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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

April 2022
Issue: 23

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We are pleased to present to you the twenty-third 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 March 2022.

During the month of March 2022, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as ITC on promotional schemes not eligible, Validity of Garnishee notice in Form GST DRC-13 set aside, CENVAT Credit refund allowed on closure of factory and others.

In the twenty-third 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 March 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

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DA Updates and Articles for the month of March 2022

Indirect Tax Fortnightly Update for the month of March 2022

https://dardaadvisors.com/wp-content/uploads/2022/03/DA-Indirect-Tax-Fortnightly-Update_Mar-2022.pdf

GST COMPLIANCE CALENDAR

MARCH 2022

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TDS Deductor

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GSTR-8
TCS Deductor

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GSTR-1
Normal Taxpayer

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GSTR-6
Input Service Distributor

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- ITC on promotional schemes not eligible – AAAR
- Placement of specified medical instruments by the appellant at the premises of unrelated hospitals, labs etc. in pursuance of the agreement for their use for a specific period without any consideration considered as 'Supply' under Section 7 of the CGST Act, 2017
- Validity of Garnishee notice in Form GST DRC-13 set aside as the principles of natural justice and the procedure prescribed in law not followed – Hon'ble High Court
- Salary and related cost Reimbursement liable to GST when not satisfying pure agent conditions – AAR
- Activity of design and development of patterns used for manufacturing of camshafts, is an 'intermediary services'
- Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017
- Verification or Mismatch of ITC has been extended to 31.08.2022 in Rajasthan
- GST Revenue Collection in March 2022- Rs. 1,42,095 Cr.

ITC on promotional schemes not eligible – AAAR

Issue:

The products supplied by the applicant are taxable under the Act which are sold through various retail stores across the country and obtain substantial revenue from Export Sales too. With the objective of expanding the market share, the appellant stated that they had launched a sales promotional offer to enhance sales of its products; the sales promotional offer was named as 'Buy n Fly scheme. The appeal is filed against the AAR Order on the application for advance ruling filed by them which held that the GST paid on inputs/input services procured by the appellant to implement the promotional scheme under the name 'Buy n Fly' is not eligible for ITC under the GST law in terms of Section 17(5)(g) and (h)of the CGST Act, 2017 and TNGST Act, 2017.

The main contention of the applicant is that these goods/services do not fall under 'gift' (Section 17(5)(h)) as the same was not given in volition, but on contractual obligation, on their retailers achieving the targeted sales nor these goods/services called as 'goods/services used for personal consumption (Section 17(5)(g)).

Aggrieved with the above decision, the appellant has filed the appeal before AAAR.

Legal Provisions:

Section 17(5)(g) and (h)of the CGST Act, 2017 and TNGST Act, 2017

Observation and Comments:

The AAAR observed and held that:

- In the case at hand, the appellant has not procured the goods/services for further supply but for consumption by the retailers under the scheme and hence the cited example do not apply to the facts of the case as the appellant in the case at hand becomes the ultimate consumer of the said goods/services. Though the appellant claim that the cost of the products procured for the scheme are part of the M.R.P. pricing, the appellant did not file the actual value of costing attributed to the reward scheme in the final price of the products manufactured.
- It is pertinent to note that the appellant has stated that the M.R.P. remained the same both Pre and Post Campaign, which points that the goods and services distributed under the scheme were without valuable consideration.
- But the fact remains that non-obstante clause in section 17(5) of the CGST Act, 2017 would make the argument of appellant that the reward scheme meant furtherance of business futile and hence on both clauses (g) and (h) of sub-section (5)of section put embargo on availability of input tax credit itself as such situations were obviously found in the reward scheme of the appellant.

ITC on promotional schemes not eligible – AAAR

- It has been established that the giving away of goods/services under the scheme is not a 'Supply' and therefore ITC of the GST paid on the goods/services procured for the 'Buy n Fly Scheme' is not available to the appellant.
- Section 17 (5) of the Act, the gifts or rewards given without consideration even though they were given for sales promotion do not qualify as inputs for the purposes of Credit, since no GST is paid on its disposal. Therefore, we hold that the input tax credit on the inputs and input services involved in the goods and services used for the purpose of reward is not available for the appellant and accordingly the ruling given by the Advance Ruling Authority of Tamil Nadu requires no intervention and the appeal is dismissed.

DA Comments:

The eligibility of ITC on sale promotions needs detailed clarification from CBIC. In the said Ruling by AAAR, the ruling has mainly relied on non-submission of costing data and the applicant's submissions on legal facts has not been considered.

M/S. GRB Dairy Foods Pvt. Ltd. [2022 (3) TMI 1368 - Appellate Authority For Advance Ruling, Tamilnadu]

Placement of specified medical instruments by the appellant at the premises of unrelated hospitals, labs etc. in pursuance of the agreement for their use for a specific period without any consideration considered as 'Supply' under Section 7 of the CGST Act, 2017

Issue:

The Appellant is inter-alia engaged in the sale of diagnostic reagents/kits etc. It is submitted that the business model of the Appellant inter-alia, in the State of Kerala, is that it places its owned diagnostics instruments at the premises of unrelated hospitals, labs etc. for their uses for a specified period without any consideration. To execute the aforesaid placement of instruments, the appellant inter-alia enters into reagent Supply and Instrument use Agreement ("the Agreement") with various hospitals, labs etc. The Appellant had raised following question in the advance ruling application:

"Whether in the facts of the present case, the provision of specified medical instruments by the Appellant to unrelated parties like hospital(s), Lab(s) for uses without any consideration, constitutes a "Supply" or whether it constitutes "movement of goods otherwise than by way of supply" as per provisions of the CGST/ SGST Act, 2017.

