DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM

Darda Advisors LLP

November 2021
Issue: 18

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

Wish you and your family Shubh Deepawali from Darda Advisors!

We are pleased to present to you the eighteenth 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 October 2021.

During the month of October 2021, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as Apex Court denied refund and rectification of GSTR 3B, SEZs can claim refund under GST, LOA cannot be cancelled due to re-demarcation of processing and non-processing area and others.

In the eighteenth 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 October 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.

Shubh Diwali!

Regards

Vineet Suman Darda
Co-founder and Managing Partner

DA Updates and Articles for the month of October 2021

Indirect Tax Fortnightly Update for the month of October 2021

https://dardaadvisors.com/indirect-tax-alert/da-indirect-tax-fortnightly-update_oct-2021/

Aatmanirbhar Bharat - PLI Scheme for Speciality Steel

https://dardaadvisors.com/indirect-tax-alert/da-indirect-tax-update_aatmanirbhar-bharat-pli-scheme-for-speciality-steel-industry/

Aatmanirbhar Bharat - PLI Scheme for ACC Battery Storage

https://dardaadvisors.com/tax-articles/indirect-tax-articles/aatmanirbhar-bharat-production-linked-incentive-scheme-for-acc-battery-storage/

GST COMPLIANCE CALENDAR

NOVEMBER 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

30
GSTR 3B(AMNESTY SCHEME)
NORMAL TAXPAYER

- SEZs eligible to claim refund under GST when vendor charged GST on supplies
- Refund of involuntary tax paid during investigation is allowed
- Rectification of GSTR 3B returns and consequent refunds not allowed – Hon'ble Supreme Court in the case of Bharti Airtel
- Acts of fraud or suppression are to be specifically pleaded by adjudicating authority – Section 74 of CGST Act
- Lower GST rate benefit not available to sub-sub-contractor when not provided under GST Law – AAR
- Uploading or serving of summary of show cause under Rule 142(1) is not a mere formality, but it is mandated
- Consideration received in case of Arbitrage claim related to Pre-GST regime liable to GST
- Increase in GST rate for permanent transfer of Intellectual Property

SEZs eligible to claim refund under GST when vendor charged GST on supplies

Issue:

The SEZ received supplies that included the GST component such CGST, SGST and IGST even when the transaction is inter-state and considered 'zero rated supply' under section 16 of IGST Act. Despite the petitioner not being liable to the payment of taxes, the invoices have been settled in full and tax has been paid on all the zero rated supplies. When the refund claim is filed by SEZ on refund of taxes charged such taxable supplies, SCN was issued by the adjudicating authority where the locus of the petitioner to claim the refund was questioned, the respondent being of the view that the petitioner was not entitled to the refund on various grounds, including that, as per Section 54 of the CGST Act, only a supplier of services would be entitled to claim refund and not the SEZ itself. The Order is issued by the adjudicating authority without considering the submissions rejecting the refund claim, which is further rejected by first appellate authority, against which the writ petition is filed.

Legal Provision:

Section 16 of IGST Act and section 54 of CGST Act read with Rule 89 of CGST Rules

Observation and comment:

- The statutory scheme for refund under the CGST and SGST Acts, permits any entity to seek a refund of taxes or other amounts paid under the provisions of the Act, subject to satisfaction that is it so entitled, and that there is no double claim as against the same amount. Ordinarily, though zero rated supplies are not subject to the levy of taxes, the petitioner, in this case has remitted the same as raised in the invoice, albeit erroneously.

- *The provisions of Section 54 of the CGST Act, providing for a refund, apply to any person who claims such refund and who makes an application for the grant of the same. The language of the provision is clear and does not contain, or admit of any restriction in its operation.*

- Clause (h) is a residuary Clause which states that the date of payment of tax is the relevant date in the case of any goods not covered by Clauses (a) to (g) of Clause (2) of the explanation. *Thus, the statutory scheme for refund admits of applications to be filed by any entity that believes that it is so entitled, including the petitioner SEZ. The language of Rule 89, echoes that of Section 54, and both the aforesaid provision and Rule commence with the*

SEZs eligible to claim refund under GST when vendor charged GST on supplies

phrase 'any person'. The only exclusion is of the person covered under a notification issued under Section 55, admittedly inapplicable to the petitioner.

- I do not agree for the reason that Rule 89(1) does not envisage any such restriction and, in my view, applies to any entity. No doubt, the second proviso refers to a supplier of an SEZ, which is only one kind of entity that may make an application under Rule. *This is not to say that the reference to a supplier, will exclude, by virtue of such reference, other applicants.*

- *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. No restrictions or amplifications of the Rule are permissible by interpretation. On the legal issue of entitlement to refund, I hold in favor of the petitioner.*

- For the above purpose, the petitioner will appear before the 2nd respondent on a date to be fixed by the authority and provide all material available with it in support of its claim. Full liberty is granted to R2 to seek and obtain all information as he may deem necessary to clear apprehensions in his mind, including that the claims amount to a double deduction or that the taxes have not been remitted to the treasury by the SEZ

DA Comments:

The Honorable High Court has settled the position on the said issue and in cases, where the suppliers are charging taxes on SEZ supplies, SEZs can claim the refund.

