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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

May 2022
Issue: 24

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We are pleased to present to you the twenty-fourth 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 April 2022.

During the month of April 2022, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as ITC is not available on steel and cement, merger of two distinct registration is Supply, conversion of free shipping bill to AA shipping bill and others.

In the twenty-fourth 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 April 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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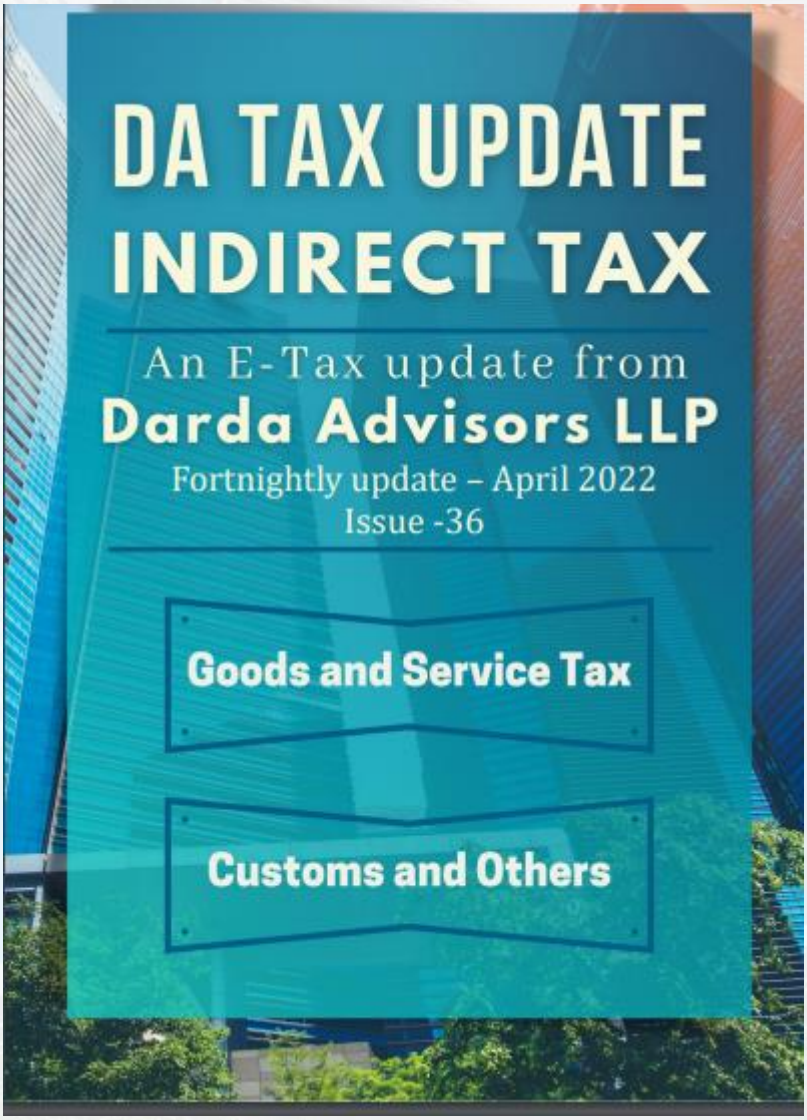
DA Updates and Articles for the month of April 2022

Indirect Tax Fortnightly Update for the month of April 2022

https://dardaadvisors.com/wp-content/uploads/2022/04/DA-Indirect-Tax-Fortnightly-Update_April-2022.pdf



GST COMPLIANCE CALENDAR

MAY 2022

10
GSTR-7
TDS Deductor

10
GSTR-8
TCS Deductor

11
GSTR-1
Normal Taxpayer

13
GSTR-6
Input Service Distributor

20
GSTR-5A
OIDAR Service Provider

20
GSTR-3B
Normal Taxpayer

20
GSTR-5
Non-Resident Taxable Pe

- Merger of two distinct persons' GST registration is 'Supply' and liable to GST – AAR
- ITC on Steel, cement and other consumables for factory set up is not available – AAR
- Spot memo issued by Audit department without considering earlier proceedings not sustainable
- Refund claimed by SEZ unit of unutilised ITC related to ISD is allowed
- When there is a belated payment of tax declared in the returns filed, interest has to follow
- No GST recovery on the royalty paid on account of excavation of sand for brick – Stay from Honorable High Court
- Interest for delayed refund – Rate as applicable under section 56 of CGST Act, 2017 – Supreme Court
- Cancellation of registration basis vague SCN not sustainable – Honorable High Court
- GST Circulars/Notifications
- GSTN Portal Changes