The Hon'ble Authority for Advance ruling Kerala held that the placement of specified medical instruments to unrelated customers like hospitals, labs, etc. constitute 'Composite Supply'. The principal supply is transfer of right to use of any goods for any purpose and is liable to GST under Sl.No. 17(iii) - Heading 9973 of Notification No. 11/2017 Central Tax (Rate) dated 28 June 2017. The Appellant filed an appeal before the AAAR which was dismissed and accordingly, the Appellant filed writ petition before the Hon'ble Kerala High Court. The Hon'ble High Court quashed the order and remanded the matter back to AAR for fresh determination of question posed by the Appellant. The AAR answered the question by holding that the placement of instruments at the premises of hospitals/labs is a supply for consideration. Being aggrieved and dissatisfied by the impugned order passed by the AAR, the Appellant has filed the present appeal before AAAR.

Legal Provisions:

Section 7 of CGST Act, 2017

Placement of specified medical instruments by the appellant at the premises of unrelated hospitals, labs etc. in pursuance of the agreement for their use for a specific period without any consideration considered as 'Supply' under Section 7 of the CGST Act, 2017

Observation and Comments:

The AAAR observed and held that:

- The hospitals or laboratories where the equipments are installed have the right to use the machine during the period of contract; but the title and ownership of the instrument continues to be with the appellant and the customer has to return the instruments to the appellant at the end of the specified period or at the earlier termination of the agreement. It is further stated that the users of the instruments under the agreement only possess a non-transferable right to use the said instruments during the tenure of agreement. Hence, there is provision of transferring right to use the instruments from appellant to hospitals/labs for a fixed tenure. As per the provisions contained in Sl. No: 1(b) to schedule II of the Act, it is specified that any transfer of right in goods or of undivided share in goods without the transfer of title thereof is a supply of services. Hence, the activity of the appellant prima facia qualifies to be categorized as supply of services vide Schedule II to the Act.

- The next condition to be satisfied is that the transaction/ activity should be in the course or furtherance of business. The activity of the appellant of placing of instruments at the hospitals/labs is admittedly linked with sale of reagents in terms of the agreement, whereby it is evident that the entire activity is nothing but a commercial transaction which is undoubtedly in the course or furtherance of business.

- The next condition to be satisfied is that the transaction / activity should be made for a consideration. The term 'consideration' is defined in Section 2 (31) of the CGST Act, 2017. Hence the agreement of the customer to purchase the reagents, calibrators and disposables for use in the instrument exclusively from the appellant for a minimum value every month with obligation to pay the deficit amount in case the purchase in a month felts short of the minimum agreed value constitutes a valid consideration as defined under Section 2 (31) of the CGST Act, 2017. Therefore, there is no doubt that the transaction I activity is made for a consideration within the meaning of CGST Act, 2017. Moreover, itis admitted by the appellant in their appeal too that in some instances, the appellant had raised suo-moto claim, on the hospital for payment of some amount. where the customers failed to fulfil the conditions of minimum purchase of reagents etc. In the light of the discussion above. it is evident that the transaction I activity in issue in hand satisfies all the essential ingredients of 'supply' as defined under Section 7 of the CGST Act, 2017.

Placement of specified medical instruments by the appellant at the premises of unrelated hospitals, labs etc. in pursuance of the agreement for their use for a specific period without any consideration considered as 'Supply' under Section 7 of the CGST Act, 2017

- Based on the above discussion, it is evident that the activity or transaction undertaken by the appellant qualifies to be categorised as "supply" as defined in Section 7 of the CGST Act, 2017. Accordingly, it is concluded that the placement of specified medical instruments to unrelated customers like Hospitals, labs etc for their use the appellant constitutes supply of services under CGST Act, 2017.
- Based on the above discussion, it is evident that the activity or transaction undertaken by the appellant qualifies to be categorised as "supply" as defined in Section 7 of the CGST Act, 2017. Accordingly, it is concluded that the placement of specified medical instruments to unrelated customers like Hospitals, labs etc for their use the appellant constitutes supply of services under CGST Act, 2017.

DA Comments:

Even after multiple rounds under the said issue, the AAAR has given the same response which could be again challenged at the Honorable High Court level.

M/S. Abbott Healthcare Private Limited [2022 (3) TMI 1204 - Appellate Authority For Advance Ruling, Kerala]

Validity of Garnishee notice in Form GST DRC-13 set aside as the principles of natural justice and the procedure prescribed in law not followed – Hon'ble High Court

Issue:

In all the three writ petitions, primarily challenge was to the Circular bearing F. No. CBEC-20/16/07/2020-GST dated10 February 2020 issued by the CBIC which prescribes that interest payable on delayed payment of taxes can be recovered under the provisions of Section 79 read with Section75(12) of CGST Act. Further, the challenge in the respective writ petitions for quashing of the Summary of the Order issued in Form GST DRC-07 and also sought quashing of the demand notices issued in Form GST DRC-01 relating to the different tax periods.

Legal Provisions:

Section 73(1) of JGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- When the petitioner had disputed the demand of interest intimated to him, the adjudication order could not have been passed without proper show-cause notice. Thus, Respondents have failed to follow the principles of natural justice and the procedure prescribed under section 73(1) of JGST Act before issuing the Summary of the Order in Form GST DRC-07. The writ petition is therefore, maintainable under Article 226 of Constitution of India on the proposition well settled by the Apex Court. [Magadh Sugar & Energy Ltd. versus State of Bihar & others, 2021 SCC On Line SC 801].

