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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

March 2022
Issue: 22

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We are pleased to present to you the twenty-two 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 February 2022.

During the month of February 2022, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as delayed refund eligible for interest from revenue authorities, technical glitch cannot deprive assesse from availment of ITC and 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 February 2022.

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.

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 February 2022

Indirect Tax Fortnightly Update for the month of February 2022

https://dardaadvisors.com/wp-content/uploads/2022/02/DA-Indirect-Tax-Fortnightly-Update_-Feb-2022-1.pdf

Union Budget 2022-23: Key Indirect Tax Proposals

https://dardaadvisors.com/wp-content/uploads/2022/02/DA-Indirect-Tax-Budget-Update-_-Feb-2022.pdf

GST COMPLIANCE CALENDAR

MARCH 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

- Refund of balance in electronic credit ledger is allowed
- Non-issuance of proper show cause notice amounts to violation of principles of natural justice
- Doctrine of latches cannot be invoked where there is blatant violation of principles of natural justice
- Delayed refund eligible for interest from revenue authorities
- Technical Glitch on GST portal cannot deprive assessee from availment of ITC
- Interest paid on gross liability is refundable post retrospective amendment of section 50 of CGST Act, 2017
- Liquidated damages liable to GST
- Seeds are not an agriculture produce and thus related activities liable to GST
- AMC would be taxable at the GST rate applicable to principal activity
- Guidelines for issuance of show cause notices (SCNs)

Refund of balance in electronic credit ledger is allowed – Gujarat High Court

Issue:

The writ applicant an SEZ unit, received the ITC of the integrated tax from its ISD (Input Service Distributor) and ITC on inward supply charged by the supplier as is permissible under the law which is lying unutilised in electronic credit ledger and accordingly refund application filed. The SCN issued to the writ applicant and accordingly rejection order is passed against which appeal to JC(A) was filed and the same was dismissed and accordingly the writ petition is filed.

Legal Provisions:

Section 54 of CGST Act, 2017

Observation and Comments:

The Hon'ble High Court observed and held that:

- The issue raised in the present writ application is no longer res integra in view of the judgement and order passed by this Court dated 11th March 2020 in the case of M/s. Britannia Industries Limited vs. Union of India [Special Civil Application No.15473 of 2019]. We take notice of the fact that M/s. Britannia Industries Limited (supra) is based on M/s. Amit Cotton Industries vs. Principal Commissioner of Customs [Special Civil Application No.20126 of 2018 decided on 27th June 2019].
- In view of the aforesaid, the writ applicant could be said to be entitled to claim the refund of the IGST lying in the Electronic Credit Ledger as there is no specific supplier who can claim the refund under the provisions of the CGST Act and the CGST Rules as Input Tax Credit is distributed by the input service distributor.
- For the foregoing reasons, this writ application succeeds and is hereby allowed. The impugned order is hereby quashed and set aside. The respondents are directed to process claim of refund made by the writ applicant for the unutilized IGST Credit lying in the Electronic Credit Ledger under Section 54 of the CGST Act 2017.

DA Comments:

The decision is welcome move in relation to refund of unutilised balance in electronic ledger. In our view, the Honorable High Court has not given adequate reasoning except referring the key finding of the judgment in the case of Britannia Industries and may be further appealed by the revenue authorities.

M/S. Ipca Laboratories Ltd. Vs Commissioner [2022 (2) TMI 947 - Gujarat High Court]

Non-issuance of proper show cause notice amounts to violation of principles of natural justice

Issue:

The present challenge relates to the show cause notice issued under Section 73 of the Jharkhand Goods and Services Tax (JGST) Act, 2017 and the summary of the show cause notice in Form DRC-01 also issued by the respondent no.3 under Rule 142(1)(a) of the JGST Rules, 2017 since the previous show cause notice issued under Section 73 of the JGST Act has been withdrawn.

Legal Provisions:

Section 73 of JKGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- A perusal of the impugned show cause notice at Annexure-1 creates a clear impression that it is a notice issued in a format without even striking out any relevant portions and without stating the contraventions committed by the petitioner.
- We have held in the case of the same petitioner in W.P.(T) No. 2444 of 2021 related to a show cause notice under Section 74 of the JGST Act that a summary of show cause notice as issued in Form GST DRC-01 in terms of rule 142(1) of the JGST Rule, 2017(Annexure-2 impugned herein) cannot substitute the requirement of proper show cause notice.
- The Apex Court in the case of Gorkha Securities (supra) concerning an order of blacklisting has laid down the ingredients of a proper show cause notice at para 21 and 22 of the report.
- As held there in, the requirement of principles of natural justice can only be met if (i) a show cause notice contains the materials / grounds, which according to the Department necessitate an action; (ii) the particular penalty/ action which is proposed to be taken. Even if it is not specifically mentioned in the show cause notice, but it can be clearly and safely discerned from the reading thereof that would be sufficient to meet this requirement.
- It needs no reiteration that a summary of show cause notice in Form DRC-01 could not substitute the requirement of a proper show cause notice. At the same time, if a show cause notice does not specify the grounds for proceeding against a person no amount of tax, interest or penalty can be imposed in excess of the amount specified in the notice or on grounds other than the grounds specified in the notice as per section75(7) of the JGST Act.

