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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM

Darda Advisors LLP

January 2022
Issue: 20

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We are pleased to present to you the twentieth 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 December 2021.

During the month of December 2021, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as SEZ unit liable to GST under RCM, employee recoveries are not liable to GST among others.

In the twentieth 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 December 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.

Wish you all a very happy and prosperous new year!!

Regards

Vineet Suman Darda
Co-founder and Managing Partner

Darda Advisors LLP
Tax and Regulatory Services

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DA Updates and Articles for the month of December 2021

Indirect Tax Fortnightly Update for the month of November 2021

https://dardaadvisors.com/wp-content/uploads/2021/12/DA-Indirect-Tax-Indirect-Tax-Fortnightly-Update_Dec-2021.pdf

Impact of Key GST Amendments w.e.f 1 January 2022

https://dardaadvisors.com/wp-content/uploads/2021/12/DA-Indirect-Tax-E-Indirect-Tax-E-Tax-Update-December-2021.pdf

India's Semi-Conductor Mission – Incentives for Development of Semiconductor and Display Manufacturing Ecosystem in India

https://dardaadvisors.com/tax-articles/india-semiconductor-mission-incentives-for-development-of-semiconductor-and-display-manufacturing-manufacturing-ecosystem-in-india/

DA Update – Aatmanirbhar Bharat – PLI Scheme for Textile Industry

https://dardaadvisors.com/wp-content/uploads/2021/09/DA-Indirect-Tax-Indirect-Tax-Update_Aatmanirbhar-Bharat-PLI-Scheme-for-Textile-Industry-1.pdf

GST COMPLIANCE CALENDAR

JANUARY 2022

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 Pe

22
GSTR-3B (QRMP)
Normal Taxpayer

- SEZ Unit liable to GST under RCM-AAR
- Employee recoveries are not liable to GST – AAAR
- ITC not available on motor vehicle when further leased/rented – AAR
- ITC cannot be denied when transaction in question is genuine and supported by valid documents
- Renting of motor vehicles at higher rate eligible for ITC
- Notification No. 40/2021 – Central Tax, dated 29 December, 2021

SEZ Unit liable to GST under RCM-AAR

Issue:

The applicant, a SEZ Unit seeks to know as to whether they required to pay tax under reverse charge mechanism on procurement of renting of immovable property services from SEEPZ in accordance with Notification No. 13/2017-CTR dated 28 June 2017 read with Notification No. 03/2018-CTR dated 25 January 2018.

Legal Provisions:

Section 26 of SEZ Act, 2005 and relevant provisions and notification under GST law.

Observation and Comments:

The AAR observed and held that:

- The RCM provisions provide that all provisions provisions of the IGST Act shall apply as if the the recipient person is liable to pay tax. The subject case satisfies all the conditions of Notification No. 10/2017-I.T. (Rate) dated 28.06.2017 as amended, and therefore as per section 5(3) of IGST Act, 2017, we are of the opinion that, the applicant is liable to pay tax under Reverse Charge Mechanism.
- The applicant, a SEZ Unit, is situated in an Exclusive Economic Zone and as per the aforesaid definition mentioned above; the term term 'India' includes an exclusive economic zone. Therefore in the subject case both, the recipient and supplier of services are situated in in India . Hence, Notification No. 18/2017 is not is not applicable in this case. We agree with the the submissions of the jurisdictional officer on on this issue.

notification is a general notification and will have to yield to the specific provision made in in Sec 16 of IGST Act." In this regard, it is to be be noted that Notification No. 10/2017- I.T. (Rate) dated 28.06.2017, as amended specifically specifically define the conditions, detailing each each and every service specifically and further putting on conditions on recipient and suppliers suppliers specifically. In fact, the said notification specifically covers "Renting of Immovable property", hence the notification cannot be treated as a general notification.

- Overall, a harmonious construction of section 5 section 5 (3) of IGST Act, 2017 read with relevant notifications and section 16 of IGST Act, 2017 clearly stipulates that applicant is liable to pay tax under Reverse Charge mechanism.
- The applicant has cited a couple of case laws/judicial pronouncements in support of their contention that they are not liable to pay pay tax under reverse charge mechanism. We find that the case laws referred by the applicant applicant pertains to service tax matters and therefore will not be applicable in the subject case.
- The fact of the matter is that in the subject transaction, the applicant is not a supplier of the impugned services and has no option to avail the procedure under LUT/Bond.

SEZ Unit liable to GST under RCM-AAR

- Further, the concerned RTI Authority has informed the applicant that, the said communication issued vide F. No. 334/335/2017-TRU dated December 18, 2017 is not a Circular perse. This communication not being a Circular and only a clarification on some particular matter of a particular person cannot be made applicable in the present case and the said communication cannot be treated as a binding clarification / judgement issued by board /competent authorities to be made applicable to all cases.

DA Comments:

The AAR did not rely on any legal precedents including clarification by TRU, CBIC on the said issue. The CBIC needs to clarify on applicability of RCM to SEZ Developers/units.

