

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

Fortnightly update - September 2021

Issue -26

Goods and Service Tax

Customs and Others

45th GST Council Meeting's Key Decisions

Recommendations/ Clarifications relating to GST law and procedure

- Interest is to be paid by a taxpayer on “**ineligible ITC availed and utilized**” and not on “ineligible ITC availed” at 18% w.e.f. 01 July 2017
- **Unutilized balance in CGST and IGST** cash ledger may be **allowed to be transferred** between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure
- A person incorporated in India under the Companies Act, 2013 and a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for considering a supply of service as export of services
- W.e.f. 01 January 2021, **the date of issuance** of debit note (and not the date of underlying invoice) shall determine the **relevant financial year** for the purpose of section **16(4)** of CGST Act, 2017

45th GST Council Meeting's Key Decisions

Recommendations/ Clarifications relating to GST law and procedure

- Rule 36(4) of CGST Rules, 2017 to be amended, once the proposed clause (aa) of section 16(2) of CGST Act, 2017 is notified, **to restrict availment of ITC** in respect of invoices/ debit notes, to the extent the details of such invoices/ debit notes are furnished by the supplier in FORM GSTR-1/ IFF and **are communicated to the registered person in FORM GSTR-2B.**
- Rule 59(6) of the CGST Rules to be amended with effect from 01 January 2022 to provide that a registered person shall **not be allowed to furnish FORM GSTR-1**, if he has **not furnished the return in FORM GSTR-3B** for the preceding month
- Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST
- **Aadhaar authentication** of registration to be made **mandatory** for being **eligible for filing refund claim** and application for revocation of cancellation of registration

45th GST Council Meeting's Key Decisions

Recommendations/ Clarifications relating to GST law and procedure

- There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules, 2017
- Only those goods which are actually subjected to export duty will be covered under the restriction imposed under section 54(3) of CGST Act, 2017 from availment of refund of accumulated ITC
- Provision to be incorporated in in CGST Rules, 2017 for removing ambiguity regarding procedure and time limit for filing refund of tax wrongfully paid as specified in section 77(1) of the CGST/SGST Act and section 19(1) of the IGST Act.
- **Late fee** for delayed filing of **FORM GSTR-1** to be **auto-populated** and collected in **next** open return in **FORM GSTR-3B**

45th GST Council Meeting's Key Decisions

Recommendations/Clarifications on GST rate changes

- GST on specified **Renewable Energy Projects** can be paid in terms of the **70:30 ratio** for goods and services, respectively, during the period from **1 July 2017 to 31 December 2018**, in the same manner as has been prescribed for the period on or after 1st January 2019
- Certain relaxations have been made in conditions relating to IGST exemption relating to import of goods on lease, where GST is paid on the lease amount, so as to allow this exemption even if
 - i. such goods are transferred to a new lessee in India upon expiry or termination of lease; and
 - ii. the lessor located in SEZ pays GST under forward charge
- It is being clarified that all pharmaceutical goods falling under heading 3006 attract GST at the rate of 12% [not 18%]
- External batteries sold along with UPS Systems/ Inverter attract GST rate applicable to batteries [28% for batteries other than lithium-ion battery] while UPS/inverter would attract 18%

45th GST Council Meeting's Key Decisions

Recommendations on GST rate changes

- Correction in Inverted Duty structure in Footwear and Textiles sector deferred till January 2022
- Carbonated Fruit Beverages of "Fruit Drink" and "Carbonated Beverages with Fruit Juice" attract GST rate of 28% and Cess of 12%
- Distinction between fresh and dried fruits and nuts is being clarified for application of GST rate of "nil" and 5%/12% respectively
- Pure henna powder and paste, having no additives, attract 5% GST rate under Chapter 14
- Supply of mentha oil from unregistered person has been brought under reverse charge
- Brick kilns would be brought under special composition scheme with threshold limit of Rs. 20 lakhs, with effect from 1 April 2022

45th GST Council Meeting's Key Decisions

Recommendations on GST rate changes

- Services by cloud kitchens/central kitchens are covered under 'restaurant service', and attract 5% GST [without ITC]
- Overloading charges at toll plaza are exempt from GST being akin to toll.
- The renting of vehicle by State Transport Undertakings and Local Authorities is covered by expression 'giving on hire' for the purposes of GST exemption
- The services by way of grant of mineral exploration and mining rights attracted GST rate of 18% w.e.f. 01 July 2017

45th GST Council Meeting's Key Decisions

Recommendations on GST rate changes in relation to Goods

S. No.	Description	From	To
1	Retro fitment kits for vehicles used by the disabled	Appl. Rate	5%
2	Fortified Rice Kernels for schemes like ICDS etc.	18%	5%
3	Medicine Keytruda for treatment of cancer	12%	5%
4	Biodiesel supplied to OMCs for blending with Diesel	12%	5%
5	Ores and concentrates of metals such as iron, copper, aluminum, zinc and few others	5%	18%
6	Specified Renewable Energy Devices and parts	5%	12%
7	Cartons, boxes, bags, packing containers of paper etc.	12%/18%	18%
8	Waste and scrap of polyurethanes and other plastics	5%	18%
9	All kinds of pens	12%/18%	18%
10	Railway parts, locomotives & other goods in Chapter 86	12%	18%
11	Miscellaneous goods of paper like cards, catalogue, printed material (Chapter 49 of tariff)	12%	18%