Merger of two distinct persons' GST registration is 'Supply' and liable to GST – AAR

Issue:

The applicant is a trader & manufacturer of agrochemical products. Akola registration in pesticides while Nagpur registration is involved in manufacturing as well as insecticides. Further, in light of an incentive scheme of the Government of Company obtained separate registration both the locations since the newly acquired at Nagpur was getting covered under the incentive scheme. However, it was later that separate registration is not a under the incentive scheme & therefore to merge both the registrations by way of transfer of business of Nagpur registration Akola registration without consideration, going concern basis. The applicant seeking advance ruling in respect of the following question.

- Whether the transaction of transfer of business by way of merger of two GST registrations/distinct persons would constitute 'supply' under the GST law
- Whether the transaction of transfer of business by way of merger of two GST registrations/distinct persons would constitute 'supply of goods' under the law
- Whether merger between distinct would qualify as 'transfer of business as concern' under the purview of GST Law?
- Whether the transaction of transfer of business by way of merger of two GST registrations/distinct persons would constitute 'supply of services' under the law?
- If the transaction qualifies as 'supply of services', whether the said transaction get covered under Sl. No. 2 of no. 12/2017-C.T. (R) dated 28.06.2017, therefore not liable to GST?
- Whether Nagpur registration can file GST ITC-02 and transfer unutilized credit balance to Akola registration?
- In case the Applicant merges the Akola registration, then can the claim credit balance appearing in Akola registration via Form GST ITC 02A in Nagpur registration?

Legal Provisions:

Section 7(1) and Part 4(c) of Sch.-II of CGST Act, 2017 and Sl. No. 2 of Notification No. 12/2017-C.T.(R) dt 28 June 2017

Merger of two distinct persons' GST registration is 'Supply' and liable to GST – AAR

Observation and Comments:

The AAR observed and held that:

- In the subject case, M/s Crystal Crop Protection Limited, Nagpur and M/s Crop Protection Limited, Akola, as units holders of the same PAN and they are distinct persons. Hence, the case at doesn't qualify to be a "going concern another person" as units are holders of same PAN and they are merely distinct persons. As discussed above, in view of statutory guidance as per Section 18 supra), the change in constitution of the business is essential otherwise, it cannot said that there is transfer of business as going concern.

- Hence, the provisions of Para 4 (c) of Schedule II of CGST Act, 2017 do not in this case. Therefore, the impugned will be treated only as supply of goods therefore there is no supply of services instant case.

DA Comments:

When law itself gives separate status to distinct person, the question of not considering the same as exempted transaction would lead to denial of eligible credit and further imposition of GST liability by considering it as 'Supply of Goods'.

M/S. Crystal Crop Protection Limited [2022 (4) TMI 1087 - Authority For Advance Ruling, Maharashtra]

ITC on Steel, cement and other consumables for factory set up is not available – AAR

Issue:

The applicant sought advance ruling on following aspects:

Whether input tax credit of GST is for supply of the following goods :-

(a) steel, cement and other consumables (Annexure attached) to the extent of their usage in the execution of the works service when supplied for construction of immovable property, in the form of the which is an Integrated Factory building Gantry Beam, which in turn used for across the pre-cast concrete beams, poles over which the crane would be operated;

(b) Structures, Pre cast, reinforced concrete beams, poles etc. (purchased as it is) which used as supports to mount andoperate the over 10 metres from ground, as shown in pictures attached; and

(c) Other capital goods, like rails which are over the concrete arms for smooth travel over-head crane

Legal Provisions:

Section 17 of CGST Act, 2017

Observation and Comments:

The AAR observed and held that:

In the case at hand, the supply received by applicant results in construction of a civil structure which is in the form of a factory. factory is nothing but a building where use machines to produce goods or services both. The foundation and walls though are strengthened is again only a part of the which is in the genre of 'Civil Structure'. factory premises will be designed and constructed to support the 'Plant and Machinery' to be housed in it for the production of the goods for which such is intended.