Non-issuance of proper show cause notice amounts to violation of principles of natural justice

- We are thus of the considered view that the impugned show cause notice as contained in Annexure-1 does not fulfill the ingredients of a proper show cause notice and amounts to violation of principles of natural justice.
- This Court, however is not inclined to be drawn into the issue whether the requirement of issuance of Form GST ASMT-10 is a condition precedent for invocation of Section 73 or 74 of the JGST Act for the purposes of deciding the instant case. Since the Court has not gone into the merits of the challenge, respondents are at liberty to initiate fresh proceedings from the same stage in accordance with law within a period of four weeks from today.

DA Comments:

It is rightly said that without any further inputs and adequate reasonings, the adjudicating authority are issuing notices based on data received from Central agencies and not falling under the definition of proper show cause notice.

M/S Nkas Services Private Limited Versus The State Of Jharkhand [2022 (2) TMI 1157 - Jharkhand High Court]

Doctrine of latches cannot be invoked where there is blatant violation of principles of natural justice

Issue:

The writ is filed against the partial rejection of refund where no notice has been served on the petitioner, no opportunity was given to the petitioner to put forth his case and without even giving any reason as to why the particular amount has been inadmissible and accordingly it was rejected, the impugned order was passed rejecting that portion of the claim made by the petitioner, thereby the order impugned is vitiated because of glaring violation of principles of natural justice.

Legal Provisions:

Section 54 of CGST Act, 2017 read with Rule 92 of CGST Rules, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- The respondents, on instructions, would submit that, the order impugned were passed sometime in 2018, against which, within three months period, appeal should have been filed before the Appellate Authority. However, the petitioner has not chosen to file any appeal within time for the reasons best known to him. Now, belatedly after two years, these writ petitions have been filed before this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution.
- This Court feels that, though there is no limitation prescribed under Article 226 for the litigants to approach the High Courts by invoking the extraordinary jurisdiction to issue prerogative writs, itis the self made law or judge made law in various pronouncements of the Hon'ble Supreme Court as well as the various High Courts, that doctrine of latches would definitely be made applicable to cases where Article226 is invoked belatedly without any plausible reason.
- However, what is the time limit which can be construed as a belated one or within the reasonable period, depends upon the facts of each and every case, as in these arena there is no hard and fast rule.
- Since there has been no notice issued to the petitioner before passing the order of rejection with regard to the refund either in full or in part, this Court has no hesitation to hold that, the impugned orders insofar as the rejected portion i.e., inadmissible portion of the refund claim made by the petitioner are infirm and vitiated.

Doctrine of latches cannot be invoked where there is blatant violation of principles of natural justice

- In these kind of cases, since the blatant violation of principles of natural justice and also the statutory mandate as contemplated under the Rule referred to above, these kind of cases are entertainable before this Court by invoking Article 226 of the Constitution of India and in these cases, the two years period cannot be construed as a long delay to invoke the doctrine of latches to reject the claim of the petitioner as canvassed by the learned Standing Counsel appearing for the respondents.
- With these directions, all these Writ Petitions are ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

DA Comments:

By not invoking 'doctrine of latches' where there is gross violation of principle of natural justice, the Honorable High Court has considered the case even when there is delay of 2 years in filing the appeal before first appellate authority.

M/S. S.B. Homes Versus The CCGST [2022 (2) TMI 999 - Madras High Court]

Delayed refund eligible for interest from revenue authorities

Issue:

The grievance of the writ applicant is that the exports were made in September 2017, but till this date, the same has not been refunded and thus the same be refunded along with interest.

Legal Provisions:

Section 16 of IGST Act, 2017, read with Section 54 of CGST Act, 2017 read with Rule 96 of CGST Rules, 2017

Observation and Comments:

- The issue raised in the present writ application is no longer res integra after the decision of this High Court in the case of Amit Cotton Industries vs. Principal Commissioner of Customs, 2019 (19) G.S.T.L. 200 (Guj.).
- As provided in Section 16 of IGST Act, 2017, read with Section 54 of CGST Act, 2017 read with Rule 96 of CGST Rules, 2017, the shipping bill itself were required to be considered as refund claims and required to be granted refund of the IGST paid.
- In view of the aforesaid, we allow this writ application directing the respondents to immediately sanction the refund of the I.G.S.T. paid in regard to the goods exported i.e. the Zero Rated Supply with 9% simple interest from the date of the shipping bills till the date of actual refund.

DA Comments:

The delayed refund on exports are eligible for interest payment from revenue authorities and such issues need not to be addressed by Honorable High Courts if the law is followed in true spirit by revenue authorities.