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

Employee recoveries are not liable to GST – AAAR

Issue:

The applicant filed the AR before AAR for following aspects in relation to recovery from employees:

- Notice pay recovery in lieu of notice period period under clause 5(e) of Schedule II of CGST Act,
- Recovery of premium of Group Medical Insurance Policy of non-dependent parents parents from the employees & retired employees at actuals,
- Recovery of nominal amount for availing the the facility of Canteen, when it is no supply supply as per clause 1 of Schedule III of CGST Act.
- Recovery of telephone charges recovered from the employees over and above the fixed rental charges payable to BSNL.
- Provision of Canteen services to all the employees without charging any amount (Free of cost) will fall under para 1 of Schedule II of CGST Act and will not be subjected to GST.

The AAR given negative ruling and accordingly accordingly the appeal filed before AAAR.

Legal Provision:

Section 2(17), Section 7, Section 15, Schedule II Schedule II of CGST Act, 2017

Observation and Comments:

The AAAR observed and held that:

Issue of GST applicability on	AAAR Ruling
Notice pay recovery	The services by an employee to the employer in the course of or in relation to his employment have been placed out of the purview of GST. GST. In present case also the said compensation which accrues to the employer is in relation to the services provided by the employee. Such compensation is related to the services not provided by him to the employer during the course of employment. In other words, the employer employer is being compensated for the employee's sudden exit. Merely because the employer is being compensated does not mean that any services have been provided by him or that he has 'tolerated' any act of the employee for premature exit.

Employee recoveries are not liable to GST – AAAR

Issue of GST applicability on	AAAR Ruling
Notice pay recovery	We are of the considered view that the ratio the decision of the hon'ble hon'ble Madras High Court in GE T&D India Ltd Vs Deputy Commr of
Recovery of Group Medical Insurance Policy for Non-Dependent parents	From the reading of the above definition and section (supra), we find that that the activity undertaken by the applicant like providing of Mediclaim Mediclaim policy for the employees' non-dependent parents/ retired employees through insurance company neither satisfies conditions of Section 7 to be held as "supply of service" nor it is covered under the term "business" of Section 2(17) of CGST ACT 2017. Accordingly, facilitating medical insurance services to non-dependent parents and retired employees upon recovery of premium amount on actuals cannot cannot be considered as 'supply of service' under CGST Act or MPSGST MPSGST Act.
Partial recovery of canteen charges	In our view, as the appellant is not carrying out the said activity of collecting employees' portion of amount to be paid to the Canteen Service Service Provider, for any consideration, such transactions are without involving any 'supply' from the appellant to its employees and is therefore therefore not leviable to Goods and Services Tax. The appellant has asserted before us that it is collecting the portion of employees' share and paying to Canteen Service Provider, a third party, party, which is nothing but the facility provided to employees, without without making any profit and working as mediator between employees employees and the contractor / Canteen Service Provider. Under these these circumstances, we hold that the Goods and Services Tax is not applicable on the activity of collection of employees' portions of amount amount by the appellant, without making any supply of goods or service service by the appellant to its employees.

Employee recoveries are not liable to GST – AAAR

Issue of GST applicability on	AAAR Ruling
Partial recovery of telephone charges	This question is similar to that of point no.2 i.e. recovery of amount of of premium of Group Medical Insurance policy recovered at actual which which has been discussed above. Applying the same rationale and from from the from the reading of the above definition of business and Section Section 7(supra), we find that the activity undertaken by the applicant like providing of telephone facility to employees through BSNL neither neither satisfies conditions of Section 7 to be held as "supply of service" service" nor it is covered under the term "business" of Section 2(17) of CGST ACT 2017. Accordingly, facilitating telephone connection to employees upon recovery recovery of usage charges on actuals cannot be considered as 'supply of of service' under COST Act or MPSGST Act.
The said transactions and availability of ITC on procurements when such transactions are liable to GST	a. Input credit of GST paid to BSNL on usage charges recovered from employees would not be available to the appellant as they are not providing any outward supply of telephone services and the facility is also also not attributable to the purposes of their business in terms of Section Section 17(1) of the CGST Act. b. Input credit of GST paid to the insurance provider would also not be be available to the applicant- as health insurance is in the excluded category under Section 17 (5) of the CGST Act and as said insurance services are not any outward supply of the applicant. c. As regards provision of canteen facility we find that the appellant has has submitted that the canteen facility was required to be provided by a a company as per Section 46 of the Factories Act, 1948. Therefore applying the proviso under Section 17(5)(b) that the input tax credit in in respect of such goods or services or both shall be available, where it is is obligatory for an employer to provide the same to its employees under under any law, we are of the view that input credit of GST paid would be would be available to the appellant.

Employee recoveries are not liable to GST – AAAR

Issue of GST applicability on	AAAR Ruling
Free supply of Canteen services	Thus services by an employee to the employer in the course of or in relation to his employment have been placed out of the purview of GST. GST. In this case canteen services are provided to employees by the employer. employer. So this is not a case where some services have been provided provided by the employee to the employer. There is nothing on record to record to show that the said facility provided to employees is part of the the wage structure. Therefore, we do not find any reason to hold that canteen facilities would would fall under Schedule III of the CGST Act. However, at point no.3 we no.3 we have held that canteen services would not be leviable to GST at at the hands of the employer because of our findings that the employer employer was merely a facilitator between the canteen service provider provider and the employee and that the employer was mandated to run a run a canteen under the Factories Act.