- In the present case, petitioner has disputed the interest liability by filing reply. Respondent had also indicated that in case petitioner fails to deposit the amount of tax and interest by05.02.2020, show-cause notice under section 73(1) shall be issued. Respondent have themselves failed to follow the procedure stipulated under the Act as indicated by them in Form GST DRC-01A containing the intimation of the tax ascertained against the petitioner. Summary of the Order has been issued upon the petitioner in Form GST DRC-07 on his GSTN portal without following the principles of natural justice.

- We are thus satisfied that the Respondents have failed to follow the procedure prescribed in law before issuing Summary of the Order in Form GST DRC-07 holding the petitioner liable to pay interest under section 50(1) of the Act due to late filing of GSTR-3B and not depositing the due interest on its own. As such, writ petition succeeds only on the point of failure to follow the principles of natural justice and the procedure prescribed in law.

Validity of Garnishee notice in Form GST DRC-13 set aside as the principles of natural justice and the procedure prescribed in law not followed – Hon'ble High Court

- Writ petitions are allowed in the manner and to the extent indicated hereinabove. Since the writ petition has been decided only on the question of failure to follow the principles of natural justice, we do not consider it necessary to deal with the other authorities cited on behalf of the parties.

DA Comments:

It is held in plethora of judgments the any proceedings without following principle of natural justice is unsustainable. However, still the number of such proceedings are set aside by the Honorable Courts being principle of natural justice is not followed.

M/S Narsingh Ispat Limited bs UOI and others [2022 (3) TMI 1047 - Jharkhand High Court]

Salary and related cost Reimbursement liable to GST when not satisfying pure agent conditions – AAR

Issue:

The Applicant is an approved NEEM (National Employability Enhancement Mission) Facilitator under the All-India Council for Technical Education (National Employability Enhancement Mission) Regulations, 2017("NEEMS Regulations"). since the NEEM contract assures training and does not constitute employment. The NEEM Facilitators are required to partner with various trainers and Employers / Company / Industry (Industry partner) for imparting training to NEEM trainees. The Applicant has entered into training agreements with various companies (industry partners) for imparting practical training and has registered them as training partner in accordance with NEEM Regulations.

Currently, the Applicant is collecting GST on the entire transaction value which is the price payable by Industry partner in accordance with section 15 of the CGST Act which includes administration fee, sourcing fee, enrolment fee and the following reimbursements:-

a. monthly stipend paid to trainees on behalf of Industry partner

b. Cost of medical and accident insurance obtained for benefit of the Trainees and reimbursed by Industry partner.

The applicant has sought advance ruling in respect of the following questions:-

- Whether, the Applicant is acting as a pure agent of the Industry partner to the extent of reimbursement received towards stipend paid to trainees on behalf of Industry partner as part of training agreement and therefore the said reimbursement is not chargeable to GST?
- Whether, the Applicant is acting as a pure agent of the Industry partner to the extent of reimbursement received against cost of medical and accident insurance obtained for the benefit of trainees by the Applicant and reimbursed by the Industry partner as per the training agreement and therefore the said reimbursement is not chargeable to GST?

Legal Provisions:

Rule 33 (iii) of the CGST Rules 2017

Salary and related cost Reimbursement liable to GST when not satisfying pure agent conditions – AAR

Observation and Comments:

- It could be seen from the above that a pure agent would be a person (supplier i.e. applicant in this case)who enters into a contractual agreement with the recipient of supply (Industry partner in this case) to act as recipient's pure agent to incur expenditure or costs, in the course of supply of goods or services or both. It isan admitted fact that the applicant herein is raising invoice for stipend and insurance cost and distributes the same to the trainees on receipt of the said amount and also not furnished any contractual agreement to incur expenditure first and to claim the said amounts later. Thus, the applicant does not qualify to be a pure agent a tall, in terms of rule 33 of the CGST Rules 2017.

- The applicant has furnished a copy of agreement from which it is clearly evident that the applicant is not incurring the said amount initially and latter claiming the said amount by raising an invoice. Further the applicant also has not furnished any documentary evidence wherein the Industry Partner has authorised the applicant to make the payment to third party and later to claim the actual amounts. Thus even on this account also the applicant is not fulfilling the required condition.

- Rule 33 (iii) of the CGST Rules 2017 stipulates that the applicant must procure certain supplies from the third party, as a pure agent of the recipient of supply, which are in addition to the services he supplies on his own account. In the instant case, the applicant has not furnished any information with regard to procurement of supplies from the third party i.e. trainees. Thus the applicant is not fulfilling the required condition.

- In view of the above the applicant does not qualify to be a pure agent and hence the GST is chargeable on the entire transaction value.

DA Comments:

The conditions of 'Pure Agent' under GST law is lenient in comparison to erstwhile Service Tax law. In the present case, the AAR rightly denied the benefit of 'Pure Agent' based on facts of the case.

M/S. Teamlease Education Foundation [2022 (3) TMI 574 - Authority For Advance Rulings, Karnataka]

Activity of design and development of patterns used for manufacturing of camshafts, is an 'intermediary services'

Issue:

The applicant manufactures camshafts and sells the same to domestic as well as overseas customers. The overseas OEMs / Machinists place orders for camshafts on the applicant, which are sent outside India. Accordingly, for the purpose of manufacture of the camshafts, applicant needs patterns and tools according to the specifications of the OEMs/Machinists the supply of which is the obligation of the overseas OEMs/ Machinists.