The entire construction of the 'Integrated factory premises' with the strengthening of walls, increase in the volume/size of plinth beam, etc are only part of Civil structures Factory housing the 'Plant and Machinery' are not the foundation with which such and Machinery' are fixed to earth. The best is an added measure to bear the load 'Plant and Machinery' installed in the Therefore, the additional to be considered as 'any other civil excluded from the explanation of 'Plant Machinery'.

Further, it is seen that the works are 'composite supply of Works Contract' in the supplier raises invoices only for "Works' executed at the milestones as has been the agreement and it has not been that the applicant makes the individual of Steel, Cement and other consumables the invoices are in their names, which is pre-condition for availment of credit.

ITC on Steel, cement and other consumables for factory set up is not available – AAR

The incremental foundations made is not the 'foundation with which the Plant and Machinery are fixed to earth', which is held as eligible along with the 'Plant and Machinery' as per the Explanation under Section 17 of the GST Act.

Therefore, the credit of steel, cement and other consumables even in proportion to the incremental volume of the earth foundation, side walls, beams, etc are not available as credit to the applicant. No ruling is extended on the 'Pre-cast, Reinforcements, supports' said to have been purchased as it is by the applicant and 'Other Capital goods' as the required facts of procurement and documentary substantiation is not made before us.

DA Comments:

There is need to have detailed clarification from CBIC on ITC eligibility related to premises or factory used in furtherance of business and coverage under the definition of 'Plant and Machinery'.

M/S. Coral Manufacturing Works India Private Limited [2022 (4) TMI 1141 - Authority For Advance Ruling, Tamilnadu]

Spot memo issued by Audit department without considering earlier proceedings not sustainable

Issue:

The appellants challenged the jurisdiction of the Sr. Audit Officer in issuing two communications enclosing a memo called as "spot memo" on the ground that there is no jurisdiction for the audit department to issue such a notice and in this regard, places reliance on the decision of the High Court of Bombay in Kiran Gems Private Limited vs UOI [2021 SCC OnLine Bom 98].

Legal Provisions:

Provisions related to issuance of SCN and authority's jurisdiction under GST laws

Observation and Comments:

The Honorable High Court observed and held that:

- From the records placed before us, we find that none of the proceedings initiated by the department has been shown to have been taken to the logical end. If, according to the respondents department, there is an irregularity in the availment of credit, then appropriate proceedings under the Act should be initiated and after due opportunity to the appellants, the matter should be taken to the logical end.

- Thus, it is not clear as to why different wings of the very same department have been issuing notices and summons to the appellants without taking any of the earlier proceedings to the logical end.

- However, we make it clear that the issue whether CERA audit can be conducted against a private entity as contended by the appellants is not gone into as this Court is of the view that it is too premature for the Court to give a ruling on the said issue. This is more so because the authorities have not taken forward the proceedings, which they have initiated earlier from May, 2018.

- For the above reasons, the writ appeal is allowed to the extent indicated. The spot memos enclosed are quashed. The authorised representative of the appellants shall be afforded an opportunity of personal hearing and a decision be taken on merits and in accordance with law.

DA Comments:

Having multiple proceedings without logical end by multiple authorities is and the Honorable High Court rightly aside the Audit's Spot memo.

Ideal Unique Realtors Private Limited & Anr. Versus The Union Of India & Ors. [2022 (4) TMI 1198 - CALCUTTA HIGH COURT]

Refund claimed by SEZ unit of unutilised ITC related to ISD is allowed

Issue:

The brief facts of the case are that the has two manufacturing units in India i.e., Special Economic Zone Unit (SEZ)and other Export Oriented Unit [EOU]. Certain of common services were purchased at the petitioner's Head Office in Mumbai and distributed the proportionate credit as an service distributor within the meaning of Section 2(61) of the CGST Act, 2017 to petitioner SEZ unit. This credit was claimed refund by the petitioner under Section of the IGST Act, 2017. All refund claims rejected by the adjudicating authority and further by JC(A) and accordingly writ filed before the Honorable High Court.