Platinum Holdings Private Limited vs ACGST and others [WP no. W.P.No.13284 of 2020 – Madras High Court]

Refund of involuntary tax paid during investigation allowed

Issue:

The petitioner is registered and operates an e-commerce platform under the name 'Swiggy' and during investigation, it is alleged by the Directorate General of Goods and Services Tax Intelligence (DGGSTI) that the alleged third party service provider i.e. Greenfinch was a non-existent entity and accordingly, the ITC availed by the petitioner were fraudulent.

The Petitioner seeks for issuance of a writ of mandamus directing the respondents to refund an amount of Rs.27,51,44,157/- allegedly illegally collected from the petitioner, issuance of an appropriate writ in the nature of direction to the respondents not to take any coercive action against the petitioner and its officials during the pendency of ongoing investigation, issuance of a writ directing the respondents to pay interest of 12% p.a. on the amount the refund etc.

Petitioner has also sought for issuance of a writ or order holding Section 16(2)(c) of the Act, 2017 as unconstitutional.

Legal Provision:

Section 16(2)(C) and Section 74 (6)(7)(8) of CGST Act

Observation and Comments:

The Honorable High Court observed and held that:

- It must be noted that *if there is an amount that has been wrongfully withheld, which could be demonstrated to be so, there is no bar for exercising writ jurisdiction to issue appropriate directions directing the respondent to make good the petitioner's claim for refund.* [Godavari Sugar Mills Ltd. v. State of Maharashtra and Others reported in (2011) 2 SCC 439 relied upon]

- It is clear that the procedure of self-ascertainment under sub-section (5) of Section 74 contains a scheme that is concluded after following the procedure under sub-sections (6), (7) and (8) of Section 74 of the CGST Act. In the present case, it must be noted that though there is payment of tax and even if it is accepted that payment of tax is also followed by requisite Challan DRC-03, the *mere payment of tax cannot be construed to be a payment towards self-ascertainment as contemplated under Section 74 (5) of CGST Act.*

- *The scheme of self-ascertainment as contained in sub-sections (5), (6), (7), (8) of Section 74 of CGST Act would not admit of making of payment and continuance of investigation.* Upon payment of tax after collection of the same with penalty, if the same is accepted even before the issuance of notice under Section 74(1) during investigation, there ends the matter and there is nothing further to be proceeded with.

Refund of involuntary tax paid during investigation allowed

- If it is that the petitioner has paid tax on self-ascertainment, the question of respondents contending that the investigation is pending would also indicate that the contention of self-ascertainment as made out by the respondent is clearly an afterthought. Accordingly, the contention of payment being made by way of self-ascertainment is liable to be rejected.
- *The fear of police powers are such that would shake a man irrespective of their position in society.* In the context of the facts as made out, the payment cannot be stated to have been made voluntarily.
- *A bonafide taxpayer is required to be treated better than a 'detenu and arrestee'.* No doubt, the power of investigation cannot be interfered with nor can the court direct investigation be made in a particular manner, however, during all such investigation, it cannot be held that the Fundamental Rights including the right of a bona fide tax payer to be treated with appropriate dignity as enshrined under Article 21 of the Constitution of India would be kept in abeyance.
- In the present case, in light of disposal of the writ petition, providing substantial relief to the petitioner and as the legality of the said provision has not been adverted to in detail in oral arguments, *the court refrains from adjudication relating to the constitutional validity of Section 16(2)(c) of the Act and the contentions of the parties as regards constitutional validity of Section 16(2)(c) is kept open.*
- Consideration of the right of refund in the present factual matrix would be independent of the process of investigation and the two cannot be linked together.

DA Comments:

Section 16(2)(c) of CGST Act is nothing but scary. It is one of the harshest and scariest provisions of the GST laws and may prove to be a nightmare for the compliant taxpayers. The issue faced in this case by Swiggy is due to non-payment of tax by their vendors and DGGSTI forcefully asked them to remit the additional tax which they asked for refund and went through prolong litigations. The Honorable High Court should have considered to set aside the provision of section 16(2)(c) of CGST Act

M/s Bundl Technologies Pvt Ltd vs UOI and others [2021-TIOL-2073-HC-KAR-GST]

Rectification of GSTR 3B returns and consequent refunds not allowed – Hon'ble Supreme Court in the case of Bharti Airtel

Issue:

The petitioner had alleged before the Honorable Delhi High Court that there has been excess payment of taxes, by way of cash and that this was occasioned to a great degree due to non-operationalization of Forms GSTR-2A, GSTR-2 and GSTR-3 and the system related checks which could have forewarned the petitioner about the mistake; that since there were no checks on the Form GSTR-3B which was manually filled up by the Petitioner, the excess payment of tax went unnoticed; that, therefore, the Petitioner desired to correct its returns, but is being prevented from doing so as there is no enabling statutory procedure implemented by the Government. The Honorable Delhi High Court while allowing the petition [2020-TIOL-901-HC-DEL-GST] had held that:

- Since the respondents could not operationalise, the statutory forms envisaged under the Act resulting in depriving the petitioner to accurately reconcile its input tax credit, the respondent cannot today deprive the petitioner of the benefits that would have accrued in favour of the petitioner if, such forms would have been enforced; that the Petitioners cannot be denied the benefit due to the fault of the respondents;
- The facility of form GSTR-2A was not available prior to 2018 and, as such, for the months July 2017 to September 2017 the scheme was envisaged under the Act was not implemented; that the only remedy that can enable the petitioner to enjoy the benefit of seamless utilisation of the input tax credit is by way of rectification of its return GSTR-3B; that the correction mechanism is critical to sustaining successful implementation of GST
- Paragraph 4 of CBIC Circular 26/26/2017-GST dated 29 December 2017 is not in consonance with the provisions of the CGST Act, 2017