DA Comments:

Having multiple rulings in favor and against the employee recoveries, there is dire need to have detailed clarification from CBIC. Further, the reasonings taken by AAAR are not reasonable and adequate to establish that the same is not liable to GST.

M/s Bharat Oman Refineries Ltd. [2021-TIOL-36-AAAR-GST]

ITC not available on motor vehicle when further leased/rented – AAR

Issue:

The applicant raised the queries before AAR whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver)

- Leased or rented to customers will be available to it as ITC in terms of Section 17(5) (a)(A) of CGST Act, 2017

- Registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will be available to it as ITC in terms of of Section 17(5)(a)(B) of CGST Act, 2017

- Renting or Leasing or Hiring Motor Vehicles Vehicles to SEZ to transport the employees employees of the customers without payment of IGST under LUT is deemed as as taxable supply and whether ITC is admissible on Motor Vehicles procured and and used commonly for such supply to SEZ SEZ and other than SEZ supplies

Legal Provision:

Section 17(5) of CGST Act, 2017

Observation and Comments:

The AAR observed and held that:

- The Provision is clear in that, the ITC is eligible in cases of 'further supply of such motor vehicle'. In the case at hand, the supply made by the applicant to the vendors vendors as per the agreements are services of 'Renting/hiring of such Motor Vehicles Vehicles with the Operators' and 'such motor vehicles' are not supplied i.e., the activity of the applicant is that he uses the vehicles bought by him for supplying services of hiring of such vehicles with the operators under his Payroll/ responsibility and the supply is not a 'further supply of such motor vehicles' per-se. From the above, above, it could be construed that Section 17(5) (a) (A) of CGST Act, 2017 allows ITC ITC of GST paid on purchase of motor vehicles for transportation of persons having having approved seating capacity of not more than thirteen persons (including the driver), only when the taxable person makes makes further supply of such motor vehicles. vehicles. The applicant in this case is a service provider, who provides service of renting/leasing motor vehicles. The taxable taxable outward supply in this case does not not include further supply of such purchased motor vehicles. Hence the applicant is ineligible to avail ITC on motor motor vehicles as per section 17(5)(a) (A) of of CGST Act 2017 and Q.No. 1 is answered answered in Negative.

- With regard to second question, as much as as the activity undertaken by the applicant is only renting/hiring of the Motor Vehicles Vehicles with the operators and not undertaking transportation of passengers, the exception at S. 17(5)(a)(B) is not available to the applicant.

ITC not available on motor vehicle when further leased/rented – AAR

- With regard to third question, since the ITC of the Tax paid on purchase of such vehicles are restricted as per the provisions of S.17(5)(a) and not Excepted under S. 17(5)(a)(A) for the reasons discussed at para 8.2 above, the ITC is not admissible on the tax paid on procurement of such vehicles.

DA Comments:

There is urgent need to set up National AAR and National AAAR to avoid such vague rulings which have been issued without proper understanding of the provisions of the GST law.

New Pandian Travels Pvt Ltd [2021-TIOL-297-AAR-GST]

ITC cannot be denied when transaction in question is genuine and supported by valid documents

Issue:

The petitioners in those writ petitions are aggrieved by the impugned notices issued by the respondents concerned for not allowing the petitioners, who are the purchasers of the goods in in question and refusing to grant the benefit of ITC on purchase from the suppliers and also asking the petitioners to pay penalty and interest under relevant provisions of GST Act.

The Case of department is that the suppliers from from whom the petitioners/buyers are claiming to to have purchased goods in question are all fake and non existing and the bank accounts opened by by those suppliers are on the basis of fake documents and petitioners' claim of benefit of input tax credit are not supported by relevant documents and that the petitioners have not verified genuineness and identity of aforesaid suppliers who are registered taxable persons (RTP) (RTP) before entering into any transaction with those suppliers. Further grounds of denying the ITC benefit to the petitioners by the respondents respondents are that the registration of suppliers in in question has already been cancelled with retrospective effect covering the transactions period in question.

The main contention of the petitioners in these writ petitions are that the transactions in question question are genuine and valid by relying upon all all the supporting relevant documents required under law and contend that petitioners with their their due diligence have verified the genuineness genuineness and identity of the suppliers in question and more particularly the names of those those suppliers as registered taxable person were available at the Government portal showing their their registrations as valid and existing at the time time of transactions in question and petitioners submit that they have limitation on their part in ascertaining the validity and genuineness of the suppliers in question and they have done whatever whatever possible in this regard and more so, when when the names of the suppliers as a registered taxable person were already available with the Government record and in Government portal at at the relevant period of transaction petitioners could not be faulted if they appeared to be fake later on. Petitioners further submit that they have have paid the amount of purchases in question as as well as tax on the same not in cash and all transactions were through banks and petitioners are helpless if at some point of time after the transactions were over, if the respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised unless the the department/respondents establish with concrete concrete materials that the transactions in question question were the outcome of any collusion between the petitioners/purchasers and the suppliers in question. Petitioners further submit that all the purchases in question invoices-wise were available on the GST portal in form GSTR-2A 2A which are matters of record.