Legal Provisions:

Section 16(3) of IGST Act, 2017.

Observation and Comments:

The Honorable High Court observed and that:

- There is no doubt that the petitioner exporting goods out of the country had a zero-rated supply. There is also no that the petitioner was entitled to avail of tax which was distributed by the petitioner's head office.
- On the supply of common service to the petitioner's Head office, the supplier of common services could not have refund either under 16(3)(b) of the IGST Act, 2017 as such a supply did not a "zero rated supply" within the Section 2(23) of the IGST Act, 2017.
- Therefore, there is no question of the supplier claiming refund under Section 16(3)(a) or (b) of the IGST Act, 2017. The suppliers of these input service also have availed refund under Section 54 (3) the Central Goods and Service Tax Act, 2017 r/w Rule 89 of Central Goods and Service Tax Rules, 2017.
- To avail such refund to the supplier also have filed a declaration to that incident of tax has not been passed on SEZ. The supplier also could not have claimed any exemption as the supply a common service and the invoice was on the petitioner's Head Office at
- The purpose of granting refund on zero supply is to ensure that the exports are competitive in the international market such transactions are not burdened with taxes.
- Therefore, there is no merit in the order passed by the respondent benefit of refund of unutilized input tax credit of zero rated supplies effected by petitioner.
- I am therefore inclined to allow this writ petition together with consequential the petitioner. The Writ petition thus allowed with the above observations. costs.

Refund claimed by SEZ unit of unutilised ITC related to ISD is allowed

DA Comments:

The said judgment relied various judgment Britannia industry case rightly held that refund of accumulated ITC including credit distributed by ISD is allowed.

M/S. ATC Tires Private Limited Versus JCGE and others (2022 (4) TMI 1194 - Madras High Court)

When there is a belated payment of tax declared in the returns filed, interest has to follow

Issue:

The short point that arises for the present Writ Petition is whether the recovery under the proposed notice the order passed by this Court on an occasion will come within the purview of Section 50 of CGST Act, 2017 r/w 142(A)of CGST Rules, 2017 as inserted vide No.60/2018- Central Taxes, dated w.e.f.,30.10.2018.

Legal Provisions:

Section 50 of CGST Act, 2017 read with 142(A) of CGST Rules, 2017

Observation and Comments:

The Honorable High Court observed and that:

- The said proviso to Section 50(1) came force with effect from 1 September 2020 terms of Notification No.63/2020-Tax dated 25 August 2020. The CBIC has also clarified on 26 August 2020 that no recovery of interest shall be made for in the light of the decision taken by the Council in its 39th meeting on delayed payment of GST.
- A reading of the above proviso makes it that it is applicable to the cases where were filed after the due date under 39 of the respective GST enactments. there interest levied is to be paid from electronic cash ledger. This proviso is applicable to the facts of the case as the of the petitioner does not fall under the circumstances specified therein .
- Since tax was paid by the petitioner petitioner is liable to interest during the period default. There was no excuse for paying the tax in time from its electronic cash register. Nothing precluded the petitioner from discharging the tax from its electronic credit.
- If there is a belated payment of tax in the returns filed, interest has to The petitioner has to pay the interest on belated payment of tax and as has been demanded. Even where there is a failure file returns or circumstances specified Sections 73 and 74 of CGST Act, 2017, in interest has to be paid.

DA Comments:

The retrospective amendment in section 50 of CGST Act, 2017 does not provide relief whether tax itself not paid either by electronic cash or credit ledger which the Honorable High Court also held in the said judgment.