For operational efficiency and logistics issues, it is industry practice that the said tools are made in India. The OEMs/Machinist outsource the following tasks to the Applicant:

(a) Assistance in designing and process planning for the manufacture of the tools.

(b) Identify and appoint a third-party vendor to manufacture such tools as per the approved specifications.

(c) Coordinate with such third-party vendors for manufacture of tools as per the approved specifications

The Applicant charges a fee for the same from the OEMs / Machinists. The overseas OEMs/Machinists pays consideration for assistance in manufacturing process planning(including designing and development of prototype) in foreign currency. The ownership of tools lie with the OEMs/ Machinists and can only be used to manufacture the goods of the OEMs/Machinists who are the owner of such tools. the applicant, seeking an advance ruling in respect of the following question.

Whether the activity of design and development of patterns used for manufacturing of camshafts, for a customer is a composite supply, the principal supply being supply of services?

Legal Provisions:

Section 2 (30), 2(90), 2(52), 2(102) and section 7 of CGST Act, 2017

Observation and comments:

- In view of the entire process submitted by the applicant, we find that the applicant is not only providing services to the overseas OEMs/Machinists, but they also actively identify and closely engage with third party vendors on behalf of the overseas OEMs/Machinists. The supply in the instant case consists only of service and there is no supply of goods. Such supply of services appears to be that of an intermediary service

Activity of design and development of patterns used for manufacturing of camshafts, is an 'intermediary services'

- In the subject case the main supply would be supply of tools and patterns to the overseas customers by the third party vendors, which is not actually happening physically since the tools and patterns are moving from the third party vendors directly to the applicant. Such movement of goods to the applicant appears to be on behalf of the overseas vendors because the ownership of the tools and patterns is with such overseas vendors as submitted by the applicant. Secondly the ancillary supply would be the supply of designs and drawings of the patterns and tools by the applicant, on behalf of the overseas customers to third party vendor/s and also the activity of identifying the third party vendors who can manufacture the pattern and tools as per the design/drawings (requirements) and explaining and closely working and engaging with such third party manufacturer to develop the patterns and tools.
- Further, it is very clear from the applicant's submissions that they are not providing any services on its own account. The designs are provided to the third party vendors on behalf of the overseas customers of the applicant. The service provided by them is to their overseas customers and as per the requirements and directions of its overseas principals.
- Thus the applicant is satisfying all the conditions of an intermediary and we have no hesitation in holding that, the applicant is supplying intermediary services as per the relevant provisions of the IGST Act, 2017.

DA Comments:

The AAR in the said ruling given its own judgment without even considering the facts and nature of transactions. It could have major impact on OEMs in Auto and other sectors as the said model is very common.

M/S. Precision Camshafts Limited [2022 (3) TMI 1367 - Authority For Advance Ruling, Maharashtra]

Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017

The Central Tax officers of Audit Commissionerate's and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGI ") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent Central Tax officer of the executive Commissionerate in whose jurisdiction the noticee is registered when such cases pertain to jurisdiction of one executive Commissionerate of Central Tax only.

Circular No.169/01/2022-GST, dated 12 March 2022

Introduction of Restoration of Cancelled Registration

Now, a functionality in the name of 'Restoration of Cancelled Registration' has been developed and deployed w.e.f. 23.03.2022, to facilitate the jurisdictional Range officers to restore the registrations in pursuance of judicial / appellate orders.
This functionality would cover both the cancellations viz. ordered suo motu by Range officers against which appeal orders were obtained without applying for revocation through form REG-21, and cancelled on the request from the taxpayers

Registration Advisory No. 07/2022, dated 23 March 2022

Clarification on VAT Amnesty Scheme 2022 for the State of Rajasthan

In exercise of the powers conferred by clause 6(4) of FD notification No.F.,12(II) FD/Tax/2022-103 dated 23.02.2022 with respect to Amnesty Scheme-2022, few clarifications have been issued.

Notification No. F.16(752)/Tax (VAT)/Amnesty/ CCT/22-23/PL-I/1383-1390, dated 21 March 2022

Limit for E-way bill has been extended in the State of Rajasthan

E-Way Bill limit extended to Rs. 2 Lakh in Rajasthan wef 1st April 2022, Where the Goods movement commence and terminates within the area of same city without crossing the area of the city.

Notification No. F.17 (131-Pt.-II) ACCT/GST/2017/7713, dated 24 March 2022

Verification or Mismatch of ITC has been extended to 31.08.2022 in Rajasthan

The manner for the verification of deposit of tax for the purpose of allowing the Input Tax Credit (ITC) for pending demands pertaining to assessment years up to 2017-18, where the demands have been created for want of verification of Input Tax Credit claimed by a dealer has been prescribed.

The application shall be submitted category wise by the dealer electronically in Form ITCV-A/B/C/D, as the case may be, through the official website of the Commercial Taxes Department (www.rajtax.gov.in), separately for each year, quarter wise, in the manner as provided therein, up to 31.08.2022.

No.F.16 (100) Tax /CCT/ 14-15/ 1423, dated 23 March 2022

Appointment of Common Adjudicating authority for SCNs issued by DGGI

CBIC issues notification to vest power to additional commissioner or Joint Commissioner of Central Tax for passing order or decision in respect of notices issued by DGGSTI.