Against this order, Revenue had filed a Special Leave Appeal before the Honorable Supreme Court and had stayed the operation of the impugned judgment by its order dated December 17, 2020 [2020-TIOL-179-SC-GST-LB] and had listed the matter in March 2021 for final disposal

Legal Provision:

Section 37, 38, 39 of CGST Act, 2017, GSTR 2A, GSTR 2B, GSTR 3B, Rule 61 of CGST Rules, 2017, Circular 26/26/2017-GST dated 29 December 2017

Rectification of GSTR 3B returns and consequent refunds not allowed – Hon'ble Supreme Court in the case of Bharti Airtel

Observation and Comments:

The Honorable Supreme Court observed and held that:

- *The question of reading down paragraph 4 of the said Circular would have arisen only if the same was to be in conflict with the express provision in the 2017 Act and the Rules framed thereunder.* The express provision in the form of Section 39(9) clearly posits that omission or incorrect particulars furnished in the return in Form GSTR-3B can be corrected in the return to be furnished in the month or quarter during which such omission or incorrect particulars are noticed. This very position has been restated in the impugned Circular. It is, therefore, not contrary to the statutory dispensation specified in Section 39(9) of the Act.

- *Payment for discharge of OTL (Output Tax Liability) by cash or by way of availing of ITC, is a matter of option*, which having been exercised by the assessee, cannot be reversed unless the Act and the Rules permit such reversal or swapping of the entries.

- The entire edifice of the grievance of the writ petitioner (respondent No. 1) was founded on *non- operability of Form GSTR- 2A* during the relevant period, which plea having been rejected as untenable and flimsy, it must follow that the writ petitioner/respondent No. 1 with full knowledge and information derived from its books of accounts and records, had done self- assessment and assessed the OTL for the relevant period and chose to discharge the same by paying cash. Having so opted, it is not open to the respondent to now resile from the legal option already exercised.

- *Form GSTR- 2A is only a facilitator for taking an informed decision while doing such self- assessment.* Registered person is not denied of the opportunity to rectify omission or incorrect particulars, which he could do in the return to be furnished for the month or quarter in which such omission or incorrect particulars are noticed.

- *It is not a case of denial of availment of ITC as such. If at all, it is only a postponement of availment of ITC.* The ITC amount remains intact in the electronic credit ledger, which can be availed in the subsequent returns including the next financial year. *Further, there is no express provision permitting swapping of entries effected in the electronic cash ledger vis- a-vis the electronic credit ledger or vice versa.*

Rectification of GSTR 3B returns and consequent refunds not allowed – Hon'ble Supreme Court in the case of Bharti Airtel

- *Any indulgence shown contrary to the statutory mandate would not only be an illegality but in reality, would simply lead to chaotic situation and collapse of tax administration of Union, States and Union Territories.* Resultantly, assessee cannot be permitted to unilaterally carry out rectification of his returns submitted electronically in Form GSTR-3B, which inevitably would affect the obligations and liabilities of other stakeholders, because of the cascading effect in their electronic records.
- The direction issued by the High Court, being in the nature of issuing writ of mandamus to allow the writ petitioner to rectify Form GSTR- 3B for the period July to September 2017, in the teeth of express statutory dispensation, cannot be sustained

DA Comments:

We need to view this decision from following perspective:

- Where the basic issue for defence for incorrect filings/compliances is glitches in the GSTN portal – The judgment would have significant impact on any litigation following the ratio contained in this judgment, so long as filings/compliance would have been possible with suitable internal processes, which is completely in the control of the taxpayer, Courts are not likely to take a lenient view.
- If the taxpayer can substantiate that non-compliance has arisen out of the glitches in the GSTN portal and steps practically possible in the taxpayer's hands has been taken, this decision may not impact them negatively

UOI vs Bharti Airtel Ltd And Others [2021-TIOL-251-SC-GST]

Acts of fraud or suppression are to be specifically pleaded by adjudicating authority – Section 74 of CGST Act

Issue:

The Show cause notice (SCN) issued by the adjudicating authority under Section 74 of the JGST Act, 2017 has been challenged by the petitioner along with the consequential challenge to summary of show-cause notice in FORM DRC-01 is without jurisdiction and vague and that the proceeding initiated without service of FORM GST-ASMT-10 is void ab-initio.

Legal Provisions:

Section 74 of CGST Act, 2017

Observation and Comments:

The Honorable High court observed and held that:

- A bare perusal of the impugned SCN creates a clear impression that it is a notice *issued in a format without even striking out any irrelevant portions* and without stating the contraventions committed by the petitioner i.e., whether it's actuated by reason of fraud or any wilful misstatement or suppression of facts in order to evade tax as proceedings under Section 74 have a serious connotation as they allege punitive consequences.
- *In absence of clear charges which the person so alleged is required to answer, the noticee is bound to be denied proper opportunity to defend itself.* This would entail violation of principles of natural justice which is a well-recognized exception for invocation of writ jurisdiction despite availability of alternative remedy.
- Apex Court has [in Oryx Fisheries P. Ltd. (2010) 13 SCC 427] held that the *concept of reasonable opportunity includes various safeguards and one of them is to afford opportunity to the person to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based.*
- *It is also true that acts of fraud or suppression are to be specifically pleaded* so that it is clear and explicit to the noticee to reply thereto effectively.
- *Impugned notice completely lacks in fulfilling the ingredients of a proper SCN under Section 74 of the Act.* A summary of show cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the JGST Rules, 2017 cannot substitute the requirement of a proper show-cause notice

Acts of fraud or suppression are to be specifically pleaded by adjudicating authority – Section 74 of CGST Act

- Court finds that upon perusal of GST DRC-01 issued to the petitioner, although it has been mentioned that there is mismatch between GSTR-3B and 2A, but that is not sufficient as the foundational allegation for issuance of notice under Section 74 is totally missing and the notice continues to be vague.