M/S. Srinivasa Stampings vs AC and others [2022 (4) TMI 1241 - Madras High Court]

No GST recovery on the royalty paid on account of excavation of sand for brick – Stay from Honorable High Court

Issue:

The petitioner has submitted that as per decision of the Hon'ble Supreme Court rendered in the case of India Cement Ltd. Vs. State of Tamil Nadu Etc., [AIR 1990 SC the royalty is separate and distinct from revenue and it is not related to the land as unit, as such, no taxis to be paid upon the royalty. The petitioner has further that the Hon'ble Supreme Court in Special Leave to Appeal (C) No.37326/2017, arising out of judgment of this Court rendered in case of Udaipur Chamber of Commerce Industry Vs. Union of India has already payment of service tax for grant of mining lease/royalty.

Legal Provisions:

Relevant provisions for applicability of GST royalty

Observation and Comments:

Issue notice. Issue notice of stay returnable on 5.7.2022.

Meanwhile, the respondents are restrained recovery of GST on the royalty paid on of excavation of sand for brick and further proceedings pursuant to the notice dated 15.02.2022 (Annex.5) shall remain stayed.

DA Comments:

The issue is long pending at various Honorable High Courts and being certain companies are still paying GST or paid service tax on the same, there may be situations of refund if judgment comes in favour of tax payers.

Shree Basant Bhandar Int Udyog vs UOI and others [2022 (4) TMI 1197 - Rajasthan High Court]

Interest for delayed refund – Rate as applicable under section 56 of CGST Act, 2017 – Supreme Court

Issue:

The revenue authority filed review petitions against the judgment of Honorable High with regard to payment of interest for refund as per section 56 of the IGST Act, at the rate of not exceeding six percent of the Honorable High Court judgment to interest at the rate of 9%.

Legal Provisions:

Section 56 of CGST Act, 2017

Observation and comments:

The Honorable Supreme Court observed held that:

- The relevant provision has prescribed interest at 6 percent where the case for refund is governed by the principal of Section 56 of the CGST Act. As has clarified by this Court in Modi Industries Ltd.9 and Godavari Sugar Mills Ltd.7 wherever a statute specifies or regulates interest, the interest will be payable in of the provisions of the statute. statute, on the other hand, is silent rate of interest and there is no express payment of interest, any delay in paying compensation or the amounts due, attract award of interest at a reasonable on equitable grounds.
- Since the delay in the instant case was in region of 94 to 290 days and not so inordinate as was the case in Sandvik Ltd.5, the matter has to be seen purely light of the concerned statutory
In terms of the principal part of Section of the CGST Act, the interest would be awarded at the rate of 6 percent. The of interest at 9 per cent would be only if the matter was covered by the to the said Section 56. The High Court in error in awarding interest at the rate exceeding 6 per cent in the instant

DA Comments:

The reasoning for awarding lower rate as applicable under section 56 of CGST Act, 2017 by Honorable Supreme Court after considering key legal precedents, relevant provisions under section 56 of CGST Act, 2017 and number of days delay.

UOI and others vs M/S. Willowood Chemicals Pvt. Ltd. & Anr. And UOI & Ors. Versus M/S. Saraf Natural Stone & Anr. [2022 (4) TMI 980 - SUPREME COURT]

Cancellation of registration basis vague SCN not sustainable – Honorable High Court

Issue:

The appellant filed further writ petitions issuance of vague SCN and order for cancellation of GST registration by authority without considering the earlier issued by Honorable High Court.

Legal Provisions:

Rule 22(1) and sub-rule (2A) of Rule 21A of CGST Rules, 2017

Observation and comments:

The Honorable High Court observed and that:

- In accordance with the order passed by Court as above, it was expected of the respondent no.2 to issue a fresh show-notice containing all the necessary information and material particulars to enable the writ-applicant to meet with same. However, the respondent no.2 proceeded to pass an order cancelling registration. The order cancelling the registration on the face of it is as vague anything.
- Does the aforesaid order with only marks make any sense? We fail to that the respondent no.2 might not even for a second as to what he was We are at pains to observe as to on basis the respondent no.2 could have put his signature on such an order. signs the order it means he is approving contents of the order.
- Mr. Nanavati, the learned counsel for the writ applicant very emphatically submitted that this a fit case, in which respondent no.2 should be proceeded contempt of court. He pressed very hard issue of notice to the respondent no.2 contempt. Mr. Nanavati is fully justified making such a submission. However, we not issuing any notice for contempt with a warning to the respondent henceforth if this court comes across such vague order or show-cause notice signed by him, then that will be his last in the office.
- There is nothing which we can say further in this matter. The order dated 29.03.2022 cancelling the registration of writ-applicant is hereby quashed and set aside. The so-called order dated 05.04.2022,Annexure-P/4, Page-18 is hereby quashed and set aside.
- With the aforesaid, the GST registration the writ-applicant stands restored