Legal Provision:

Section 16 of CGST Act, 2017

ITC cannot be denied when transaction in question is genuine and supported by valid documents

Observation and comments:

The Honorable High Court observed and held that: that:

- Considering the submission of the parties and and on perusal of records available, these writ writ petitions are disposed of by remanding these cases to the respondents concerned to consider afresh the cases of the petitioners on on the issue of their entitlement of benefit of input tax credit in question by considering the the documents which the petitioners want to rely in support of their claim of genuineness of of the transactions in question and shall also consider as to whether payments on purchases purchases in question along with GST were actually paid or not to the suppliers (RTP) and and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also consider as to compliance of of statutory obligation by the petitioners in verification of identity of the suppliers (RTP).

- These cases of the petitioners shall be disposed disposed of by the respondents concerned in accordance with law and in the light of observation made above and by passing a reasoned and speaking order after giving effective opportunity of hearing to the petitioners and by dealing with the judgments judgments petitioners want to rely at the time time of hearing of the cases, within eight weeks weeks from the date of communication of this this order.

DA Comments:

The Honorable High Court allowed the petitioners to establish on their facts to allow ITC even when the registration of suppliers are cancelled and further there is issue of non-compliance.

M/s LGW Industries Ltd And Ors vs UOI & Others [2021-TIOL-2308-HC-KOL-GST]

Vouchers are not the same as lottery tickets and are not actionable claims

Issue:

The applicant involved in the business of providing providing marketing services in the area of sourcing and supply of E-Vouchers. The clients issue work orders to the applicant for supply of vouchers having a pre-defined face value. The client client issues such vouchers to their customers who who in turn can redeem the vouchers at any of the the specified merchants who have agreed to accept accept the vouchers as consideration for goods or or services supplied by them. The applicant undertakes to procure several types of vouchers such as 'gift vouchers', 'cashback vouchers' and 'open vouchers' which are redeemable at specified specified merchants. The applicant enters into agreement with the merchants for the purchase of of the vouchers which are in turn sold to their clients.

The AR filed before AAR held that ""The supply of supply of vouchers is taxable and the time of supply in all three cases would be governed by Section 12(5) of the CGST Act, 2017. The rate of of tax on the supply of vouchers is 18% GST as per per entry no. 453 of Schedule III of Notification No. 01/2017-Central Tax (R) dated 28.06.2017." 28.06.2017."

Aggrieved by the said Ruling, the appeal is filed before AAAR.

The applicant submitted that the vouchers are payment instruments which facilitate purchase of of goods or services. The vouchers are thus consideration in full or part for the goods or services or both to be supplied at the time of redemption of the voucher by the beneficiary. When the voucher is defined as "consideration" for for the purchase or supply of goods or services, it it is fallacious to hold that the vouchers themselves themselves are "goods" and are subject to levy of GST.

Legal Provision:

Section 2(52), 2(1), 12 of CGST Act, 2017

Observation and comments:

The AAAR observed and held that:

- On a conjoint reading of the aforesaid provisions, it is reasonable to say that money per se has been kept out of GST. Therefore, any any transaction in money as such does not qualify as a supply and does not fall within the the purview of being exigible to GST.
- The vouchers in question are undoubtedly payment instruments recognised by RBI. The question is however, whether these vouchers can be considered as 'money'. The finding of the the lower Authority is that these vouchers are are not used by the Appellant to settle an obligation and hence cannot be considered as as 'money'; that it takes on the colour of money money only when it is redeemed by the beneficiary at the time of purchase of goods and/or services. We agree with this finding.
- The voucher in the hands of the Appellant, does does not settle an obligation but rather creates creates an obligation. The settlement of the obligation occurs at the time when the ultimate ultimate beneficiary uses the voucher to purchase goods and/or services. The definition definition of money also makes it clear that it is is only when the payment instrument is used as as consideration to settle an obligation, does it it qualify as 'money'. This occurs only when the the voucher is redeemed. Until then it is just an an instrument recognised by the RBI but is not not 'money'. Therefore, the voucher in the hands of the Appellant cannot be termed as 'money'.

Vouchers are not the same as lottery tickets and are not actionable claims

- The Appellant has strongly relied on the Supreme Court decision in the case of Sodexo SVC India Pvt Ltd to drive home the contention that the vouchers are not 'goods'. The nature of the transaction in the case before us is different from the nature of the transaction by Sodexo in as much as the Appellant is clearly not the issuer of the vouchers nor is he authorized by RBI to issue vouchers. The Appellant is buying vouchers from entities authorized to issue them and is selling the same to his clients. In other words, the Appellant is purely trading in vouchers. Since the material facts are patently different, the decision of the Supreme Court will not apply to the Appellant. Therefore, we reiterate that the vouchers being traded by the Appellant are in the nature of goods.
- Having concluded that the vouchers traded by the Appellant are goods and not actionable claims, we hold that the supply of vouchers by the Appellant is a supply of goods in terms of Section 7 of the CGST Act. We are in complete agreement with the ruling given by the lower Authority on the aspect of value of the vouchers for the purpose of GST, the rate of tax and the time of supply of the vouchers by the Appellant. Since the Appellant is not the issuer of the voucher, the provisions of time of supply under Section 12(4) will not apply and the time of supply will be governed by the provisions of Section 12(5) of the CGST Act.

