

# DA TAX UPDATE INDIRECT TAX

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

Fortnightly update - November 2021

Issue -31

**Goods and Service Tax**

**Customs and Others**

## Goods and Service Tax

### **M/s Appario Retail Pvt Ltd [2021-TIOL-2142-HC-TELANGANA-GST]**

The Hon'ble High Court ruled that petitioner can claim refund of the excess balance in its electronic cash ledger, which includes the amount that has been collected by the ECO under Section 52 of the CGST Act from the net value of consideration payable to the petitioner in respect of sales/supplies effected through it, as such amount paid to the Government is allowed as a credit in the electronic cash ledger of the petitioner under Section 49(1) of the CGST Act and such balance being eligible for refund under Section 49(6) of the CGST Act.

### **M/s Prodip Nandi [2021-TIOL-250-AAR-GST ]**

The applicant is engaged in supplying manpower services to his clients on daily/ monthly basis for different jobs as

periodical invoices to his clients indicating salary/ wages payable against the manpower services supplied by him and also indicated the service charges payable to him at the agreed rates in the invoices in a separate manner which shall not shift his liability on the recipient of services and makes him qualify as a 'pure agent' in terms of rule 33 of the CGST/WBGST Rules, 2017. Whether the applicant is acting as pure agent is answered in negative.

### **M/s Kamdhenu Agrochem Industries LLP [Advance Ruling no:GST-ARA-112/2019-20/B-87]**

GST registration is not required to be obtained in a state where imported goods are sold before clearance of such goods for home consumption

## Goods and Service Tax

**CBEC-20/16/05/2021-GST  
Circular dated 02 November  
2021**

The CBIC has issued a circular prescribing the guidelines for disallowing the debit of electronic credit ledger under rule 86A of the CGST Rules, 2017. Rule 86A of the Central Goods and Services Tax Rules, 2017 provides that in certain circumstances, Commissioner or an officer authorized by him, on the basis of reasonable belief that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible, may not allow debit of an amount equivalent to such credit in electronic credit ledger

**File No.GST-15/30/2021-P  
AND P-CTD dated 15  
November 2021**

Tamil Nadu Commercial Tax Department has issued circular amending the instructions to be followed in the Intelligence Wing and its functions. The amendments are

- Documents prescribed to be carried along with consignment of goods have minor defects not intended for tax evasion, penalty of upto Rs. 5,000 shall be levied.
- The person in-charge of a conveyance has to carry an E-way bill and Invoice or bill of supply or delivery challan, either in physical or electronic form
- The Roving squad officers, shall not insist on physical copy of these documents, if the person in-charge of a conveyance prefers to show them electronically

## Customs & Others

### **M/s Godrej And Boyce Manufacturing Company Ltd. [2021-TIOL-2112-HC-MUM-GST]**

The Hon'ble Bombay High Court by its Order dated 29 October 2021, finding certain technical flaws in the retrospective amendment, has set aside SCN which had alleged that the Petitioner had availed inadmissible transitional credit of E. Cess, SHE Cess and PLA. What weighed with the Court was that the amendments were to take effect from a date to be notified and such notification was not yet issued

### **M/s MNH Shakti Limited [Service Tax Appeal No. 75218 of 2020]**

The Hon'ble Tribunal while appreciating the submissions made by the assessee observed that the assessee, in the given facts of the case, has received the compensation in terms of the statute enacted pursuant to the Supreme Court Order and the assessee cannot be said to have

or choice whether to tolerate or not and the receipt of compensation is by operation of law. Hence, the assessee cannot be said to have rendered the "Declared Services" as contended by the department. No service tax can be levied on the amount received by the appellant as compensation

### **TEMA India Ltd [2021-TIOL-710-CESTAT-AHM]**

The Hon'ble CESTAT observed that the services such as courier services, insurance services and other indirect services can be used either in the factory or even outside the factory but in relation to the business activity of appellant, and need not be related to directly in manufacturing of final product or clearance of final product. And hence ruled that all the services are input services in terms of Rule 2(1) of Cenvat Credit Rules, 2004, allowing the CENVAT credit

## Customs & Others

### Trade Notice No. 22/2021-22-DGFT, dated 2 November 2021

After 31 December 2021, the Online IT system will not be operational and no applications/claims under the schemes can thereafter be submitted. It has also been notified that the facility for filing applications, with a late cut provision, would also not be available and all applications will get time barred after 31 December 2021.

### Public Notice No. – 92/2021 dated 1 November 2021

Procedure for submission of valid documents for utilisation of MEIS Scrip for import in the absence of mandatory recording of transfer details facility on DGFT website has been prescribed

### Notification No. 02/2021-Central Excise (N.T.), dated 10 November ,2021

Every manufacturing unit engaged in the manufacture or production of Petroleum Crude, falling under tariff heading 2709 00 10 of the Fourth Schedule to the Central Excise Act, 1944, where it has a centralized billing or accounting system for the goods manufactured or produced by different units or premises and opts for registering only the unit or premises or office, from where such centralized billing or accounting is done. Prior intimation shall be given before starting commercial production at any additional premises subsequent to obtaining such registration

## Customs & Others

**Circular  
1079/03/2021-CX,  
11 November 2021**

**No. dated**

**Trade Notice No 24/2021-  
22; Dated 15 November  
2021**

Pre-show cause notice consultation shall not be mandatory for those cases booked under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 for recovery of duties or taxes not levied or paid or short levied or short paid or erroneously refunded by reason of: –

- a. fraud: or
- b. collusion: or
- c. wilful mis-statement: or
- d. suppression of facts: or
- e. contravention of any of the provision of the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 or the rules made there under with the intent to evade payment of duties or taxes

The DGFT has extended the due date for mandatory filing of non-preferential Certificate of Origin electronically to 31 January 2022. Thus, allowing the traders to file the document in a manual way for the time being

**Trade Notice No 23/2021-  
22; dated 09 November  
2021**

The DGFT has issued a trade notice notifying that the Government of India has constituted a committee for determination of RoDTEP rates for AA/SEZ/EoU exports and to give supplementary report or recommendations on issues relating to errors or anomalies, with respect to RoDTEP schedule of rates

## Import and Export data

Imports of October 2021 at \$ 68.09 B

Exports of October 2021 at \$ 56.51 B

		October 2021 (USD Billion)	October 2020 (USD Billion)	October 2019 (USD Billion)	Growth vis-à-vis October 2020 (%)	Growth vis-à-vis October 2019 (%)
Merchandise	Exports	35.65	24.92	26.23	43.05	35.89
	Imports	55.37	34.07	37.99	62.51	45.77
	Trade Balance	-19.73	-9.15	-11.75	-115.50	-67.83
Services*	Exports	20.86	16.89	17.53	23.52	19.01
	Imports	12.71	9.21	10.36	38.09	22.68
	Net of Services	8.14	7.68	7.16	6.06	13.69
Overall (Merchandise+ Services)*	Exports	56.51	41.81	43.76	35.16	29.13
	Imports	68.09	43.28	48.35	57.32	40.82
	Trade Balance	-11.58	-1.47	-4.59	-685.57	-152.36

Source : PIB

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