M/S Sri App Enterprises Versus PCC (2022 (2) TMI 661 - Gujarat High Court)

Technical Glitch on GST portal cannot deprive assessee from availment of ITC

Issue:

The writ applicant is a proprietary concern, a small size taxpayer and was eligible for composition scheme under section 10 of the CGST Act, 2017 and decided to opt out of the composition scheme w.e.f. 1 April 2018 and thus entitled to claim an Input Tax Credit of the goods held in stock as on the date of transition by virtue of Section 18(1)(c) of the CGST, Act,2017.

Due to technical issues on GST portal, the writ applicant did not able upload the Form ITC – 01 well within the extended time limit. However, an error report was generated on the portal and the writ applicant was unable to file such Form.

Further, for not less than 15 times, he requested the concerned authority to look into the matter and permit him to upload the Form ITC – 01, however, till this date, the concerned authority has not said anything in that regard. Accordingly, the writ application filed.

Legal Provision:

Section 10 and section 18 (1) (c) of CGST Act, 2017

Observation and Comments:

The Hon'ble High Court observed and held that:

- As per technical analysis, the ITC-01 logs of the petitioner along with the screen shot of annexed as Annexure-C of the writ petitioner were examined in GSTN. No technical glitches of the GST portal were observed in petitioner's case. From the screen shot annexed by the petitioner, it is observed that the petitioner used the 'wrong offline tool' for filing of ITC-01.
- It appears on plain reading of the aforesaid that the department tried to upload the ITC – 01, but due to technical glitch in the GSTN portal, the authority concerned was unable to upload the ITC – 01. However, nothing could be worked out.
- Be that as it may, if the writ applicant is otherwise entitled to claim the Input Tax Credit under Section 18(1)(c) of the Act, a technical glitch in the portal should not deprive him of such a claim. It was within the capacity of the department itself to resolve the controversy and see to it that the needful is done.
- We direct the respondents to do the needful and see to it that the writ applicant is able to claim the Input Tax Credit by uploading the Form ITC – 01.

Technical Glitch on GST portal cannot deprive assessee from availment of ITC

DA Comments:

It is rightly held that the any such issues including technical glitches cannot deprive the assessee from its legible rights.

Ezzy Electricals Versus State Of Gujarat [2022 (2) TMI 946 - Gujarat High Court]

Interest paid on gross liability is refundable post retrospective amendment of section 50 of CGST Act, 2017

Issue:

In this writ petition, petitioner has challenged the impugned adjudication order by contending that in view of amendment to section 50 subsection (1) of the CGST Act, 2017, the aforesaid impugned order of adjudication relating to interest is not sustainable in law.

Legal Provision:

Section 50(1) of CGST Act, 2017

Observation and Comments:

- In view of this legal position as stands now due to the aforesaid amendment, the impugned demand arising out of the impugned adjudication order is not sustainable and accordingly the impugned order of the appellate authority in connection with the demand relating to interest is set aside.

- Since the adjudication order is being set aside due to the retrospective change in law, petitioner is entitled to get refund of the same, and accordingly respondent concerned shall verify the refundable amount as claimed by the petitioner and on verification, if it is found that claim of the petitioner is correct, in that event respondent concerned shall refund the same, within a period of four weeks from the date of communication of this order by taking into consideration the aforesaid amendment.

DA Comments:

It would be first time in our view where the retrospective amendment is providing refund relief to tax payers.

Finex Merchants Pvt Ltd Versus State Of West Bengal & Ors. [2022 (2) TMI 719 - Calcutta High Court]

Liquidated damages liable to GST

Issue:

The applicant is engaged in production and distribution of electricity obtained from solar energy. They have engaged other company for construction of solar power project. The agreement has clauses for recovery of liquidated damages on (2) counts, one delay in delivering of the contract and the other regarding non-performance of the plant. The applicant is desirous of ascertaining exigibility of liquidated damages to GST on account of delay in commissioning and its time of supply from Authority of Advance Ruling (AAR).

Legal Provisions:

Section 2(31) (b) of CGST Act, 2017 read with entry in 5(e) of Schedule II and serial no. 35 of Notification no. 11/2017-Central dated 30 June 2017.

Observation and comments:

The AAR observed and held that:

- When the parties to a contract specify the time for its performance, it is expected that either party will perform his obligation at the stipulated time. But if one of them fails to do so, the question arises what is the effect upon the contract. This scenario is answered by Section 55 of the Indian Contract Act, 1872.

- A combined reading of the provisions (1) & (3) of Section 55 of the Indian Contract Act, 1872 reveals that a failure to perform the contract at the agreed time renders it voidable at the option of the opposite party and alternatively such party can recover compensation for such loss occasioned by non-performance.

- Thus liquidated damages are claimed by the applicant from the contractor due to the delay in commissioning of the project and the taking over date by the contractor 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. The entry in 5(e) of Schedule II to the CGST Act classifies this act of forbearance.

- Further Section 2(31)(b) of the CGST Act mentions that consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance. Therefore such a toleration of an act ora situation under an agreement constitutes supply of service and the consideration or monetary value of such toleration is exigible to tax.