45th GST Council Meeting's Key Decisions

Recommendations on GST rate changes in relation to Goods

S. No.	Description	From	To
12	IGST on import of medicines for personal use, namely i. Zolgensma for Spinal Muscular Atrophy ii. Viltepso for Duchenne Muscular Dystrophy iii. Other medicines used in treatment of muscular atrophy recommended by Ministry of Health and Family Welfare and Department of Pharmaceuticals	12%	Nil
13	IGST exemption on goods supplied at Indo-Bangladesh Border haats	18%	Nil
14	Unintended waste generated during the production of fish meal except for Fish Oil	Nil (for the period 1 July 2017 to 30 September 2019)	
15	Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended upto 30 September 2022	-	Nil
16	Services by way of grant of National Permit to goods carriages on payment of fee	18%	Nil

45th GST Council Meeting's Key Decisions

Recommendations on GST rate changes in relation to Goods

S. No.	Description	From	To
17	Skill Training for which Government bears 75% or more of the expenditure [presently exemption applies only if Govt funds 100%].	18%	Nil
18	Services related to AFC Women's Asia Cup 2022	18%	Nil
19	Unintended waste generated during the production of fish meal except for Fish Oil	Nil (for the period 1 July 2017 to 30 September 2019)	
20	Licensing services/ the right to broadcast and show original films, sound recordings, Radio and Television programmes	-	Nil
21	Printing and reproduction services of recorded media where content is supplied by the publisher	18%	Nil
22	Exemption on leasing of rolling stock by IRFC to Indian Railways withdrawn		
23	E Commerce Operators are being made liable to pay tax on following services provided through them i) transport of passengers, by any type of motor vehicles through it ii) restaurant services provided through it with some exceptions		

Goods and Service Tax

VKC Footsteps India Pvt Ltd. [2021-TIOL-237-SC-GST]

The Hon'ble Supreme Court affirmed the view of the Madras High Court and disapproved of the view of the Gujarat High Court, and held that Rule 89(5) was tenable, thereby restricting the refunds only in cases of input tax credit on account of Inverted Duty Structure pertaining to Goods.

BMG Informatics Pvt Ltd [2021-TIOL-1831-HC-GUW-GST]

When the provisions of Section 54(3)(ii) of the CGST Act of 2017 are unambiguous and explicitly clear in nature, there is no requirement of bringing in any uniformity in the implementation of the Act (by exercising the powers u/s 168(1) of the Act, 2017)

TVH Lumbini Square Owners Association [W. A. Nos. 2318 and 2321 of 2021]

Madras High Court has stayed the single-Judge ruling on GST exemption for RWA contributions up to ₹ 7,500. No exemption is applicable when the monthly contribution exceeds ₹ 7,500, the Centre told the Court

M/s NE Equipment Solutions Pvt Ltd [2021-TIOL-1767-HC-TRIPURA-GST]

The petitioner contended that E-way bill had expired due to no fault of his own, and he even made good the default (post detention) by generating a fresh e-way bill. The Hon'ble High Court in its ruling asked the department to make a clear distinction between deliberate tax evasion and technical or minor defects which manifest no intention to evade taxes.

Goods and Service Tax

**Circular No 158/14/2021-GST
dated 06 September 2021**

CBIC has issued clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No 34/2021-Central tax dated 29th August, 2021

Customs & Others

Divi's Laboratories Ltd [Service Tax Appeal No. 30584 of 2019]

SEZ Act had an overriding effect, in view of the provisions of Section 51 of the SEZ Act, over all other laws and, therefore, the ground for rejecting the refund claims was not tenable in law and even otherwise, approval from UAC was only procedural in nature and not a mandatory condition

Mahatma Gandhi University of Medical Sciences and Technology [Service Tax No. 50962 of 2020]

Burden of proof lies on Revenue w.r.t. intention of assessee to evade Excise Duty

Notification No 26/2015- 2020- DGFT dated 16 September 2021

DGFT has extended the last date of submitting application for

scrip-based scheme to 31st December, 2021. The extension has been granted in respect to the MEIS, SEIS, ROSCTL ROSL and 2% additional ad-hoc incentive as under para 3.25 of the FTP

Trade Notice 17/2021-22- DGFT dated 14 September 2021

DGFT has released a Trade Notice prescribing procedure for refund of application fees deposited by applicants for Restricted Import Authorisation of Pulses for the period 2021-22

Import and Export data

Imports of August 2021 at \$ 58.57 B

Exports of July 2021 at \$ 52.20 B

		August 2021 (USD Billion)	August 2020 (USD Billion)	August 2019 (USD Billion)	Growth vis-à-vis August 2020 (%)	Growth vis-à-vis August 2019 (%)
Merchandise	Exports	33.28	22.83	25.99	45.76	28.03
	Imports	47.09	31.03	39.85	51.72	18.15
	Trade Balance	-13.81	-8.20	-13.86	-68.30	0.37
Services*	Exports	18.92	16.13	17.55	17.33	7.83
	Imports	11.48	9.25	10.64	24.11	7.94
	Net of Services	7.44	6.88	6.91	8.21	7.66
Overall (Merchandise+ Services)*	Trade Exports	52.20	38.96	43.54	33.99	19.89
	Imports	58.57	40.29	50.49	45.38	16.00
	Trade Balance	-6.37	-1.33	-6.95	-379.58	8.36

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