- Impugned notice and the summary of SCN in Form GST DRC-01 are quashed. Respondents are at liberty to initiate fresh proceedings from the same stage in accordance with law within a period of four weeks

DA Comments:

The Honorable High Court rightly observed that '*In absence of clear charges which the person so alleged is required to answer, the noticee is bound to be denied proper opportunity to defend itself*.' The adjudicating authority needs to provide substantial reasons at the time of imposing section 74 of CGST Act so that the assessee can provide its response on such allegations

M/s Nkas Services Pvt Ltd Vs The State Of Jharkhand and Others [2021-TIOL-2079-HC-JHARKHAND-GST]

Lower GST rate benefit not available to sub-sub-contractor when not provided under GST Law – AAR

Issue:

The applicant is engaged in providing works contract service directly to sub-contractors who execute the contract with the main contractor for original contract work with the irrigation department (State of Gujarat). The applicant has sought a clarification as regards the rate of tax to be levied from the sub-contractor for original contract work pertaining to irrigation and construction work (works contract) in as much as it is the contention of the applicant that they should be charged @12% only and not @18%.

Legal Provision:

Notification no. 11/2017-CT(R) dated 28 June 2017

Observation and Comments:

The AAR observed and held that:

- The Government Irrigation Division awarded work contract to Main Contractor M/s JSIW for EPC of a pumping station. Subsequently, the Main contractor awarded the said work to sub-contractor M/s Radhe Construction who, in turn, awarded the said work to the applicant, who is now a sub-sub-contractor and to be eligible for being covered at Sr no 3 (iii) of said NT 11/2017-CT(R), the following two conditions shall be satisfied viz.

  i. Composite Supply of Works Contract to be supplied by Main Contractor to Government and

  ii. Supply by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of canal, dam or other irrigation works.

- The applicant does not satisfy condition 1, but satisfies only condition no. 2 –

- Further, to be eligible for being covered at Sr no 3 (ix) of said NT 11/2017-CT(R), the following two conditions shall be satisfied:

  i. Composite supply of works contract provided by a sub-contractor to the main contractor and

  ii. That main contractor shall provide services specified in item (iii) to Government

- It is observed that the applicant is not a sub-contractor but a sub-sub-contractor, therefore, the applicant does not satisfy both the conditions.

Lower GST rate benefit not available to sub-sub-contractor when not provided under GST Law – AAR

- Wording in the said Notification, when clear, plain and unambiguous and only one meaning can be inferred, authority is bound to give effect to the said meaning and cannot allow any scope for intendment.
- Held that the applicant is sub-subcontractor and supplies service to M/s Radhe [sub-contractor] and not to M/s JSIW [main contractor], and the conditions of said entry 3(iii)/3(ix) to said Notification is not satisfied.
- Concluded that GST rate on subject supply is @18% for services supplied by the sub-sub-contractor to sub-contractor M/s Radhe and supply merits entry at Heading 9954, Entry No 3(ii) of Notification No.11/2017-CT(R):

DA Comments:

The argument from the applicant that they are agent of sub-contractor as back to back sub-contract of the works contract has been done and thus eligible for lower rate of GST did not consider by AAR.

M/s Kababhai Popatbhai Savalia Shreeji Earth Movers [2021-TIOL-243-AAR-GST]

Uploading or serving of summary of show cause under Rule 142(1) of CGST Rules is not a mere formality, but it is mandated

Issue:

The petitioner submits that a summary of show cause in form GST-DRC-01 under rule 142(1) has been generated/uploaded electronically and without giving any slightest breathing time to the petitioner assessee to respond, the impugned assessment order has been passed and the writ petition is filed to Honorable High Court.

Legal Provision:

Rule 142 (1) of CGST Rules

Observation and Comments:

The Honorable High Court observed and held that:

- Uploading or serving of summary of show cause in Form GST-DRC-01 under Rule 142(1) is not a mere formality, but it is mandated under the Rule, so that the assessee would have a chance of getting summary of show cause and respond to the same.
- Without giving such a breathing time, on the very same day, that is, the date on which GST-DRC-01 notice, that is, summary of notice was uploaded, the impugned order was passed, therefore, on that ground, Court feels that the impugned order cannot be sustained - impugned order is quashed and the matter is remitted back to the respondent for reconsideration.
- If notice has already been issued, summary of such show cause in form GST-DRC-01 shall be freshly uploaded, breathing time be given to petitioner to respond with available records and after giving an opportunity of hearing, a fresh assessment order can be passed in the manner known to law. Writ petition is disposed of.