DA Comments:

The AAAR differentiated the trading in voucher vis a vis using of the voucher to buy the goods/services for determining the same as goods liable to GST and non-applicability of time of supply under section 12(4) of CGST Act, 2017.

Premier Sales Promotion Pvt Ltd [2021-TIOL-37-AAAR-GST]

Renting of motor vehicles at higher rate eligible for ITC

Issue:

The applicant and Navi Mumbai Transport Undertaking ("NMMT") have entered into an Operator Agreement to procure and supply air-conditioned electric buses on gross contract basis basis to be plied on the routes identified by NMMT. During the term of the Agreement, ownership of the buses to be vested with the Applicant.

In-terms of the agreement, the applicant, as an operator, will be responsible for operating and maintaining the buses by employing drivers and other staff necessary for the operation and maintenance of buses. Further, the applicant shall shall incur all expenses for operating the buses including expenses on repairs, maintenance, procurement of spare parts, charging of batteries etc. NMMT or a third party appointed by NMMT, NMMT, shall collect appropriate fare from the passengers. The remuneration to the applicant is based on the total distance travelled by each bus.

The applicant filed the advance ruling (AR) before before AAR (Authority of Advance Ruling) to sought ruling on taxability of GST, relevant SAC SAC (Service Accounting Code) and availability of of ITC (Input Tax Credit).

Legal Provisions:

Entry. No. 10(i) and 10(iii) of Notification No 11/2017-C.T.(R) dated 28 June 2017

Observation and Comments:

The AAR observed and held that:

It is noticed that a very similar issue which was involved in the case of M/s. M P Enterprises & Associates Limited [2021-TIOL-147-AAR-GST], was was decided by AAR. The only difference is that in in the subject case, the fuel supplied by the applicant is in the form of electricity, instead of diesel which was used as fuel in the above referred referred case.

In the case of transportation of passengers, the recipient of service would be the passenger whereas in the case of renting of any motor vehicle, the recipient would not be the passenger. passenger. In the subject case, the consideration for for supply of service is charged from NMMT and and not the passenger. Therefore in the subject case it is clear that the recipient of service is NMMT. Hence, we have no hesitation in holding holding that the subject activity, amounts to 'renting of motor vehicle' and shall qualify as a taxable activity under the provisions of the GST Laws.M/s MP Enterprises & Associates Limited.

Thus, the service of operating AC buses by the applicant for NMMT would be subject to GST @12% under Tariff Heading 9966 i.e. 'renting of of any motor vehicle designed to carry passengers passengers where the cost of fuel is included in the the consideration charged from the service recipient' inserted by way of notification no.31/2017 no.31/2017 dated 13 October 2017 in rate notification wherein the applicant is eligible to claim set off, as discussed above, on its outward supplies, as provided in the above notification.

Renting of motor vehicles at higher rate eligible for ITC

DA Comments:

There is always a long debate whether such such transaction would be 'hiring' or 'renting' and being hiring of motor vehicles vehicles is exempted when provided to specified authority, the service provider prefers to enter into rental agreement to avoid increasing of cost due to non-availability of ITC on exempted transaction.

M/ S Mh Ecolife E-Mobility Pvt Ltd [2021-TIOL-304-AAR-GST]

Notification No. 40/2021 – Central Tax, dated 29 December, 2021

- ITC can be availed only if the details have been furnished in GSTR-1 and same has been communicated to communicated to the registered person in GSTR-2B.
- Time limit of filing annual return and reconciliation statement for financial year 2020-21 has been extended extended from 31.12.2021to 28.02.2022.
- In case of UIN not mentioned in invoice, an attested copy of invoice to be submitted along with the refund refund application in GST RFD-10, which would be effective from 1 April 2021.
- Rule 142 has been amended to align it with new provisions of Sec 129.
- New Rule 144A has been inserted which would be effective from 1 January 2022 providing recovery procedure of penalty.
- Rule 154 has been substituted to be effective from 1 January 2022.
- Rule 159 has been amended to provide copy of attachment order in Form GST DRC-22 and to be sent to sent to the person whose property is being attached under section 83, to be effective from 1 January 2022. 2022.
- Rule 159 sub rule (5) has been amended to prescribe Form GST DRC-22A to file an objection for the the provisional attachment.
- Changes have been made to Form GST DRC-10, GST DRC-11, GST DRC-12, GST DRC-22, GST-DRC-23, DRC-23, Form APL-01 which would be effective from 1 January 2022.

Notification No. 38/2021–Central Tax, dated 21 December, 2021

Mandatory Aadhar authentication for GST Refund application and Application for Revocation of cancellation of registration.