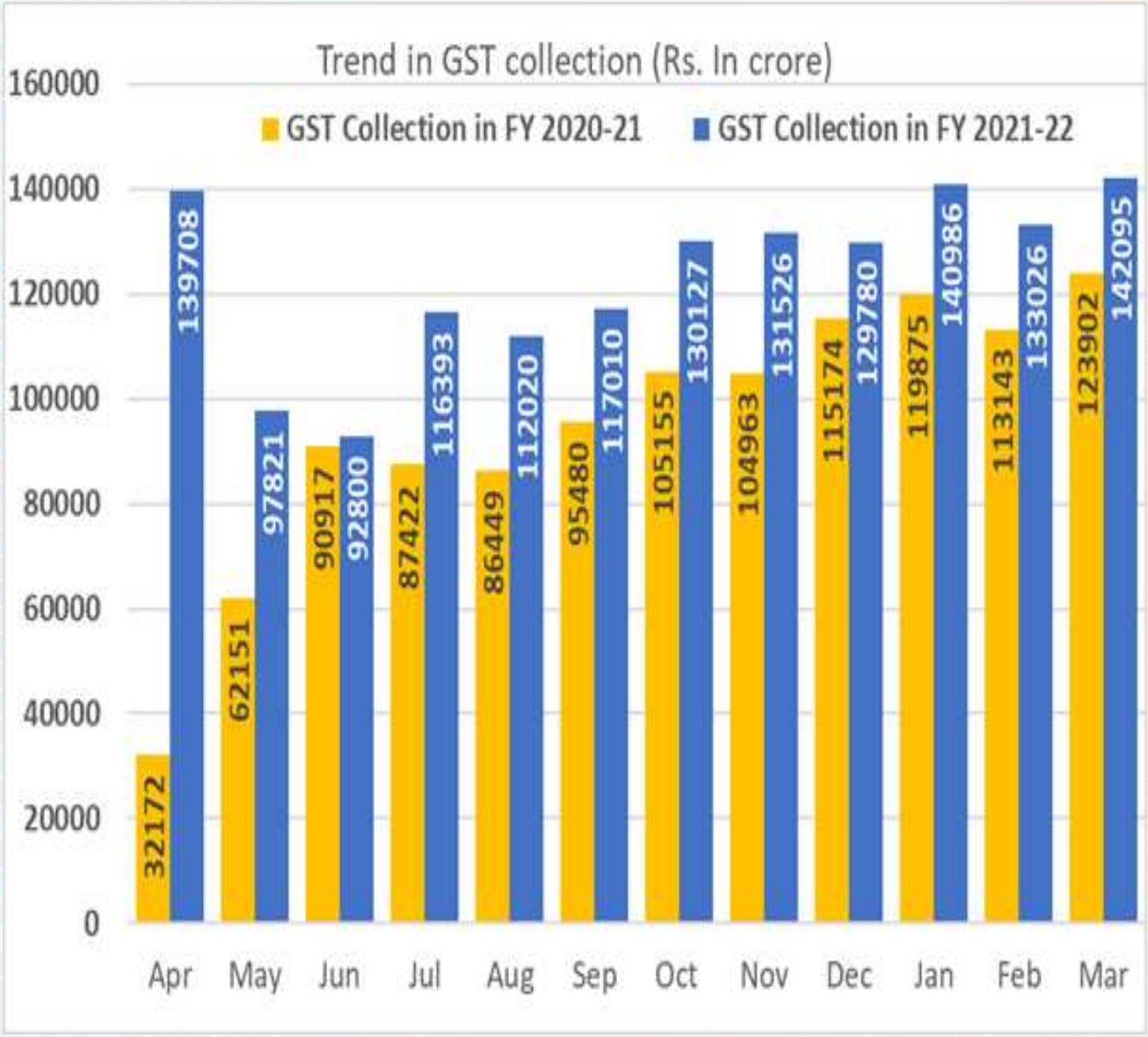
Notification No. 02/2022-Central Tax, dated 11 March 2022

Standard Operating Procedures for Scrutiny of Returns for FY 2017-18 and 2018-19

CBIC has released SOP for Scrutiny of returns for FY 2017-18 and 2018-19 which contains Relevant statutory provisions (Section 61- Scrutiny of returns, Rule 99-Scrutiny of returns), Basis for Selection of GST returns for scrutiny, Proper officer for scrutiny of returns, Scrutiny Schedule, Process of scrutiny by the Proper Officer, Timelines for scrutiny of returns, Scrutiny Schedule, Indicative List Of Parameters For Scrutiny, Scrutiny Register To Be Maintained By The Proper Officer and Monthly Scrutiny Progress Report format.

Instruction No. 02/2022-GST, dated 22nd March, 2022

GST Revenue Collection in March 2022- Rs. 1,42,095 Cr.



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- Refund of unutilised Cess is allowed under Central Excise regime
- MEIS eligible, if otherwise satisfied the substantive requirements of the scheme
- Amount deposited during investigation is 'Pre-deposit' and eligible for refund without being time barred
- SAD Refund – Time limitation of notification to be applied and not of Section 27 of the Customs Act
- CENVAT Credit refund allowed on closure of factory
- Extension of last date of application under scrip based schemes
- New Online module for interest equalisation scheme
- Advisory to avail benefit of IGCR Rules
- Exemption of deposits from the provision of Section 51A of Customs Act, 1962

Refund of unutilised Cess is allowed under Central Excise regime

Issue:

The appellant has filed the appeal against the order of the Commissioner (Appeals) rejecting the claim for refund of the accumulated balance of credit on education cess and secondary and higher education cess [the cess] filed under Central Excie.