- 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.

Liquidated damages liable to GST

DA Comments:

The issue is well settled in international jurisdiction that liquidate damages are not liable to tax. There is need that CBIC clarified on such transactions and its taxability.

M/S. Achampet Solar Private Limited [2022 (2) TMI 715 - AAR, Telangana]

Seeds are not an agriculture produce and thus related activities liable to GST

Issue:

The applicant is engaged in production and sale of agricultural seeds. In the process of production, the applicant outsources certain services such as cleaning, drying, grading and packing to the job workers and stores the seeds in various facilities after processing them. In the process they also transport the seeds by engaging a GTA. The applicant is desirous for ascertaining whether the services obtained by them in production of the seeds from other agencies including GTA are taxable or exempt. Hence this application before AAR.

Legal Provisions:

Notification no. 12/2017-Central dated 30 June 2017

Observation and Comments:

The AAR observed and held that:

- In this connection, it is observed that the Seed Act, 1966 defines seed at Section 2(11)
- Thus all grain do not qualify to be seed. Further the sale and purchase of 'seed' is subject to the provisions of Seed Control Order, 1983 and any deviations from the control rules contained in the said order are punishable under the law.
- Even in the context of GST law, 'Seed' is treated separately from 'grain'. Therefore, the seed is included at Serial No. 79 of Notification No. 02/2017 dated: 28.06.2017 wherein exemption is accorded to 'all goods of seed quality'. Clearly GST law also makes a distinction between grain and seed, therefore even if grain is taxable it will be exempt if it is of seed quality.
- Hence seed and grain are not one and the same. The law applicable to grain and seed will be different and therefore concessions applicable to grain produced by a cultivator will not be applicable to seed.
- As seen from the above, not all produce of cultivation will qualify to be agricultural produce. The litmus test for any produce of cultivation to qualify as agricultural produce is 5 fold:
    - It should be a produce out of cultivation of plants or animals.
    - It should be meant for food, fibre, fuel, raw materials or other similar products.
    - It should be subjected to no further processing.
    - Even if processing is done, it should be similar to processing done by a cultivator or a producer.
    - Such processing should not alter essential characteristics and only make it marketable for primary market i.e., mandis or agriculture market committees.
- The applicant is supplying goods which are produce of cultivation of plants. However they are of seed quality and not grain, therefore further they are not meant for food, fibre, fuel or raw material for further processing. In the definition of agricultural produce, the word 'raw material' is used which is a general word and is in the company of specific words i.e., food, fibre and fuel. These specific words indicate direct consumption by human or in industry but not in cultivation.

Seeds are not an agriculture produce and thus related activities liable to GST

- The Hon'ble Supreme Court of India in the case of Godfrey Philips India Vs State of U.P 2005 (139) STC537, held that when 2 or more words susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from and are qualified by each other, the meaning of the general word being restricted to a sense analogous to that of the less general. In this case, it was held that even in case of inclusive definition, principle of noscitur a sociis can be applicable.
- Applying this rule to the present facts, supply of seed does not fall under the definition of agricultural produce as the seed does not fulfill the utilities prescribed therein.
- Similarly the said definition restricts the 'agricultural produce' to unprocessed goods. Further even if' processing' is done it should be 'such processing' as done by a 'cultivator' for 'primary market'. Essentially processed agricultural products do not fall under this definition. If any processing is done it should be on an equal footing to that done by a "cultivator for primary market" i.e., processing made by a farmer for agricultural mandi. Even if the farmer does any different processing such produce will not fall under this definition.
- The facts presented by the applicant clearly indicate that the processing done by them to turn grain into seed quality goods is different from the processing done by a cultivator or producer of grain for primary market i.e., agricultural mandi or agricultural market yard. Therefore even on this count, the seed quality goods produced by them cannot be treated as agricultural produce.
- Therefore the seeds produced by them do not qualify as agricultural produce and hence:
  - Storage of seeds in the storage facility/godown, loading/unloading and packaging by job worker are not exempt
  - Cleaning, drying, grading and treatment with chemicals carried out by a job worker or on job work basis are not exempt
  - Transportation of seeds from farm to storage facility and then transportation of packed seed from storage facility to distributors is not exempt
  - If processing is undertaken by an applicant himself for in house seed production, there is no supply and hence exempt.

DA Comments:

The AAR has provided detailed view with valid reasoning. It could have severe impact on Seed industry as they are not paying taxes mainly on GTA and job work charges.

M/S. Ganga Kaveri Seeds Pvt. Ltd [2022 (2) TMI 778 - AAR, TELANGANA]

AMC would be taxable at the GST rate applicable to principal activity

Issue:

The applicant is executing a contract for South Central Railways for design, supply, installation, testing and commissioning of onboard train collision avoidance system (TCAS). The applicant is desirous of ascertaining the liability to tax under GST law on the execution of this contract on various counts including place of supply.

