

# DA TAX UPDATE INDIRECT TAX

An E-Tax update from  
**Darda Advisors LLP**

Fortnightly update - October 2021

Issue -29

**Goods and Service Tax**

**Customs and Others**

## Goods and Service Tax

### **M/s Platinum Holdings Pvt Ltd [2021-TIOL-2016-HC-MAD-GST]**

The Hon'ble High Court ruled that ordinarily, though zero rated supplies (SEZ related) are not subject to the levy of taxes, the petitioner, in this case has remitted the same as raised in the invoice, albeit erroneously. Even the language of Rule 89, echoes that of Section 54, and both the aforesaid provisions and Rule commence with the phrase 'any person'

The HC in its ruling stated that it is a settled position that there can be no insertion of a word or phrase in a statutory provision or in a Rule which must be read and applied, as framed. Bench holds in favor of the petitioner.

### **M/s Bright Star Plastic Industries [2021-TIOL-1965-HC-ORISSA-GST]**

The Hon'ble Court found the merit in the contention that for the fraud committed by the selling dealer, which resulted in cancellation of a selling dealer's registration cannot be an automatic cancellation of the registration of the purchasing dealer.

### **M/s Adama India Pvt Ltd [2021-TIOL-228-AAR-GST]**

AAR ruled that CSR activities, as per Companies (CSR Policy) Rules, 2014 are those activities excluded from normal course of business of the applicant and, therefore, not eligible for ITC, as per Section 16(1) of the CGST Act, 2017.

## Goods and Service Tax

### **M/s B G Shirke Construction Technology Pvt Ltd [2021-TIOL-234-AAR-GST]**

The AAR in its ruling stated that the site offices are independent offices separately registered under the GST Laws - Similarly, the group companies are also separately registered under the GST Laws and since both the site offices as well as the group companies cannot be treated as employees, the applicant cannot get the benefit of Entry No. 1 to Schedule III and is, therefore, taxable under GST Laws - Held that Managerial and leadership services provided by the Registered/Corporate Office to its Group Companies is to be considered as "supply of service".

### **M/s Kanahiya Realty Pvt Ltd [2021-TIOL-230-AAR-GST]**

The Hon'ble AAR held that Supply of hosiery goods and goods under promotional scheme

shall not fall under the category of 'composite supply' since it cannot be considered as naturally bundled and supplied in conjunction with each other in the ordinary course of business. It would qualify as individual supplies taxable at the rates applicable to each of such goods as per section 9 of the CGST Act, 2017

### **M/s Continental Engineering Corporation [TSAAR Order No.13/2021]**

Damages claimed by the applicant from the contractee due to the delays in making available possession of site, drawings & other schedules by the contractee beyond the milestones fixed for completion of project are consideration for tolerating an act or a situation arising out of the contractual obligation. The Consideration received for such forbearance is taxable under CGST and SGST.

## Goods and Service Tax

**Ms. Rameshchandra Jayshreeben Kothari,**  
[GUJ/GAAAR/  
APPEAL/2021/06]

The phrase 'in relation to any function' refers not to what activities the recipient of the service is engaged in, but to what service the supplier is providing. In order to be covered under entry at no. 3 of notification no:12/2017-CT(R), service by the taxpayer should relate to an activity listed in Article 243G or Article 243W read with Eleventh Schedule and Twelfth Schedule of the Constitution of India. The service of providing 'equipments on hire' for 'live videography' does not have any direct and proximate relationship with any of the activities listed as mentioned.

**M/s. Sankalp Facilities and Management Services Pvt. Ltd.**  
[GUJ/GAAR/R/51/2021]

Manpower services provided for the purpose of security, cleaning and housekeeping services provided to the schools are exempt from GST but not when supplied to Government Colleges providing education services of above higher secondary level, Government offices and Government hospitals.

**M/s. Gujarat Hira Bourse**  
[GUJ/GAAR/R/52/2021]

Contribution paid by the members of a section 8 company towards development cost of infrastructure is taxable. The consideration paid to taxpayer is not exempt under entry no. 41 (Heading 9972) of notification no:12/2017-CT(R) dated 28 June 2017.

## Customs & Others

### **R Shanmugam Pillai And Sons Vs Designated Committee Sabka viswas (Legacy Disputes Resolution) Scheme, 2019 [2021-TIOL-2025-HC-MAD-ST]**

SVLDRS - Contention that unless and until appeal is numbered by Registry, only then can it be considered to be 'pending' before CESTAT is not a criteria laid down in s.124/125 of FA, 2019.

### **M/s Modern Insecticides Ltd Vs Commissioner of Customs Ludhiana, ICD, GRFL, Ludhiana [2021-TIOL-652-CESTAT-CHD]**

Additional Director General, DRI, Ludhiana is not a proper Officer to issue Show Cause Notice under Section 28 (4) read with Section 2 (34) of Customs Act, 1962. Therefore, the impugned proceedings are set aside.

### **Balaji Services Vs UoI [2021-TIOL-2023-HC-MP-ST]**

The petitioners' has filed an applications under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 which has been rejected by respondents on 18 December 2019, without following the principles of natural justice. Respondents were not justified in rejecting the petitioners' application without giving them an opportunity. Impugned orders were set aside.

### **Delhi International Airports Pvt. Ltd. Vs Commissioner Of Customs (Appeals) [FINAL ORDER No. 51832 /2021]**

Handling of cargo in Customs area will always be responsibility of the Custodian.

## Customs & Others

### **Trade Notice No. 19/2021-2022 – DGFT, dated 1 October 2021**

Mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform has been extended to 31 October 2021

### **Trade Notice No. 20/2021-22 dated 5 October 2021**

The Procedure and criteria for submission and approval of applications for export of syringes has been specified

### **F.No. 01(05)/Circular/CESTAT/2021, dated 5 October 2021**

CESTAT directed Registry of Tribunal while computing the period of limitation it shall adhere to the directions dated 27 April 2021 issued by the Supreme Court in SMW(C) No. 3/2020

### **DGFT Advisory No: 06/2021 dated 1 October 2021**

Advisory for E-scrip to avail export incentive schemes has been issued. E-scrip module has been developed by ICEGATE, CBIC is to provide a digital service to exporters to avail benefits defined under various incentive schemes like RoDTEP (Remission of Duties and Taxes on Exported Products) and RoSCTL (Rebate of State and Central Taxes and Levies)

## Import and Export data

Imports of September 2021 at \$ 68.49 B

Exports of September 2021 at \$ 54.06 B

		September 2021 (USD Billion)	September 2020 (USD Billion)	September 2019 (USD Billion)	Growth vis-à-vis September 2020 (%)	Growth vis-à-vis September 2019 (%)
Merchandise	Exports	33.79	27.56	26.02	22.63	29.86
	Imports	56.39	30.52	37.69	84.77	49.59
	Trade Balance	<b>-22.59</b>	<b>-2.96</b>	<b>-11.67</b>	<b>-663.48</b>	<b>-93.60</b>
Services*	Exports	20.26	16.96	16.87	19.50	20.13
	Imports	12.10	9.77	9.83	23.86	23.09
	Net of Services	<b>8.16</b>	<b>7.19</b>	<b>7.04</b>	<b>13.58</b>	<b>15.98</b>
Overall (Merchandise+ Services)*	Exports	54.06	44.52	42.89	21.44	26.03
	Imports	68.49	40.29	47.53	70.00	44.11
	Trade Balance	<b>-14.43</b>	<b>4.23</b>	<b>-4.63</b>	<b>-441.40</b>	<b>-211.51</b>

Source : PIB

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