Legal Provision:

Section 11B of Central Excise Act, 1944

Observation and comments:

The Honorable CESTAT observed and held that:

- The submission of learned counsel for the appellant is that refund of credit of cess cannot be denied merely on the ground that such credit which could not be utilised prior to GST regime would stand lapsed. In this connection, learned counsel placed reliance upon the decision of the Tribunal in Slovak India Trading.
- The Tribunal, in the aforesaid decision rendered in Slovak India Trading held that refund has to be made when an assessee goes out of the Modvat Scheme or when the Company is closed. The appeal filed by the Department before the Karnataka High Court to assail the aforesaid decision of the Tribunal was dismissed and the Supreme Court also dismissed the appeal filed by the Department to assail the aforesaid order of the Karnataka High Court.
- It is, therefore, clear from the aforesaid decision rendered in Slovak India Trading by the Tribunal, the Karnataka High Court and the Supreme Court that refund has to be granted when either the there is a closure of the factory or when an assessee goes out of the Modvat scheme.
- In Bharat Heavy Electricals, a Division Bench of the Tribunal examined whether credits create a vested right and do not extinguish with the change of law and held that change of law cannot be a ground for divesting an assessee from this valuable right and in this connection, the Tribunal placed reliance upon the decision of the Karnataka High Court in Slovak India Trading.
- Learned authorised representative of the Department also placed reliance upon the decision of the Rajasthan High Court in Banswara Syntex Ltd.
- It is, therefore, seen that there are conflicting decisions of the Karnataka High Court and the Punjab and Haryana High Court on the one hand and the Rajasthan High Court on the other hand. The decision of the Karnataka High Court in Slovak India was affirmed by the Supreme Court. It would, therefore, be appropriate to follow the view taken by the Karnataka High Court and the Punjab and Haryana High Court.

Refund of unutilised Cess is allowed under Central Excise regime

- It needs to be noted that CENVAT credit avail is a vested right as has held by the Supreme Court in Eicher Motors and Samtel India.
- The appellant is, therefore, clearly entitled to the refund of the balance amount of credit of cess and the decision to the contrary taken by the Commissioner (Appeals) cannot be sustained. The order dated 12.06.2019 passed by the Commissioner (Appeals) is, therefore, set aside and the appeal is allowed with consequential reliefs, if any.

DA Comments:

The issue of cess carry forward as credit or refund availability was always an issue before various Tribunals and Courts. With this judgment, the assessee who filed claim for cess refund could have additional leverage for processing the refund claims.

Emami Cement Limited Vs Commissioner (Appeals) , CGST, Central Excise, Raipur [2022 (3) TMI 1254 - CESTAT New Delhi]

MEIS eligible, if otherwise satisfied the substantive requirements of the scheme

Issue:

The Company challenged the impugned order of the second respondent rejecting the request for grant of relief under the MEIS Scheme under the Foreign Trade Policy 2015-2020. It is the specific case of that the Company had filed two bills of entry as Shipping Bill and by filing the bill of entry stated that no for yes as aforesaid benefits.

Legal Provision:

Foreign Trade Policy 2015-2020

Observation and comments:

The Honorable High Court observed and held that:

- The fact that the petitioner has exported goods and was otherwise entitled to the benefit under the aforesaid scheme has not been disputed by the respondents. There is only a procedural lapse on the part of the petitioner in failing to exercise the option in all the shipping bill by assuming that one declaration in the first shipping bill will suffice for exports as was the procedure prior to the amendment. Since the scheme is an export incentive given to an exporter, the procedures cannot be imposed to deny the substantive benefit under the Foreign Trade Policy.
- In this case, there is only a procedural lapse. If the petitioner was otherwise entitled to the aforesaid exporter incentive and was not dis-entitled to the same, such benefit cannot be denied. Therefore, I am of the view that the impugned order passed by the third respondent has to go as such export incentives cannot be denied on account of procedural lapse. Accordingly, the impugned order passed by the third respondent is quashed and the case is remitted back to the respondents to re-examine the issue as to whether the petitioner had indeed exported and was entitled to the exporter incentive under the aforesaid scheme, but for the lapse of not clicking the correct option in the System/Web Portal.

DA Comments:

The Honorable Court rightly held that the benefits cannot be denied due to procedural lapse. The DGFT needs to consider all such cases by issuing clarification to consider such matters.

Tractors And Farm Equipment Limited vs DGFT, PRC, ACC [2022 (3) TMI 826 - Madras High Court]

Amount deposited during investigation is 'Pre-deposit' and eligible for refund without being time barred

Issue:

The company had filed six Shipping Bills for export of Horticulture & Agriculture Machinery parts under claim of drawback. Suspecting over-valuation, an investigation was initiated and goods were allowed to be exported provisionally on execution of bond and bank guarantee of ₹ 1 crore. A SCN was issued which was adjudicated in which the declared value was rejected and the same was re-determined, the goods were confiscated and redemption fine and penalties were imposed on the appellant. The company preferred appeal before the Commissioner (Appeals) who vide order-in-appeal allowed their appeal. Accordingly, the company filed a refund claim which was rejected by the Adjudicating Authority. Thereafter, the assessee had filed appeal before the Commissioner (Appeals) which held that the amount deposited is in the nature of pre-deposit and the appellant is entitled to consequential refund and accordingly, granted to refund to be disbursed within a period of 4 weeks from the date of receipt of this order. Being aggrieved, the Revenue is in appeal before the Tribunal.

