Court.

F No. 01(05)/Circular/CESTAT/2021 dated 26 July 2021

DGFT Invites Suggestions on New Foreign Trade Policy (2021-26)

The Foreign Trade Policy (2015-2020), was extended till 30 September 2021, in order to prepare a new five-year Foreign Trade Policy, suggestions/inputs are invited from various stakeholders. Stakeholders are requested to send their suggestions/inputs only through above-mentioned Google Form, rather than email or paper-based submissions on or before 31 July 2021.

Trade Notice No. 09/2021-22, dated 16 July 2021

Extension of Date for mandatory electronic filing of Non-Preferential Certificate of Origin

Mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform is extended to 01 Oct 2021.

Trade Notice No. 10/2021-2022, dated 19 July 2021

DGFT amends validity period for import and revalidation of Authorisation

Para 4.41 of Handbook of Procedures 2015-20 a new sub-para (e) is added, where in only one revalidation for a period of 12 months to Advance Authorisations issued on or after 15.08.2020 (instead of 2 revalidation of 6 months each, provided earlier) would be allowed.

Para 4.51 and 4.57 of Handbook of Procedures 2015-20 are amended to allow submission of record in online mode.

Public Notice no. 16/2015-2020-DGFT dated 22 July 2021

ITC HS Codes included in the MEIS Schedule

ITC HS codes 30036000 and 30046000 have been included in the MEIS Schedule and are eligible for MEIS benefits for exports made in the period 01 January 2017 to 31 December 2020 at the rate of 3%.

Public Notice No. 18/2015-2020 dated 27 July 2021

Issuance of Export Authorisations for SCOMET Items

Directorate now introduces a new online module for filing of electronic, paperless applications for Export Authorizations for SCOMET Items with effect from 05 August 2021.

Trade Notice No. 11/2021-22- dated 28 July 2021

Introduction of Online Deemed Exports Application Module

Directorate is introducing an online Deemed Exports Module on the DGFT website as a part of IT Revamp for receiving applications under the Chapter 7 of FTP 2015-20.

The following applications are required to be submitted online through the importer/exporter's dashboard on the DGFT Website; Refund of Terminal Excise Duty (TED), Grant of Duty Drawback as per AIR and Fixation of Brand Rate for Duty Drawback.

However, the applicants will have to submit the corresponding supporting physical documents as prescribed under ANF -7A to concerned RAs within 7 days of online submission of such applications for processing of the applications at RAs.

This new application Module will cater to new applications filed in this regard by the applicants and old/legacy physical applications submitted earlier manually will continue to be processed manually by concerned Ras.

Trade Notice No. 12/2021-22-DGFT, Dated 28 July 2021

DGFT notifies revised process for online refund of user charges/Penalty/fees

The revised process for online refund of user charges/penalty/other application fees is notified. The process for e-miscellaneous payments for any online/offline process where the direct online payment option is not available, is also notified.

Public Notice no. 19/2015-2020, dated 30 July 2021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Goods and Services Tax

- GST collection recovers to a 3-month high of Rs 1.16 trn in July
- High Court directs SBI to pay ₹ 215.11 crore GST to AP government
- GST annual return filing liberalised
- Bring petroleum products in ambit of GST soon: PHDCCI
- GST slab rationalisation on cards: CEA
- GST amendment Bill passed in Delhi assembly
- Don't Pay GST Till Demands Are Met, PM's Brother Tells Traders On Protest
- Centre begins review of legal issues in GST
- DGGI detects Rs 278 crore GST evasion in railway purchases since July 2017

Customs and other

- Customs brokers: CBIC abolishes renewals of licences/registrations
- Measures from July 15 to improve faceless assessment in Customs
- IndiGo, SpiceJet Staff Arrested As Customs Cracks Down On Gold Smuggling At Delhi Airport
- Customs plans to shift Kerala gold smuggling accused to other state
- India-EU FTA Discussions Are Progressing as Per Our Expectations
- Foreign Secretary meets British counterpart, reviews 2030 roadmap to India-UK FTA
- DGFT extends Date for Mandatory Electronic Filing of Non-Preferential CoO through Common Digital Platform

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