DA Comments:

The procedure as laid down needs to be followed by adjudicating authority in true spirit to avoid undue hardship to the assessee and multiple litigations before various courts

M/s Balaji Traders vs STO [2021-TIOL-2068-HC-MAD-GST]

Consideration received in case of Arbitrage claim related to Pre-GST regime liable to GST

Issue:

The applicant has executed works contract for M/s. Hyderabad Growth Corridor Ltd (HGCL) and the work was completed in pre-GST era and the applicant raised certain claims regarding compensation for delay in execution, payment of difference in rates and other contractual breaches which was referred to a dispute resolution board on 16 June 2017. The applicant after notifying to contractee on 25 September 2017, approached an arbitration tribunal which initiated proceedings on 20 November 2017 and passed an order on 09 May 2019 to the applicant under various heads. The applicant further stated that there is no man power and operation after the GST as seen from the financial statements.

Based on the facts mentioned hereinafter, the applicant sought Advance Ruling on the following issues:

- Whether GST is applicable on the proposed receipt of money in case of Arbitration claims awarded for works contract completed in the Pre-GST regime?
- If the answer to the above question is Yes then under what HSN Code and GST rate the liability is to be discharged by the applicant?

Legal Provision:

Section 142 of CGST Act

Observation and Comments:

The AAR observed and held its view on each 6 categories as follows:

Category	AAR Ruling
Unpaid amounts including escalation of price for works executed in pre-GST period	As seen from the averments of the applicant the supply was made prior to introduction of GST. Therefore, it is not covered by Section 13(2) of the CGST/SGST Acts. Hence the amounts claimed pertaining to the works executed earlier to introduction of GST are not taxable under CGST/SGST Acts.
Refund of excess deductions made	The refund of excess deductions both statutory and non-statutory made against the bills raised for the works completed in pre-GST period do not constitute consideration for supplies made under GST period. Therefore, these amounts are not taxable under CGST/SGST Acts.

M/s Balaji Traders vs STO [2021-TIOL-2068-HC-MAD-GST]

Consideration received in case of Arbitrage claim related to Pre-GST regime liable to GST

Category	AAR Ruling
Interest on delayed payments of interim payment certificates	As seen from the averments of the applicant the interest is claimed on delayed payments on the works executed and payment certificates received in pre-GST period. In light of Section 13(2) of the CSGT Act the time of supply is not in GST period, hence these amounts are not liable to tax under CGST/SGST Acts.
Cost of Arbitration	The consideration received by arbitral tribunal is taxable on reverse charge basis under CGST & SGST Act @9% each. The service tariff code is 998215. In the present case, Arbitration as service was supplied independently after the introduction of GST i.e., the tribunal was constituted conclusively on 20.11.2017 and rendered its orders on 09.05.2019 and therefore this supply is liable to tax on reverse charge basis under GST.
Liquidated damages	These damages are 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. These damages are consideration for tolerating an act or a situation arising out of the contractual obligation as per entry in 5(e) of Schedule II to the CGST Act. As per the issues mentioned in the arbitration award, clauses 6.4 and 42.2 of the General Conditions of Contract (GCC) specifically state that in case of any delay in issuance of drawings or failure to give possession of site the engineer shall determine the extension of time and amount of cost that the contractor may suffer due to such delays in consultation with the employer and the contractor. Therefore, the time of supply of the service of tolerance is the time when such determination takes place. However, the contractee/employer has not determined the cost of delay prior to arbitration award. It was determined only by arbitration award on 09 May 2019. Therefore, the time of supply of this service as per Section 13 of the CGST Act is 09 May 2019.

M/s Balaji Traders vs STO [2021-TIOL-2068-HC-MAD-GST]

Consideration received in case of Arbitrage claim related to Pre-GST regime liable to GST

Category	AAR Ruling
Liquidated damages	The Consideration received for such forbearance is taxable under CGST and SGST @9% Each under the chapter head 9997 at serial no. 35 of Notification No.11/2017-Central/State tax rate
Interest on Arbitration Amount	The applicant is claiming interest on the amounts determined by the arbitrary tribunal under various heads. Under Section 15(2)(d) of the CGST/SGST Acts interest for delayed payment against a supply is consideration which is taxable under CGST/SGST Acts. Therefore, the interest on amounts exigible to tax under CGST/SGST forms part of value of taxable supply.

DA Comments:

On various categories including liquidated damages, the AAR has not given ruling based on GST provision and can be appealed further to AAAR by the applicant

M/s. Continental Engineering Corporation [AAR- Telangana - TSAAR Order No.13/2021 dated 8 October 2021]

Increase in GST rate for permanent transfer of Intellectual Property

- CBIC has increased GST rate on permanent transfer of Intellectual Property right in respect of goods from 12% to 18% and made it at par with supply of services.
- Before amendment, Permanent transfer of IPR in respect of goods other than Information Technology software attracted GST of 12%, while in case of IT software, 18% GST was levied

Notification No: 13/2021-Central Tax (Rate); Dated: October 27 2021

GSTN Portal Updates

Advisory for taxpayers on Form GSTR-2B

1. Form GSTR-2B is an auto-drafted ITC statement which is generated for every normal taxpayer on the basis of the information furnished by their suppliers in their respective GSTR-1/IFF, GSTR-5 (non-resident taxable person) and GSTR-6 (input service distributor). This statement indicates availability and non-availability of input tax credit to the taxpayer against each document filed by their suppliers and is made available to the taxpayers in the afternoon of 14th of every month.