Legal Provisions:

Observation and Comments:

The AAR observed and held that:

- The definition of works contract under the CGST Act at Section 2(119) is restricted to supplies of goods & services pertaining to immovable property only. This contract being an agreement for installation of equipment onboard the locomotives which are movable property, the said supply does not qualify to be a works contract under the GST law.
- As seen from the description and illustration, supply of this system is a naturally bundled supply of various goods working in unison to achieve a single purpose of railway safety through signaling etc., Therefore the supply of this system to south central railway under a contract has all the attributes to make it a composite supply.
- Thus AMC is clearly a different contract and will be enforced separately so that the failure to perform the promises under AMC will not put the promises under main contract in breach, more so because the main contract would have been completed by the time AMCs are separately entered with the authorities indicated. Therefore mere mentioning of a future AMC in the original contract will not make such future AMC contracts apart of the original contract. Further the details of Annual Maintenance Contract are not provided by the applicant, however the applicant submitted that the AMC involves the same services and goods for the maintenance of the TCAS system. Therefore, in view of the submissions, AMC is also a composite contract and GST payable will be the GST applicable to the principal supply i.e., 9% under CGST & SGST respectively on Maintenance service of Electrical signalling equipment.

DA Comments:

The reasonings are not adequate to consider AMC at the same rate as applicable to principle supply and may lead to rate applicable disputes in various sectors.

M/s. Kernex Tcas JV [2022 (2) TMI 714 - AAR, Telangana]

Guidelines for issuance of show cause notices (SCNs)

A SCN should few of the following, though there may be some variations from case to case:

- It should be issued only after proper inquiry/investigation.
- It should be strictly in the format & manner prescribed under the GST Act and Rules made thereunder;
- It should be clear on facts and legal provisions. Alleged violation of the provisions of law and other anomalies should be clearly brought out in the Show Cause Notice
- Copies of the documents to be submitted or compliance to be made by the noticee should be specifically mentioned in the SCN
- Possibility of additional evidence being needed or additional anomalies being detected should be kept open during the pendency of the proceeding and should also be mentioned in the notice itself;
- Copies of the details giving reasons for SCN should be attached with the SCN and Proper Officer should not depend only on the drop-down menus on the GSTIN portal.

F. No. 1(2)/DTT/L&J/Misc./2019-20/77-79, dated 01 February 2022

Set up of GST Refund Helpdesk

CBIC has setup a 'GST Refund Help Desk' for addressing payment related problems faced by the taxpayers.

For payment/disbursement related issues in their refund application, the taxpayers are informed to contact this GST Refund helpdesk.

Press Release No. 523, dated 17 February 2022

Rajasthan Amnesty Scheme 2022

The State Government being of the opinion that it is expedient in the public interest so to do, notifies the "Amnesty Scheme-2022", referred to as the scheme, for rebate of tax and settlement of outstanding demands and disputed amounts.

The scheme shall come into force with immediate effect and shall remain in force up to 31.8.2022.

S.O.655, dated 23 February 2022

Revision of Limit of Aggregate Turnover For E-Invoice.

E-invoice under GST has been made mandatory for registered persons having aggregate turnover above ₹20 crore in any of the previous years from 2017-18 till 2021-22 with effect from 01st April, 2022.

The existing limit of ₹50 crores has been reduced to ₹20 crores.

Notification No. 01/2022-Central Tax, dated 24 February 2022

GSTN Portal Changes

1. Improvements in GSTR-1

GSTR-1/IFF can be viewed as usual by navigating from:

Returns Dashboard > Selection of Period > Details of outward supplies of goods or services GSTR-1 > Prepare Online.

The following enhancements are being done in this phase of the GSTR-1/IFF improvement:

i. Removal of 'Submit' button before filing.
ii. Consolidated Summary.
iii. Recipient wise summary:
iv. Summary PDF