Refer our update: *https://dardaadvisors.com/wp-content/uploads/2021/12/DA-Indirect-Tax-E-Tax-Update-December-2021.pdf*

Notification No. 39/2021–Central Tax, dated 21 December 2021

Provisions of sections 108, 109 and 113 to 122 of Finance Act, 2021 (FA, 2021) wef 1st day of January, 2022 has been notified.

Refer our update: *https://dardaadvisors.com/wp-content/uploads/2021/12/DA-Indirect-Tax-E-Tax-Update-December-2021.pdf*

GST Portal Changes

1. Advisory on Revamped Search HSN Code Functionality dated 6 January 2022

Enhanced version of Search HSN Functionality has been launched on the GST Portal.

2. Module wise new functionalities deployed on the GST Portal for taxpayers dated 5 January 2022

Various new functionalities are implemented on the GST Portal, from time to time, for GST stakeholders. stakeholders. These functionalities pertain to different modules such as Registration, Returns, Advance Ruling, Ruling, Payment, Refund and other miscellaneous topics.

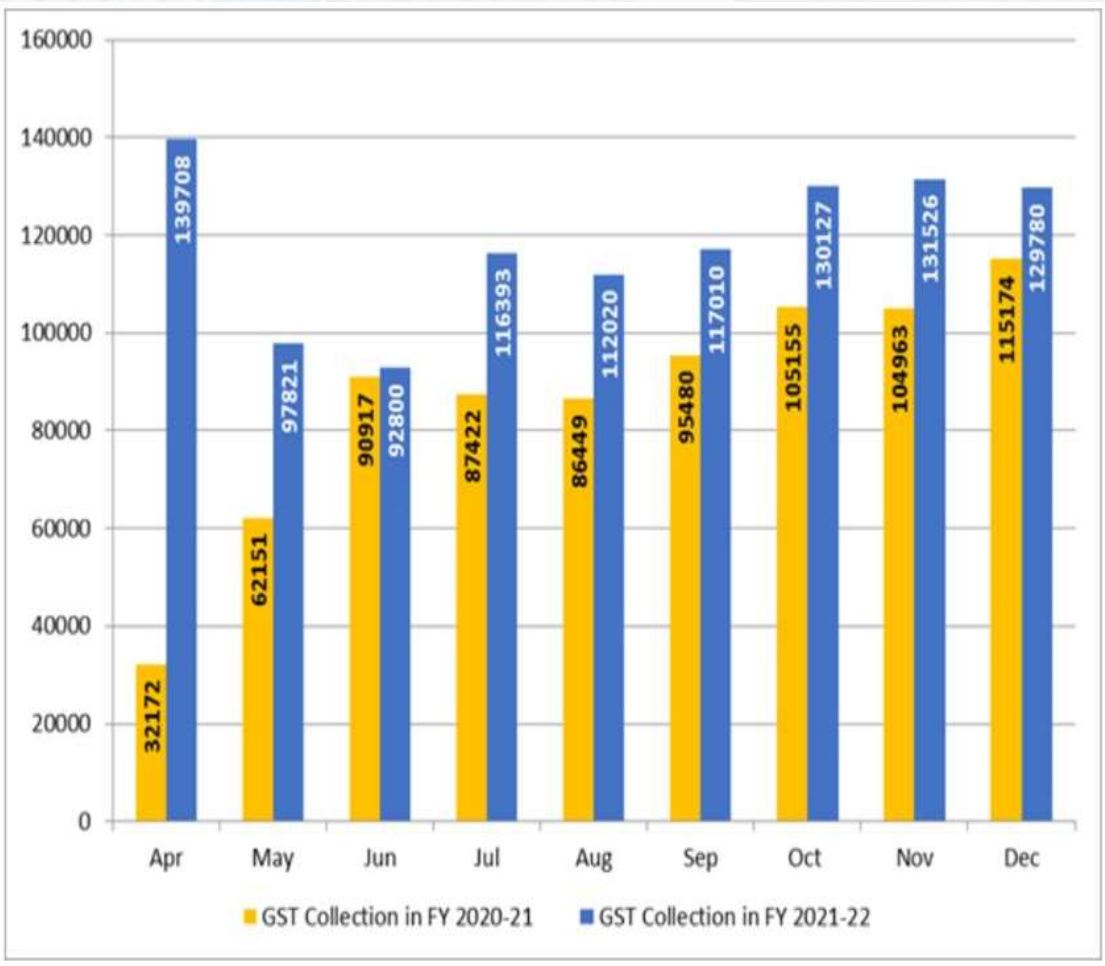
3. Reporting of supplies notified under section 9(5) / 5(5) by E-commerce Operator in GSTR-3B dated 4 January 2022

In light of the above, E-commerce operator and registered person would report taxable supplies notified under under section 9(5) of CGST Act, 2017 and similar provisions in IGST/SGST/UTGST Act in the following following manner.

Supplies reported by	Reporting in Form GSTR-3B
Supplies under 9(5) reported by ECO	Table 3.1(a) of GSTR-3B
Registered person/Restaurant supplying through ECO	Table 3.1(c) along-with nil and exempted supply

GST Revenue Collection in December 2021- Rs. 1,29,780 Cr.