Legal Provision:

Section 27(1)(b) of the Customs Act, 1962 read with Circular No.984/08/2014-CX, dated 16 September 2014

Observation and comments:

Having considered the rival contentions, I find that there was an existing dispute with regard to valuation of the exported goods, which is relevant for the purpose of calculation of draw back.

The export was allowed under provisional 'Let Export Order'. Hence, there was an existing dispute (subjudice) between the parties, when the amount of ₹ 18,68,000 was deposited in July, 2013. Accordingly, such deposit ipso facto is in the nature of pre-deposit, which is subject to outcome of the Adjudication Order. Such amount of pre-deposit never becomes time barred, under the provisions of the Act and the same has to be refunded.

Accordingly, I uphold the impugned order-in-appeal and direct the Revenue to disburse the said amount of ₹ 18,68,000/- forthwith within a period of 4 weeks, with interest @ 12% p.a. from the date of deposit till the date of refund (in view of the ruling of the Hon'ble Supreme Court in the case of Sandvik Asia Ltd. read with Division Bench ruling of this Tribunal in Parle Agro Ltd.)

This appeal by the Revenue is dismissed. The stay application also stands disposed of.

CC vs M/S. S.S. Automotive Pvt. Ltd. [2022 (3) TMI 1325 - CESTAT New Delhi]

Amount deposited during investigation is 'Pre-deposit' and eligible for refund without being time barred

DA Comments:

The time barred restriction is not applicable in the case of pre-deposit and when the law itself provide that any amount deposited during investigation is pre-deposit, such long proceedings at various levels denied the right of the assessee. The Honorable Tribunal rightly held that its eligible for refund along with interest.

CC vs M/S. S.S. Automotive Pvt. Ltd. [2022 (3) TMI 1325 - CESTAT New Delhi]

SAD Refund – Time limitation of notification to be applied and not of Section 27 of the Customs Act

Issue:

The issue involved in this appeal is whether the refund claim of Special Additional Duty (SAD), under Customs Act, which is in lieu of sales tax, have been rightly rejected as time barred by the Court. The procedure for such refund is provided under Notification No. 102/2007-Cus. dated 14 September 2007. Subsequently, this notification was amended by subsequent Notification No. 93/2008-Cus dated 01 August 2008. It is provided in substituted Condition No.2(C) that, 'the importer shall file a claim for refund of the SAD, of customs paid on the imported goods, with the Jurisdictional Customs Officer before the expiry of 'one year' from the date of payment of the said SAD of customs.

Being aggrieved, the appellant is before this Tribunal, inter alia, on the ground that it is a matter of common sense, that unless the right accrues to claim refund, limitation cannot start.

Legal Provisions:

Notification No. 102/2007-Cus. dated 14 September 2007 and section 27 of Customs Act, 1962

Observation and Comments:

- As the aforesaid findings have not been disturbed or distinguished by the Hon'ble High Court of Bombay, I am following the decision of the Hon'ble High Court of Delhi [Sony India Pvt. Ltd., -2014 (304) ELT 660 (Del.)] and hold that the appellant is entitled to the refund, as their right to claim refund of duty in terms of the Notification has accrued only when the sale took place after import.
- The findings of the Hon'ble Delhi High Court clearly show understanding of the department with regard to clause of limitation, provided in the Notification. The condition of limitation was not the part of the original notification. It was only with the introduction of Circular No. 6/2008-Cus. and Notification No.93/2008, the department started insisting on the limitation period (of one year) prescribed with effect from 1.8.2008, became applicable.
- The Hon'ble High Court has clearly held that the expression "so far as may be" used in sub-section (6) of Section 3 of CTA, has to be followed to the extent possible. Merely because Section 27 of the Customs Act provides for a period of limitation for filing refund claim, it cannot be held that even for the purposes of claiming refund in terms of the Notification, the same limitation has to be applied.
- The Hon'ble Delhi High Court has also held that in the matters which deal with substantive rights, such as imposition of penalties and other provisions that adversely affect statutory rights, the parent enactment must clearly impose such obligations; subordinate legislation or Rules cannot prevail or be made, in such case.

SAD Refund – Time limitation of notification to be applied and not of Section 27 of the Customs Act

DA Comments:

The Honorable CESTAT rightly held that unless the right accrues to claim refund, limitation cannot start.

M/S Fibre Bond Industries Vs PCC [2022 (3) TMI 1176 - CESTAT New Delhi]

CENVAT Credit refund allowed on closure of factory

Issue:

The facts of the case are that the appellant was engaged in manufacturing activity of TMT Bars availing cenvat credit on input, input services and paying duty by utilising Cenvat Credit. The appellant closed the factory and stopped the production of finished goods. Consequently, the appellant applied for refund claim of unutilised Cenvat Credit lying in their Cenvat Credit account as there is no provision in Central Excise Rules made thereunder for grant of refund for unutilised Cenvat Credit. Therefore, a SCN was issued to the appellant for rejection of the refund claim and the same was adjudicated and it was held that refund claim is not maintainable. Aggrieved from the said order, the appellant is before us.