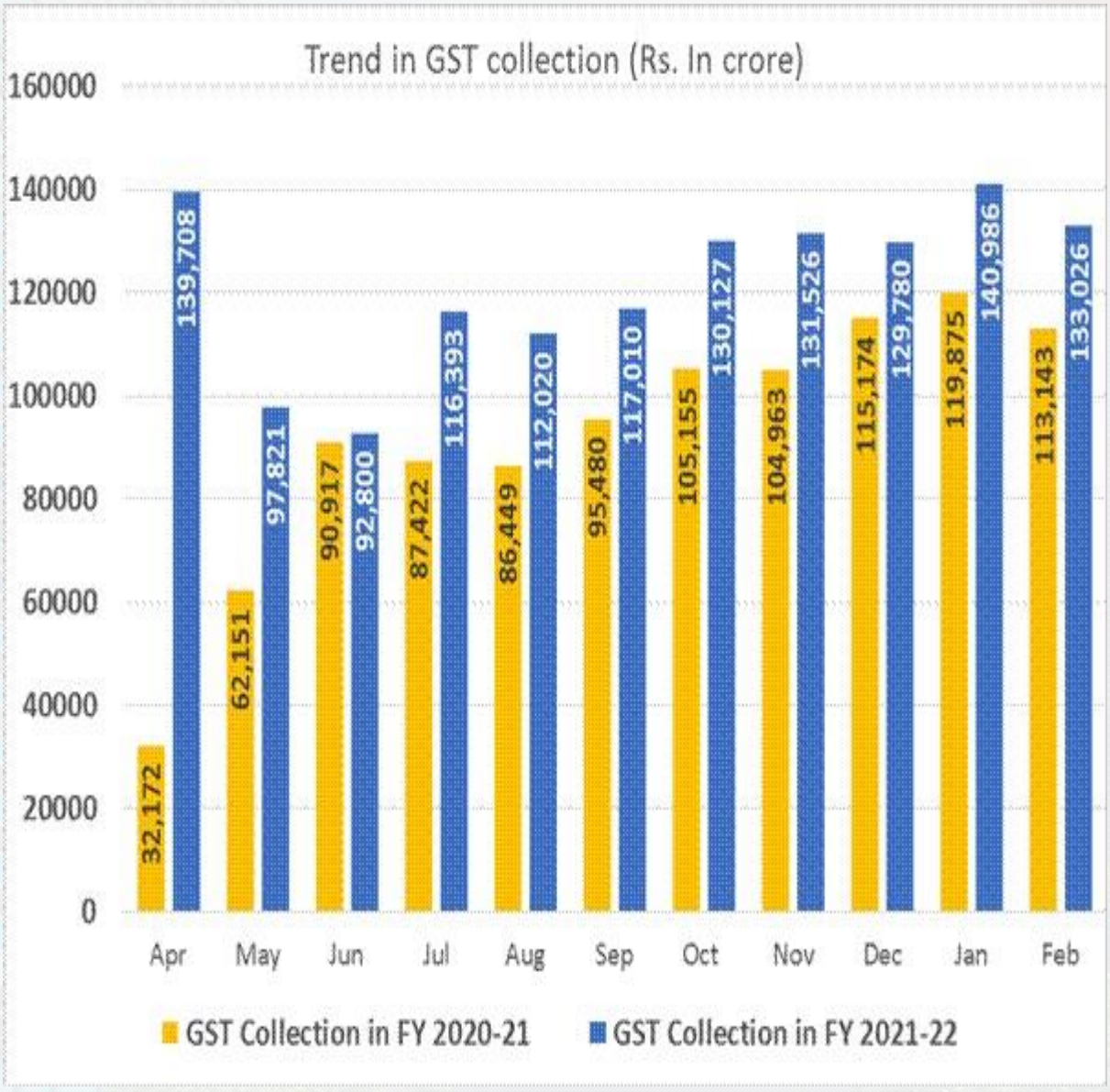
Further details regarding the new steps in the filing process are mentioned below;

i. Generate Summary: After successful generation of summary, taxpayer will see a new 'Proceed to File/Summary' button at the bottom of the GSTR-1/IFF page.

ii. Consolidated Summary: After generation of GSTR-1/IFF summary, taxpayers may note the following changes;
    a. Status change from 'Not filed' to 'Ready to file'.
    b. 'Generate Summary' button will be replaced by 'Proceed to File/Summary' button

iii. File Statement: After verifying the consolidated summary, taxpayers need to click 'File Statement' button, which shall be available at the bottom of the consolidated summary page.

GST Revenue Collection in February 2022- Rs. 1,33,026 Cr.



- Refund of unutilised CENVAT Credit is allowed on closure of operations
- Dual liability on the same transaction cannot arise under forward charge and RCM
- When the statute does not provide any time limit, the request for shipping bill amendment cannot be rejected as time barred applying the Board Circular
- Time limitation not applicable for refunds arising due to mistake of law
- Extension of last date of application under scrip based schemes
- Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022

Refund of unutilised CENVAT Credit is allowed on closure of operations

Issue:

The appellant is manufacturer of electricity meters and registered with the Central Excise department and filed refund claim under Rule 5 of Cenvat Credit Rules, 2004 for the credit remained unutilized in their Cenvat credit account on closure of operation from 1 July 2017. The said claim was rejected by both the authorities and accordingly the appeal filed before Honorable CESTAT.

Legal Provision:

Rule 5 of CENVAT Credit Rules, 2004

Observation and comments:

The Honorable CESTAT observed and held that:

- This Tribunal in the case of Kirlosker Toyota Textile Machinery (supra) had an occasion to examine the issue and after examining the various judicial pronouncement on the issue has allowed the cash refund of credit lying unutilized on closure of the operation on 19 August 2021

- In view of above observation, based on judicial pronouncements, I hold that the appellant is entitled to cash refund under Rule 5 of Cenvat Credit Rules, 2004 of the credit lying unutilized in their Cenvat credit account on closure of operation.

- In the result, the impugned order is set aside and appeal is allowed with consequential relief, if any.

DA Comments:

The issue is well settled and additionally number of companies applied for transition credit refund in cases where the same has not been transferred through TRAN-1 including cess.