2. Please click on below links to access additional content related to Form GSTR-2B:

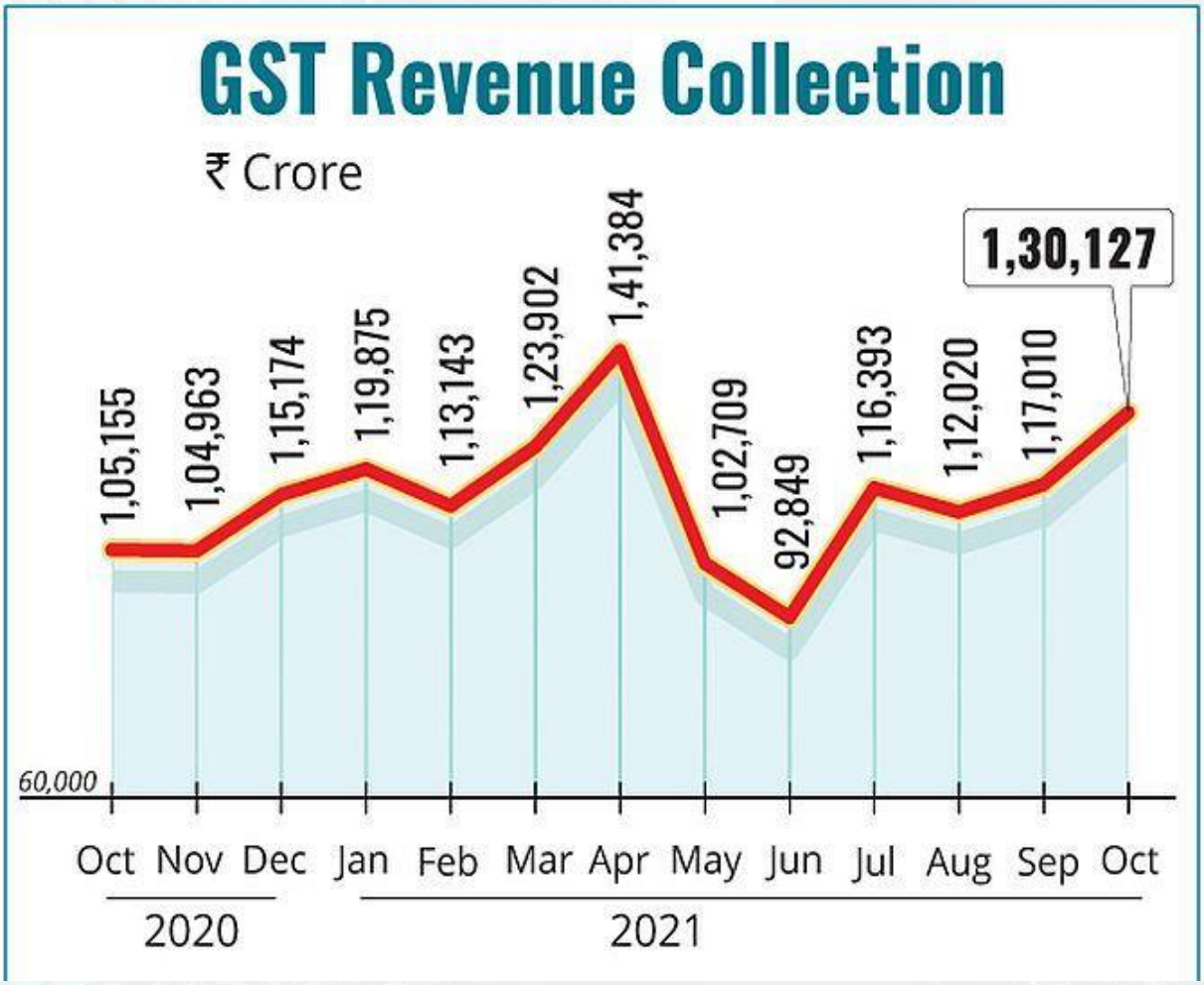
https://tutorial.gst.gov.in/downloads/news/updated advisory_gstr_2b_12_10_2021.pdf – for detailed advisory

https://tutorial.gst.gov.in/userguide/returns/index.htm#t=Manual_gstr2b.htm –for User Manual

https://tutorial.gst.gov.in/userguide/returns/index.htm#t=FAQ_gstr2b.htm – for FAQs

GST Revenue Collection in October 2021- Rs. 1,30,127 Cr.

TRENDS IN GST COLLECTION IN RS. CRORE



- SEZ Unit's LOA cannot be cancelled due to re-demarcation of processing and non-processing area
- When there is a reasonable interpretation of a legal and factual situation, which is favourable to the assessee, such an interpretation is to be adopted
- Simplification of the registration requirements for Authorised Couriers
- Instructions issued on indiscreet Show-Cause Notices issued by Service Tax Authorities
- Introduction of Anti-Absorption provisions for ADD and CVD articles
- Amendment in notification No.25/2021-Customs
- Trade Notice No. 21/2021-2022, dated 18 October 2021
- Public Notice No. 29/2015-2020, dated 18 October 2021

SEZ Unit's LOA cannot be cancelled due to re-demarcation of processing and non-processing area

Issue:

Under the 2009 Special Economic Zone ('SEZ') Guidelines, a power plant could be set up by the developers/co-developers as a part of the infrastructure facilities only in the non-processing area of the SEZ. However, under the 2012 Guidelines, this condition was relaxed and, therefore, with the reinstatement of the 2009 Guidelines, such units would now require to be placed in the non-processing area. One principal difference between the 2009 Guidelines and the 2012 Guidelines is that under the 2009 Guidelines, a power plant set up by a developer/co-developer as a part of infrastructure facility was required to be placed only in a non-processing area of the SEZ and would not be entitled to any O&M benefits.