Trends in GST Collection in Rs. Crore



- No refund can be sanctioned till assessment/re-assessment is appealed
- Proceedings by DRI Officer is invalid and without any authority of law
- Deposit/Pre deposit cannot be adjusted with pending demand
- Extension of last date of submission of MEIS scheme to 31 January 2022
- D.O.F. No. 524 /11/2021-STO(TU), dated 20 December 2021

No refund can be sanctioned till assessment/re-assessment is appealed

Issue:

The appellant imported Radial Tyres, Tubes and Flaps and paid Anti-Dumping duty at the time of of import based on its self-assessment. Realizing that Anti-Dumping duty was not payable, it filed a a refund claim under Section 27 of the Customs Act, which was rejected by the adjudicating authority. On appeal, the Commissioner (Appeals), (Appeals), remanded the matter who again rejected rejected the refund claim on the ground that the assessment was final and re-assessment of the bills bills of entry is not possible since the goods have already been cleared and unless the assessment is is set aside refund was not permissible. On appeal, appeal, the Commissioner (Appeals), upheld the order of the Assistant Commissioner rejecting the the refund claim on the ground that refund claim claim was not maintainable in view of the judgment of the Supreme Court in Priya Blue Industries Ltd. versus Commissioner [2004-TIOL-TIOL-78-SC-CUS] and CBEC Circular No.24/2004-No.24/2004-CUS dated 18 March 2004.

The CESTAT again remanded the matter which was further rejected by adjudicating authority and and Commissioner (Appeal). The appeal is again filed to CESTAT for following aspects:

- The impugned order has gone beyond the scope scope of the remand. CESTAT's order in the case required the Adjudicating Authority to only only verify in each case and every bill of entry whether any 'lis' existed between the appellant appellant and the Department or not.

- CESTAT's order has attained finality as there was no Departmental appeal in the matter and, and, therefore, the issue is decided by the Tribunal cannot be re-agitated by the Revenue Revenue

- The impugned order is liable to be set aside as as there was no 'lis' with regard to 25 bills of entry, which was the subject matter of the refund claim;

- The Anti-Dumping duty was wrongly levied and and the impugned order is, therefore, unsustainable.

Legal Provision:

Section 27 of Customs Act, 1962

Observation and comments:

- It has been categorically held that any assessment including self-assessment needs to be appealed against and in the absence of such such an appeal and consequential re-assessment assessment no refund can be sanctioned. This This judgment of the Supreme Court is binding binding on all judicial and quasi-judicial authorities and we find that the Commissioner Commissioner (Appeals) has, in the impugned impugned order, correctly relied upon this judgment and upheld the rejection of refunds. refunds.

- We do not find any force in the arguments of of the appellants that although the Aman Medical Products was set aside by the Supreme Supreme Court, the lower authority should have have still relied on it and should have sanctioned refund. Once Aman Medical Products has been set aside by the Supreme Court its ratio no longer applies.

- In view of the above, we find that the impugned impugned order is correct and needs to be upheld and we do so.

No refund can be sanctioned till assessment/re-assessment is appealed

DA Comments:

The CESTAT has completely relied upon the Honorable Supreme Court judgment to upheld that assessment/re-assessment to be challenged before the refund is applied.

M/s Bridgestone India Pvt Ltd vs CCCGST [2021-TIOL-845-CESTAT-DEL]

Proceedings by DRI Office is invalid and without any authority of law

Issue:

The appeal filed by the applicant before the Honorable High Court for:

(i) Whether in the facts and circumstances of the the case and in law the Tribunal is justified in holding that the catalyst is different from consumable and therefore denial of benefit to the the Respondent is not sustainable?

(ii) Whether in the facts and circumstances of the the case and in law the Tribunal is justified in holding that the policy will prevail over the customs notification when the Ministry of Finance, Finance, Govt. of India has every authority to regulate the customs duty benefit?

(iii) Whether in the facts and circumstances of the the case and in law the Tribunal is justified in holding that the extended period of limitation is not available despite the fact that the benefit of notification was availed by willfully misdeclaring the goods?

The Department has filed a Review Petition on 13 13 May 2021 in the matter of Canon India Private Private Limited V/s. Commissioner of Customs (2021) [2021-TIOL-123-SC-CUS-LB] because in the the said judgment, except the Notification bearing bearing No. 17/2002-Customs (N.T.) dated 7 May May 2002, the other notifications reproduced above have not been considered and the Apex Court has also not considered the effect of sub-Section 11 in Section 28 of the said Act.

Legal Provision:

Section 2(34) and section 28(4) of the Customs Act, 1962

Issue and observation:

The Honorable High Court observed and held that: that:

The proper officer, therefore, need not be the very very officer who cleared the goods but may be his his successor in office or any other officer authorised to exercise the powers within the same same office and in this case, anyone authorised from the appraisal group.