Cancellation of registration basis vague SCN not sustainable – Honorable High Court

DA Comments:

CBIC need to look into matter instead of harassments and litigations so that officers comply with guidelines strictly and does not their jurisdictional power.

Vahanvati Steels Vs State Of Gujarat [2022 (4) Tmi 1242 - Gujarat High Court]

Correct submission of return(s) under GST

All the taxpayers who have not furnished details of ineligible ITC or have furnished the details ineligible ITC partially or have not reported the reversal of ITC fully or partially in the returns the F.Y 2021-22 shall report it in the annual return to be filed in GSTR-9 whereas for the F.Y onwards, the details of ineligible ITC or partial details of ineligible ITC or reversal of ITC which been reported fully or partially shall be reported in the subsequent GSTR-3B to be filed by effect in that return.

Therefore, the taxpayers must ensure that they follow the guidelines of the circular precisely subsequent periodic returns in GSTR-3B correctly.

GST Circular No. 1/2022, dated 5 April 2022

Guidelines for conduct of personal hearing in virtual mode-Rajasthan

Commercial Taxes Rajasthan issued guidelines to all appellate authority and all additional commissioners for conduct of personal hearing in virtual Mode to facilitate all stake holders such as Suppliers/Taxpayers under GST/VAT, Importers, Exporters, Advocates, Tax Practitioners and Authorized Representatives.

No. F. 5 Misc./Appeals/Legal/CCT/15-16/2370, dated 18 April 2022

Functioning of Central Registration Unit for GST-Rajasthan

The jurisdiction in respect to column no. 4 against serial number 2 shall be as per the notification numbers F.3(A)(10) Juris/Tax/CCT/2021/715 dated 17.10.2021 and F.3(A)(10) Juris/Tax/CCT/2021/713 dated 17.10.2021, as amended from time to time:

S.No	Designation of the officer	Section of the Act	Jurisdiction
1	Assistant Commissioner of State Tax of Central Registration Unit, Headquarters. Jaipur	25, 26, 27	The whole of the State of Rajasthan
2	Joint Commissioner/Deputy Commissioner/Assistant Commissioner of State Tax of Circle/Ward concerned	28, 29, 30	Territorial Jurisdiction of relevant Circle/Ward to the pecuniary limit as the order no. F.17(150) ACCT/CiST/2018/3995 dated 16.11.2018.

Order No. 17(131-Pt. II) ACCT/GST/2017/7740, dated 7 April 2022

GSTN Portal Changes

GSTR-1/IFF enhancements deployed on GST Portal

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

a. Removal of 'Submit' button before filing:

The present two-step filing of GSTR-1/IFF involving 'Submit' and 'File' buttons will be simpler single-step filing process. The upcoming 'File Statement' button will replace the filing process and will provide taxpayers with the flexibility to add or modify records till the completed by pressing the 'File Statement' button.

b. Consolidated Summary:

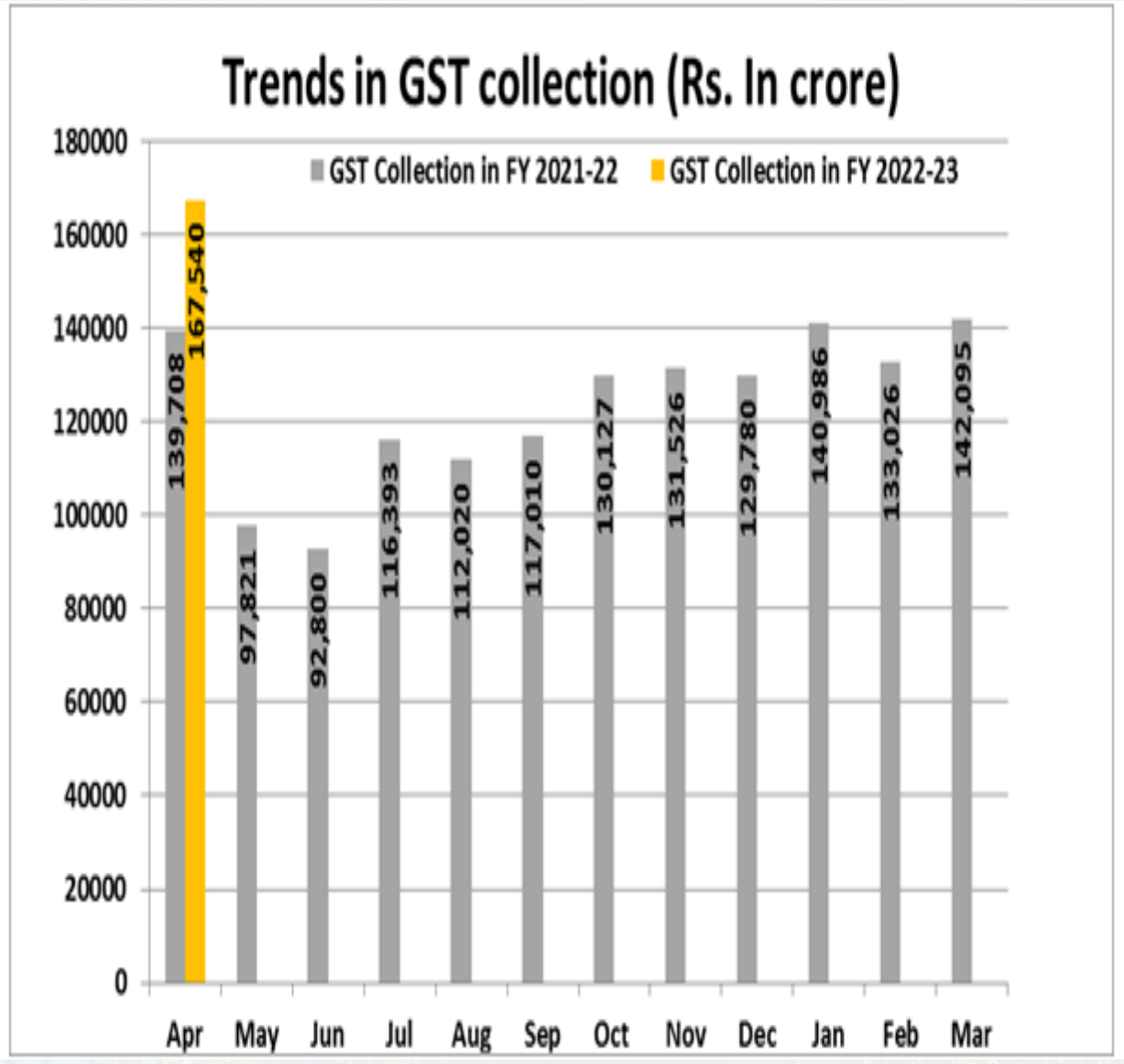
Taxpayers will now be shown a table-wise consolidated summary before actual filing of This consolidated summary will have a detailed & table-wise summary of the records added taxpayers. This will provide a complete overview of the records added in GSTR-1/IFF before filing.

c. Recipient wise summary:

The consolidated summary page will also provide recipient-wise summary, containing the the supplies & the total tax involved in such supplies for each recipient. The recipient-wise will be made available with respect to the following tables of GSTR-1/IFF, which have recipients:

i. Table 4A: B2B supplies
ii. Table 4B: Supplies attracting reverse charge
iii. Table 6B: SEZ supplies
iv. Table 6C: Deemed exports
v. Table 9B: Credit/Debit notes

GST Revenue Collection in April 2022- Rs. 1,67,540 Cr.