The petitioner's unit was granted approval in the processing area under the 2009 Guidelines and, therefore, restoration of the 2009 Guidelines cannot possibly require the petitioner's unit to be demarcated as a non-processing area. In relation to the same, the petitioner is impugning an order passed by the Board of Approval ('BoA'), whereby the petitioner's appeal against an order passed by the Unit Approval Committee, NOIDA SEZ ('UAC') was rejected.

The petitioner also prays that the petitioner may be allowed benefits under Section 26 of the SEZ Act, 2005 ('SEZ Act') in respect of maintenance and duty-free imports of raw materials and consumables for operation and maintenance of the power plant ('O&M benefits').

Legal Provision:

Section 26 of SEZ Act and 2009 and 2012 Guidelines related to O&M of Power Plant

Observation and Comments:

The Honorable High Court observed and held that:

- Letter of approval has been granted specifying the authorised operations and the same cannot be altered by general guidelines, which at best qualify to be a policy decision by the Central Government.

- Clearly, if the policy of the Central Government is not to permit power plants to be set up in processing areas, the BoA is required to ensure that no letter of approval is granted to a unit or a developer to do so. However, that does not mean that the BoA is required to proceed to cancel an existing letter of approval even though there is no default on the part of the entrepreneur in complying with the terms and conditions or its obligations subject to which, the letter of approval was granted to him.

SEZ Unit's LOA cannot be cancelled due to re-demarcation of processing and non-processing area

- Contention that the Central Government is entitled to demarcate processing areas and non-processing areas and the unit established by the petitioner had ceased to be a unit in the processing area whereby rendering it ineligible for O&M benefits is also not supported by the scheme of the SEZ Act.

- Letter of approval granted to an entrepreneur can be cancelled if the conditions as stipulated under Section 16(1) of the SEZ Act are met and not otherwise. Board of Approval cannot, for the purpose of cancelling a letter of approval, re-demarcate the processing areas and non-processing areas in an SEZ - Demarcation of such areas is not to be done for the purpose of cancelling existing letter of approvals.

- Present petition is allowed to the limited extent that the condition imposed by Unit Approval Committee of refunding the O&M benefits obtained by the petitioner during the period 01 April 2015 to 15 February 2016 by its letter dated 18 April 2016, is set aside - Petition disposed of: High Court.

DA Comments:

The O&M benefits and LOA continuity allowed to an extent irrespective of multiple change in SEZ guidelines is well laid down principle by Honorable High Court when the SEZ unit is complying with LOA's conditions.

M/s Moser Baer India Ltd vs UOI and Anr [2021-TIOL-2092-HC-DEL-CUS]

When there is a reasonable interpretation of a legal and factual situation, which is favourable to the assessee, such an interpretation is to be adopted

Issue:

The issue for consideration in this case is the eligibility of the appellant for refund of 4% of Special Additional Duty (SAD) in terms of Notification No. 102/2007-Cus, dated 14 September 2007. The appellant made claim for refund and after due adjudication, vide the Order-in-Original dt. 04/08/2018, the Assistant Commissioner rejected 4% SAD as being time barred in terms of the Notification. The Commissioner (Appeals) passed the Order-in-Appeal & upheld the rejection.

Legal Provision:

Notification No. 102/2007-Cus, dated 14 September 2007

Observation and Comments:

The CESTAT observed and held that:

- There can be no dispute on the proposition that irrespective of whether or not the judgments of non-jurisdictional High Courts are binding, these judgments deserve utmost respect which implies that, at the minimum, these judgments are to be considered reasonable interpretations of the related legal and factual situation.

- **Doctrine of precedence** only mandates that it is the ratio in the decision of higher courts to be followed, and not conclusions. Considering legal position and propriety, it is inappropriate to choose views of one of the High Courts based on perceptions about reasonableness of the respective viewpoints, as such an exercise will de facto amount to sitting in judgment over the views of the High Courts.

- When there is a reasonable interpretation of a legal and factual situation, which is favourable to the assessee, such an interpretation is to be adopted. The Apex Court in CIT v. Vegetable Products Ltd. has laid down that *if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted.*

- Although this principle so laid down was in the context of penalty, and Their Lordships specifically stated so in so many words, it has been consistently followed for the interpretation about the statutory provisions as well.

- In view of the above, the denial of refund is bad in law and hence not sustainable. The impugned order is, therefore, set aside and the appeal is allowed with consequential benefits, if any, as per law

When there is a reasonable interpretation of a legal and factual situation, which is favourable to the assessee, such an interpretation is to be adopted

DA Comments:

The Honorable CESTAT has considered Doctrine of Precedence and the laid down principle that if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted, which can be considered under other laws by various forums in case of multiple interpretations.

