

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

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Issue -32

Goods and Service Tax

Customs and Others

Goods and Service Tax

M/s Portescap India Pvt Ltd [2021-TIOL-293-AAR-GST]

The petitioner had filed for an advance ruling before the Hon'ble AAR to know whether they are required to pay tax under RCM on procurement of renting of immovable property services from SEEPZ.

The AAR in its ruling stated that Supply of goods or services or both, to or by a special Economic Zone developer or a Special Economic Zone unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. There is absence of any mention in the section 26, to provide for IGST/CGST/SGST/ exemptions in case of such services. Applicant is, therefore, required to pay tax under reverse charge (under IGST head) on procurement of renting of immovable property services from SEEPZ (local authority).

M/s Rotary Club Of Mumbai Elegant [2021-TIOL-290- AAR-GST]

The Hon'ble AAR ruled that Club and member are two distinct persons and Principle of mutuality has no application after the amendment to Section 7 of the CGST Act, 2017. Activity of collecting contributions and spending towards meeting and administrative expenditures only is 'business' and any contribution by members towards the said expenses is a supply.

M/s Radhemani and sons [2021-TIOL-2295-HC- CHHATTISGARH-GST]

The Hon'ble High Court ruled that refund under section 77 is also available when the inter-state or intra-state supply made by a taxpayer is subsequently found by taxpayer himself as intra-state and inter-state respectively.

Goods and Service Tax

M/s Shree Swaminarayan Foods Pvt Ltd [2021-TIOL-34-AAAR-GST]

The AAAR in its ruling stated that Fryums is a registered brand name (of TTK Healthcare Ltd.) and not a generic name of the product, therefore, impugned product "different shapes and size of papad", known as Fryums, is nothing but Papad, and they do not fall under the entry number 96 of exemption notification 2/2017-CTR. Thus, attracting 18% GST.

M/s Bharat Oman Refineries Ltd [2021-TIOL-286-AAR-GST]

The Hon'ble AAR held that Tax is applicable on payment of notice pay by an employee to applicant employer in lieu of notice period. Also, Premium of Group Medical Insurance Policy recovered by applicant from the non-dependent parents of employees & retired employees will fall within the ambit of supply and is liable to GST. Tax is also payable on canteen services,

telephone actuals and group medical premium, and ITC can be availed on these services.

M/s JM Chemicals [2021-TIOL-276-AAR-GST]

The Hon'ble AAR held that ITC of GST paid on leasing of land is not admissible as credit, since Law makes it explicitly clear that 'plant and machinery' excludes land, as laid down in explanation following Section 17(5) of CGST Act.

LGW Industries Limited [WPA No. 23512 of 2019]

If all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration the judgments of the Supreme Court and various High Courts which have been referred in this order and in that event the petitioners shall be given the benefit of input tax credit in question.

Goods and Service Tax

**Circular no 167/23/2021 - GST,
Dated: 17 December 2021**

The CBIC vide this circular clarified many aspects relating to the tax on supplies of restaurant service supplied through e-commerce operators. The CBIC clarified that:

- As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the Electronic Commerce Operator (ECO) shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5).
- Also, the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs.

Customs & Others

Ruchi Soya Industries Ltd [2021-TIOL-814-CESTAT- AHM]

The amended Notification Nos. 16/2008-C.E. and 36/2008-C.E, whereby the refund was restricted to 75% is valid and legal, therefore, appellant is entitled for refund in respect of Basic Excise Duty only to the extent of percentage prescribed therein and not for the full amount of duty paid from PLA.

M/s Qualcomm India Pvt Ltd [2021-TIOL-2305-HC- TELANGANA-ST]

The Hon'ble High Court ruled that since the refund benefit was denied to the assessee on the sole ground that there was no nexus between the input services and the output services exported by the appellant (revenue), the contention of the revenue can not be held to be justified and the assessee is allowed the refund.

M/s Tarz Distribution India Pvt Ltd [2021-TIOL-804- CESTAT-MUM]

The Hon'ble CESTAT held that CVD is levied to counter balance Excise component and to protect indigenous manufacturers. CVD seeks to level playing field and is not a tax collection activity.

M/s Unik Traders [2021- TIOL-2270-HC-MAD-CUS]

Even if DRI officers felt that there was an attempt to import prohibited goods, it is their duty to merely inform 'assessing officers' to make proper assessment to safeguard interest of Revenue.

Customs & Others

Instruction No 27/2021- Customs, dated 3 December 2021

It has now been decided that henceforth seized/confiscated gold will be sold (other than gold ornaments/jewellery/articles) to Reserve Bank of India (RBI) only.

Public Notice No 43/2015- 2020, dated 16 December 2021

Schedule of MEIS was harmonized with that of amended ITC (HS), regarding solar cells.

Public Notice No 101/2021- Customs dated 09 December 2021

It is to be ensured that the application submitted for amendment in seal number in IGM should have proper explanation letter. The justification for the request to change seal number must be provided by party responsible for

change in seal number. If the proper officers for amendment in seal number is not satisfied with the justification/explanation, the application should be brought to the notice of the DC/AC, Import Noting Section.

Import and Export data

Imports of November 2021 at \$ 64.75 B

Exports of November 2021 at \$ 50.36 B

		November 2021 (USD Billion)	November 2020 (USD Billion)	November 2019 (USD Billion)	Growth vis-à-vis November 2020 (%)	Growth vis-à-vis November 2019 (%)
Merchandise	Exports	30.04	23.62	25.77	27.16	16.55
	Imports	52.94	33.81	38.52	56.58	37.44
	Trade Balance	-22.91	-10.19	-12.75	-124.77	-79.65
Services*	Exports	20.33	17.39	17.82	16.88	14.06
	Imports	11.81	9.78	10.94	20.71	7.90
	Net of Services	8.52	7.61	6.88	11.95	23.84
Overall Trade (Merchandise+ Services)*	Exports	50.36	41.01	43.59	22.80	15.53
	Imports	64.75	43.59	49.47	48.54	30.90
	Trade Balance	-14.39	-2.58	-5.87	-457.27	-145.04

Source : PIB

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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

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