M/S. Landis Gyr Ltd. Versus Cg & St, Chandigarh [2022 (2) TMI 456 - CESTAT Chandigarh]

Dual liability on the same transaction cannot arise under forward charge and RCM – Service Tax

Issue:

The appellant is the Fund Manager of M/s. Sundaram Mutual Fund (hereinafter referred to as 'M/s. SMF'). In addition to the above-mentioned Management Fee, appellant can charge M/s. SMF for the initial expenses of launching schemes and other recurring expenses like Marketing and Selling Expenses including Agent's commission, Brokerage & transaction costs, Audit Fees, Insurance premium paid by M/s. SMF, cost of statutory advertisement, etc., which shall however be subjected to limitations prescribed by SEBI regulations. Apart from such fees, they had also received amounts which were reflected in their balance-sheet as "Brokerage recoverable from Mutual Fund schemes". For the period when brokerage services were subject to levy of Service Tax, the appellant has paid Service Tax on such services under reverse charge mechanism.

The Department was of the view that these amounts shown as "Brokerage recoverable" are also to be included in the taxable value for payment of Service Tax under Asset Management Services. Show Cause Notice dated 16.10.2015 was issued proposing to demand the Service Tax which is short-paid along with interest and for imposing penalties. After due process of law, the Original Authority vide order impugned herein confirmed the demand along with interest and imposed penalties. Aggrieved, the appellant is now before the Tribunal.

Legal Provision:

Section 67 (1) (i) of the Finance Act, 1994 read with the third proviso to Rule 6 (1) of the Service Tax (Determination of Value) Rules, 2006

Observation and comments:

The Honorable CESTAT observed and held that:

- As per Regulation 52 of the SEBI (Mutual Funds Regulations) 1996, the Asset Management Company can collect advisory fees as prescribed therein. As per Sub-clause (4), it is stated that in addition to the fees they can also charge the mutual fund with expenses.

- The question then arises whether the value of the services for which the appellant has paid Service Tax under reverse charge mechanism has to be included in the taxable value for discharging the Service Tax liability. The brokerage charges have already suffered Service Tax on reverse charge basis. To make the same amount subject to Service Tax on forward basis under Asset Management Services would be levying Service Tax on the same amount twice. The appellants have consistently contended that the said brokerage charges were recovered from M/s. SMF and these are nothing but reimbursable expenses.

Dual liability on the same transaction cannot arise under forward charge and RCM – Service Tax

- Viewed from this angle, the brokerage charges paid by the appellant is nothing but reimbursable expenses. The period being prior to 2015 (prior to amendment dated 14.05.2015), we are of the considered opinion that the demand of Service Tax on such reimbursable expenses cannot sustain as settled by the Hon'ble Supreme Court in the case of M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. (supra).

- There is no evidence put forward by the Department to establish that there is any element of fraud, wilful suppression or mis-statement of facts on thepart of the appellant. Since the entire transactions were under discussion between the Department and the appellant and also considering the fact that there were other litigations with regard to the credit availed on Service Tax paid on brokerage charges, we find that there is no factual or legal basis for invoking the extended period. The appellant succeeds on the ground of limitation also. The impugned order is set aside.

DA Comments:

Under the erstwhile service tax regime, there was circular issued to clarify that in case on certain transaction the tax has been paid under forward charge by the supplier, there is no need to pay under RCM even when the such transactions are liable under RCM.

M/S. Sundaram Asset Management Company Ltd [2022 (2) TMI 957 - Cestat Chennai]

When the statute does not provide any time limit, the request for shipping bill amendment cannot be rejected as time barred applying the Board Circular

Issue:

The goods were exported in fulfilment of the export obligation in terms of Advance Authorisation (AA) license and at the time of filing the shipping bills, the Customs Broker of the appellant had attempted to file AA shipping bill. However, due to a technical error in the EDI system, they could not file advance authorization shipping bill. The error arose due to the fact that the quantity mentioned in the invoice was in meters whereas the unit of measurement in the AA was in kilograms. Further, the Preventive Officer had supervised the stuffing of the goods in the container prior to export as is seen from the last page of the shipping bill.

The Commissioner of Customs rejected the request for amendment / conversion vide order impugned herein mainly relying upon the Board Circular No. 36/2010 dated 23 September 2010.

Legal Provisions:

Section 149 of Customs Act, 1962

Observation and Comments:

The Honorable CESTAT observed and held that:

- The period involved in these shipping bills are after the amendment of section 149 of the Customs Act,1962 with effect from 1.8.2019. The amended provision states that the proper officer can allow amendment of a document if presented within such time, subject to restriction and conditions as may be prescribed. However, so far there is no notification issued prescribing time limit or stipulating any conditions for amendment of shipping bill.

- The said circular being much prior to the amendment of section 149 of the Customs Act, 1962, the same cannot be applied to reject the request for conversion of shipping bill, when the Courts and Tribunal has repeatedly held that when the statute does not provide any time limit, the request for amendment cannot be rejected as time barred applying the Board Circular.