Legal Provisions:

Refund under Central Excise Act, 1944

Observation and Comments:

- We find that the jurisdictional High Court has already held that on closure of the factory the assessees are entitled for refund claim lying unutilised in their Cenvat Credit Account. In case of Modipon Ltd. (Supra) although the said order has been challenged by the Revenue before the Hon'ble Apex Court but no stay has been granted by the Hon'ble Apex Court. In that circumstances, relying on the decision in the case of Principal Commissioner, Central Excise Delhi v Space Telelink Ltd. reported in 2017 (355) ELT 0189 (Del), the Hon'ble Delhi High Court has held that unless and until the order is set aside the sanctity of the order remains.
- As order of the Hon'ble High Court of Allahabad in the case of Modipon Ltd. (Supra) has not been set aside till yet. Therefore, relying on the decision in the case of Modipon Ltd. (Supra), we hold that appellant is entitled for refund claim lying unutilised in their Cenvat Credit account on closure of the factory.
- In view of this, impugned order is set aside and appeal is allowed with consequential relief.

DA Comments:

The refund of unutilised CENVAT Credit was allowed even when there was no such specific provisions. In GST law, the refund of unutilised electronic credit ledger is allowed and the same should be considered by the adjudicating authority.

M/S. Usha Martin Limited vs CC, CE&CGST [2022 (3) TMI 1317 - CESTAT Allahabad]

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
2% additional ad hoc incentives	1 January 2020 to 31 March 2020

Notification No: 58/2015-2020, dated 7th March, 2022

Waiver of penalty for late filing of Bill of Entry due to the error in the Customs Portal

Importers/ Custom Brokers have been facing difficulty in filing Bills of Entry relating to IGCR due to the Error code 511 and 512 showing on the portal as a result of which, late filing penalty is getting imposed on them.

In all such cases, waiver of late filing charges pertaining to the above said period will be 'dealt by the respective Deputy/Assistant Commissioner of the concerned Groups directly.

Public Notice No.06/2022, dated 28 March 2022

Extension of existing Handbook of Procedures (HBP) 2015-2020

Validity of the existing Hand Book of Procedures, 2015-20 is extended up to 30th September, 2022.

Public Notice No. 53/2015-2020, dated 31 March 2022

Inclusion of Mewar Chamber of Commerce and Industry under Appendix 2E of FTP, 2015-2020- State of Rajasthan

Mewar Chamber of Commerce & Industry, Rajasthan is enlisted under Appendix 2E of FTP, 2015-2020 for issuing Certificate of Origin (Non-Preferential).

Public Notice No. 49/2015-2020, dated 14 March 2022

New Online module for interest equalisation scheme

In order to capture granular data about the beneficiaries of the scheme and its effective monitoring, it has been decided to operationalise a new online module for filing of electronic registration for Interest Equalisation Scheme w.e.f. 01.04.2022.

Exporters seeking benefit under the Interest Equalisation Scheme need to apply online by navigating to the DGFT website (https://dgft.gov.in)

Trade Notice 38/2021-22-DGFT, dated 15 March 2022

Advisory to avail Export incentive schemes

Escrip module is developed by ICEGATE, CBIC to provide a digital service to exporters to avail benefits defined under various incentive schemes like RoDTEP (Remission of Duties and Taxes on Exported Products) and RoSCTL (Rebate of State and Central Taxes and Levies)

Advisory no 06/2021 dated 21 March 2022

Advisory to avail benefit of IGCR Rules (Import of Goods at Concessional Rate of duty)

IGCR module is developed by ICEGATE, CBIC to provide a digital service to importers to avail benefits under the IGCR Rules (Import of Goods at Concessional Rate of Duty).

Advisory No 06/2022 dated 1 March 2022

Extension exemption from IGST and Compensation Cess to EOUs on imports

Amendment to Notification No. 52/2003-Customs dated 31.03.2003 for extending exemption from IGST and Compensation Cess to EOUs on imports till 30.06.2022.

Notification No 18/2022-Customs, dated 31 March 2022

Extension from Integrated Tax and Compensation Cess on goods imported against AA/EPCG authorizations.

Extends the exemption from Integrated Tax and Compensation Cess by three (03) months i.e., up to 30.06.2022 on goods imported against AA/EPCG authorizations.

Notification No. 19/2022-Customs [G.S.R. 248 (E).]

Exemption of deposits from the provision of Section 51A of Customs Act, 1962

The CBIC exempts the following deposits from section 51 A of the CA 1962;

a. with respect to goods imported or exported in customs stations where customs automated system is not in place;

b. with respect to accompanied baggage;

c. other than those used for making payment of, -

(a) any duty of customs, including cesses and surcharges levied as duties of customs;

(b) integrated tax;

(c) Goods and Service Tax Compensation Cess;

(d) interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975 (51 of 1975).

Notification No. 19/2022-Customs (N.T.) [S.O. 1512(E)]

Notifies Customs (Electronic Cash Ledger) Regulations 2022

In exercise of powers conferred by section 157 read with sub-sections (1), (2) and (3) of section 51A of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs notifies the Customs (Electronic Cash Ledger) Regulations 2022.

It shall come into force with effect from the 1st June, 2022.

Notification No 20/2022-Customs (N.T), dated 30 March 2022


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Goods and Services Tax

- GST Compensation Cess Extended
- Auditing officers lose adjudicating notice power under GST system
- Govt working to classify cryptocurrency under GST law.
- GST Council may consider proposal to raise lowest slab to 8%, rationalise tax slabs
- Income earned from Guest Lecturers to attract 18% GST
- Government ready to look into demands of restaurants for ITC

Customs and other

- Nine states did not reduce VAT on fuel
- Liquor Vendors Move High Court Over Delhi Government Order Prohibiting Discounts
- State Legislatures have power to tax lotteries organised by other states
- Govt accords dual use permission to GIFT City, allows non-SEZ entities to buy properties

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