John's Cashew Company vs CC [2021-TIOL-678-CESTAT-BANG]

Simplification of the registration requirements for Authorised Couriers

The Central Board of Indirect Taxes and Customs has taken measures to simplify the registration requirements of Authorised Couriers. In this regard, attention is invited to Notifications no. 86/2021-Customs (N.T.) and 85/2021-Customs (N.T.) both dated 27 October 2021, which have amended the Courier Imports and Exports (Clearance) Regulations, 1998 and the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 respectively

Circular No. 24/2021-Customs, dated 27 October 2021

Notification No. 86/2021-Customs (N.T.), dated 27 October 2021

Notification No. 85/2021-Customs (N.T.), dated 27 October 2021

Introduction of Anti-Absorption provisions for ADD and CVD articles

Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 to introduce the Anti-Absorption provisions and make certain other miscellaneous changes.

Seeks to further amend Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995 to introduce Anti-Absorption provisions.

Notification No. 84/2021-Customs (N.T.), dated 27 October 2021

Notification No. 83/2021-Customs (N.T.), dated 27 October 2021

Amendment in notification No.25/2021-Customs

The Central Government makes the amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2021-Customs, dated the 31 March 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 241 (E), dated the 31 March 2021.

Notification No. 51/2021-Customs, dated 22 October 2021

Advisory Note to Public Notice No. 13/2020

The procedure for giving 72 hours prior intimation request by DPD importers for their submission/change of CFS in case of any particular consignment has been laid down in Public Notice no. 13/2020 dated 23.01.2020. There have been multiple requests received for change in CFS change in CFS for particular bill of lading /consignments.

In such cases the latest request for change of CFS shall be taken as final request

Advisory Note to Public Notice, dated 20 October 2021.

Instructions issued on indiscreet Show-Cause Notices issued by Service Tax Authorities

Instructions are issued to the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, should be followed diligently.

A suitable mechanism should be devised to monitor and prevent issue of indiscriminate show cause notices. In all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the notice.

Instruction dated 26 October 2021

Trade Notice No. 21/2021-2022, dated 18 October 2021

The existing system of manual/paper-based submission and processing of non-preferential CoO applications is being extended further up to 31 October 2021 only and the online system is not being made mandatory.

Trade Notice No. 21/2021-2022, dated 18 October 2021

Public Notice No. 30/2015-2020, dated 18 October 2021

The Director General of Foreign Trade authorizes Export Promotion Council for EOUs & SEZs, Urban Exim Care Association, Federation of Industries & Associations under Appendix 2E of FTP, 2015-2020 for issuing Certificate of Origin (Non-Preferential).

Public Notice No. 30/2015-2020, dated 18 October 2021

Public Notice No. 29/2015-2020, dated 18 October 2021

The agencies enlisted under Appendix 2E of FTP-2015-20, who have on-boarded on Common Digital Platform for electronic Certificate of Origin (Non – Preferential), can issue CoO (NP) on all India basis w.e.f. 01 November 2021

Public Notice No. 29/2015-2020, dated 18 October 2021


India politics
TAX
DA NEWS
Driven by Quality, Powered by Ideation

Goods and Services Tax

- Oct GST revenue hits new high at ₹1.3L-cr
- Explained: Why GST collection has surged, what the trend indicates
- Govt may consider higher GST, fewer rates to simplify structure: Report
- Textile sector worries over proposed GST rate hike from 5% to 12%
- Companies may have to pay more taxes on intangible assets
- Centre releases final tranche of GST recompense loans to States
- GSTN blocks Rs 14,000-crore input tax credits of 66,000 taxpayers

Customs and other

- Explained: Customs duty waiver on edible oil imports; will it help control prices?
- Govt cuts custom duties on edible oils to check prices in festive season
- Chennai customs seizes gold worth Rs 2.19 crore from passengers' laptops, tablets
- FTA talks back on track as Jaishankar, Israeli counterpart meet
- India set to ink key trade deals by next year
- Need to re-negotiate FTA with ASEAN to stop misuse by third parties: Piyush Goyal
- Delayed FTP: What India's new trade policy should include in the post-pandemic world
- Two countries, 1 bloc keen to start FTA talks with India: Piyush Goyal

Darda

Driven by Quality, Powered by Ideation

Darda Advisors LLP offers a wide range of services in the tax and regulatory space to clients in India with professionals having extensive consulting experience. Our approach is to provide customized and client-specific services. We provide well-thought-out strategies and solutions to complex problems in tax and regulatory matters. Our service offerings are:

Invest India Services

- Invest India Study
- Inception And Incorporation Relate
- Incentives, Subsidies and Grant Service
- Start-Up India and MSME Services

Indirect Tax Services

- GST Services
- Representation and Litigation Support
- Corporate Training
- SEZ/EOU/STP Services
- Customs and International Trade
- GCC VAT

Other Services

- Corporate Secretarial Services
- Corporate & International Tax Services
- Certification & Attestation Services
- Financial Advisory Services
- Accounting Advisory Services
- RBI Services

www.dardaadvisors.com

da@dardaadvisors.com

Our Locations

Hyderabad

6-3-1086,5th Floor, Vista Grand Towers, Raj Bhavan Road, Somajiguda, Hyderabad – 500082, TS

Chennai

13, T.K. Mudali Street, Choolai, Chennai - 600112, Tamil Nadu

Delhi-NCR

N 93, Ground floor, Mayfield garden, Sector 51, Gurgaon, Haryana - 122018

Bhilwara

Moti Chambers, 62&63, Sancheti Colony, Pur Road. Bhilwara – 311001, Rajasthan