- Moreover, there is no requirement under section 149 of the Customs Act, 1962 that the conversion can be allowed only if the goods have been subjected to physical examination. Therefore, the rejection of the request for conversion on the ground that physical examination was not conducted before export is without any legal basis.

- The impugned order is set aside. The appeal is allowed with consequential relief, if any.

When the statute does not provide any time limit, the request for shipping bill amendment cannot be rejected as time barred applying the Board Circular

DA Comments:

Recently, the detailed regulations have also been issued related to conversion of free shipping bill to export shipping bill. Further, the judgment has rightly held that board circular prior to amended section cannot be applied.

M/S. Visoka Engineering Pvt. Ltd. [2022 (2) Tmi 804 - Cestat Chennai]

Time limitation not applicable for refunds arising due to mistake of law

Issue:

The petitioner is the Tripura Cricket Association and it is averred that they had made deposit of service tax by mistake of law even when petitioner has not provided any service as defined undersection 65B (44) of the Chapter V of Finance Act, 1994 for consideration to the BCCI and it has received fewer grants/donation from the BCCI. It is further averred that the petitioner made an application of refund of service tax which came to be rejected by the learned Assistant Commissioner on the ground of limitation under section 11B of the Central Excise Act, 1944 which is applicable to service tax and stated that the refund claimed was made after one year after the relevant date.

Legal Provisions:

Section 11B of Central Excise Act, 1944

Observation and Comments:

The Honorable High Court observed and held that:

- Learned counsel for the petitioner placed reliance on the judgment rendered by the Hon'ble Karnataka High Court in case of Commissioner of Central Excise (Appeals), Bangalore Vs. KVR Construction, reported in2012(26) S.T.R. 195 (Kar.). In the said judgment, the Hon'ble Karnataka High Court came to the conclusion that section 11B of the Central Excise Act was not applicable to a refund application filed by the petitioner based on mistake of law.

- Mere payment of an amount by the assessee and acceptance by the Department would not regularize such an amount as duty if it was not actually payable and paid by mistake.

- The issue framed hereinabove is answered in the positive in favour of the petitioner and the appellate authority i.e. the Commissioner of Central Tax (Appeals) is directed to take up the appeal and dispose of the same within a period of 2(two) months from the date of communication of the copy of this order to the authorities concerned. It is further clarified that pendency of the Vidarbha Cricket Association case before the Hon'ble Supreme Court may or may not be of relevance that the law as it stands as on date and the issue having been confirmed by the Hon'ble Supreme Court in the Commissioner V. KVR Construction vis-à-vis the issue of limitation.

DA Comments:

It is rightly held that the amount wrongly paid to exchequer when not due then limitation period is not applicable.

Tripura Cricket Association Versus UOI & Others [2022 (2) TMI 1170 - Tripura High Court]

Extension of last date of application under scrip based schemes

Last Date extended till 30 April 2022 for:

Scheme	Period
MEIS	01 April 2020 to 31 December 2020
ROSCTL	7 March 2019 to 31 December 2020
ROSL	Upto 6 March 2019

Notification No. 58/2015-2020-DGFT, dated 07 March 2022

Applicability of Social Welfare Surcharge on goods exempted from basic and other customs duties/cesses

It has been clarified vide circular that the amount of Social Welfare Surcharge payable would be 'Nil' in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted.

Circular No. 3/2022-Customs, dated 1 February 2022

Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022

- Regulations applicable to shipping bills or bills of export filed on or after 22 February 2022.
- Application to be filed within 1 year [extended up to further 1 year (6 + 6 months)] from the date of order for clearance of goods [Section 51(1) and Section 69 of CA Act] to jurisdictional Commissioner of Customs.
- Conversion is allowed subject to the discretion of the jurisdictional Commissioner of Customs satisfying following conditions and restrictions.
- The application is to be processed within a period of thirty days from the date on which it is filed.

Notification No. 11/2022-Customs (N.T.), dated 22 February 2022

Mandatory filing/issuance of Registration Cum Membership Certificate (RCMC)/ Registration Certificate

From 1st April 2022, it will be mandatory for the exporters to file Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC) applications (for issue/renewal/amendment) through the common digital portal of e-RCMC Platform.

The prevailing procedure of submitting applications directly to the designated Registering Authorities will continue only till 31.012022.

Trade Notice No. 35/2021-2022-DGFT, dated 24 February 2022


India politics
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Goods and Services Tax

- Corrugated Box Manufacturers seek cut in GST Rates
- Arrests in case of ITC Fraud
- Searches conducted by officials based on data analytics
- Levy of GST on crypto mining entities
- Income earned from Guest Lecturers to attract 18% GST
- Government ready to look into demands of restaurants for ITC

Customs and other

- Concession in electronics sector to boost manufacturing
- Customs commissionerates not to issue reports interpreting law-CBIC
- Provision to make illegal export of data punishable
- Change in HSN Codes from 1 January 2022

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