It is well known that when a statute directs that the things be done in a certain way, it must be done in that way alone. As in this case, when the the statute directs that "the proper officer" can determine duty not levied/not paid, it does not mean any proper officer but that proper officer alone. It is impermissible to allow an officer, who who has not passed the original order of assessment, to re-open the assessment on the grounds that the duty was not paid/not levied by by the original officer who had decided to clear the the goods and who was competent and authorised

Proceedings by DRI Office is invalid and without any authority of law

Even if the Supreme Court reviews the judgment of Canon India Private Limited (Supra), the review petition having been filed, and holds the Additional Director General of DRI was also the proper officer conferred with powers of Section 28 of the said Act, in the facts and circumstances of this case, the Additional Director General of DRI not having, in the first instance, assessed and cleared the goods, he will not be 'the' proper officer for issuance of show cause notice under Section 28(1) of the said Act. The appeal has to fail because the show cause notice originally issued itself would be termed non-est. The entire proceeding in the present case initiated by the Additional Director General of DRI by issuing show cause notice is invalid without any authority of law and is liable to be set aside.

In the circumstances, we do not think it is necessary to answer the substantial questions of law as framed by this Court.

DA Comments:

The Honorable High Court has considered all aspects and submissions including review petition filed by the department to Honorable Supreme Court and held that the proceedings by DRI is without authority of law and invalid.

CC vs Reliance Industries Ltd [2021-TIOL-2330-HC-MUM-CUS]

Deposit/Pre deposit cannot be adjusted with pending demand

Issue:

Based upon an investigation conducted by DGCEI DGCEI observing that the appellant has manufactured and removed excisable goods to specified parties without assessing their duty liability properly that two show cause notices were were served upon the appellants proposing the recovery of duty amount. The demand was initially initially confirmed where after appeal before the Tribunal was filed for which the matter was remanded back for fresh adjudication after proper proper verification and examination of records. Before the issuance of the said two show cause notices appellant had deposited a specific sum as as per the directions of investigating officers of DGCEI. After the aforesaid order of CESTAT, certain amount as refund of pre-deposit was sanctioned to the appellant. Subsequently, the appellant applied for balance deposit refund with with the interest. However, the refund was proposed to be rejected. The said proposal has been confirmed by the appellate authority. Being Being still aggrieved, the appellant filed the appeal appeal to Tribunal.

Legal Provision:

Section 35F of Central Excise Act, 1944

Observation and Comments:

The Honorable CESTAT observed and held that: that:

- The Department while rejecting the refund of of Rs. 15 Lakhs out of Rs. 21 Lakhs claimed has has solely relied upon para 3 of Circular No. 984/08/2014 dated 16 September 2014 wherein wherein it has been clarified by the Board that that amount deposited in excess of the mandatory pre-deposit shall not be treated as deposit under section 35 F of the Central Excise Excise Act.
- Once the proposed duty demand against the appellants stands set aside, the entire basis of deposit as was made by the appellant fails to survive. Department cannot be allowed to retain retain any part of the said amount. Above all, whenever any amount is paid during investigation it is "deposit made under protest" protest" and cannot be called as "duty paid under protest".
- In the case of EBIZ . Com Pvt. Ltd. vs. CCE reported as [2016-TIOL-3240-HC-ALL-ST], the the Hon'ble High Court had held in this case that any money lying with the Department on on account of a deposit being made by the assessee during pendency of proceedings, the same is in the nature of deposit or pre-deposit deposit till it is not appropriated. Till this stage, stage, the Revenue can only be a custodian but but once the demand stands set aside, Revenue Revenue cannot retain the amount of deposit deposit made by the assessee towards the proposal of the said duty demand.

DA Comments:

The Honorable CESTAT rightly held that for any pre-deposit/deposit, the Revenue can only be a custodian and once the demand stands set aside, the amount of deposit made by the assessee cannot be adjusted with the duty demand.

M/ s Modi Agro Products vs CCECGST [2021-TIOL-819-CESTAT-DEL]

Notification No. 48/2015-2020-DGFT, dated 31 December 2021

Last Date extended till 31 January 2022 for:

Scheme	Period
MEIS	FY 18-19 (From 1 July 2017), FY 19-20, FY 20, FY 20-21 (Till 31 December 2020)
SEIS	FY 18-19, FY 19-20
ROSCTL	7 March 2019 to 31 December 2020
ROSL	Upto 6 March 2019

Notification No. 48/2015-2020-DGFT, dated 31 December 2021

D.O.F. No. 524 /11/2021-STO(TU), dated 20 December 2021

Harmonized System nomenclature HS-2022, would come into force from 1st January, 2022. It has been introduced with significant changes to the Harmonized System with a total of 351 amendments at the six-digit level, covering a wide range of goods moving across borders.

D.O.F. No. 524 /11/2021-STO(TU), dated 20 December 2021


India politics
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Goods and Services Tax

- GST Council decides to defer rate hike on textiles from 5% to 12%
- Extending the GST compensation
- 5% GST on electricity may cause Rs 5,700-crore loss to states, Centre
- GST Officials bust fake input tax credit racket of 22 crore in Maharashtra
- Zomato, Swiggy to collect 5% GST beginning January 1
- New Provision from January 1:GST officials to make surprise recovery visits

Customs and other

- CBIC shouldn't need registration of MEIS transmitted online by DGFT
- Customs commissionerates not to issue reports interpreting law-CBIC
- Xiaomi India evades customs duty of Rs 653 crore,show cause notices issued
- Change in HSN Codes from 1 January 2022

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