Source: PIB

- Conversion of free shipping bill to AA shipping bill
- Refund of Customs Duty - Principles of unjust enrichment not satisfied due to artificial accounting juggleries
- Customs Valuation – Only provision in the books of account for royalty does not make inclusion under transaction value, till it is not paid
- When SCN and OIO contain errors that are impossible to repair or rectify, not sustainable
- Extension of Integrated Good and Service Tax (IGST) and Compensation cess exemption under Advance Authorisation, EPCG and EOU scheme

Conversion of free shipping bill to AA shipping bill - since no response from the Department, the permission deemed to have been received by the appellant

Issue:

These appeals are directed against the passed by the Commissioner of Customs whereby the request of the appellant for endorsing advance authorisation numbers the free shipping bills and for issue of NOC considering the free shipping bills as bills under Advance Authorisation (AA) which actually tantamount to conversion of shipping bills into advance licence was The learned Commissioner rejected the on the ground that

- Firstly, the appellant have exported the from Karwar Port which is not which a prior permission ought to have taken and
- Secondly, on the shipping bills, advance authorisation number was not declared.

Being aggrieved by the Orders-in-Original, appellant filed present appeals.

Legal Provision:

Section 149 of Customs Act, 1962

Observation and comments:

The Honorable CESTAT observed and held that:

- We find that as regards the first issue, appellant have been writing various the Department for permission of from Karwar Port against the subject authorisation.

- It is clear that the appellant have been requesting the Department for export from Karwar Port under advance authorisation. The Department has not any response to various made by the appellant. Therefore, in our considered view, since no response from Department, the permission deemed to been received by the appellant. there is no objection exist for export of from Karwar Port.

- As regards the endorsement regarding advance authorisation, the appellant is eligible for the same in terms of Section of Customs Act, 1962. From the plain reading of the above Section 149, it is that even though, it is discretionary but certain conditions, the document can be amended even after the goods have exported on the basis of documentary evidence which was existence at the goods were cleared for export.

Conversion of free shipping bill to AA shipping bill - since no response from the Department, the permission deemed to have been received by the appellant

- On this basis, the appellants are clearly entitled for amendment in the shipping bills by conversion of free shipping bills to shipping bills under advance authorisation. The judgments relied upon by the appellant directly support their case.

- Accordingly, both the impugned orders are set aside and appeals are allowed with consequential relief, if any, in accordance with law.

DA Comments:

The Honorable Tribunal rightly held that since no response from the Department, the permission deemed to have been received by the appellant and the same should be brought into all relevant provisions to avoid delay and trouble to assessee.

Bharath Timber And Construction Company vs CC -CUS [2022 (4) TMI 479 - CESTAT BANGALORE]

Refund of Customs Duty - Principles of unjust enrichment not satisfied due to artificial accounting juggleries

Issue:

The appellant paid customs duty on the the provisional assessment and filed refund claim for 24 bills of entries. The authority sanctioned the refund claim all 24 bills of entries but the said amount ordered to be credited to Consumer Fund on the ground on unjust enrichment. Aggrieved by the said order, the appellant appeals before the Commissioner Commissioner (Appeals) set aside both the orders and remanded the case back to the original adjudicating authority for passing order on the basis of terms set out in the After reassessment based on remand, the adjudicating authority again passed order transfer the amount to consumer welfare against which the appeal filed before which given relief for 4 BoE by passing that provision of unjust enrichment is not applicable for cases prior to 13 July 2006 on the decision of Hon'ble High Court of Gujarat in the case of Hindalco Industries 2008 (231) ELT 36 (Guj.) as well as the of Larger Bench of Tribunal in the case of Hindustan Zinc Limited 2009 (235) ELT 629 (Tri. LB). Aggrieved by this part of the Revenue is in appeal. Further, the assessee filed the appeal in respect of the other 20 of entry on the grounds that

a) the refund has been claimed for duty goods, that have not arrived in India.

b) The copies of the invoices submitted by appellant clearly show that the excess duty by the appellant have not been passed on customers.

c) The substantial condition for getting the refund has been fulfilled by the appellant. Merely making a 'provision' in the balance does not imply that the burden of duty has passed on to some other person.

Legal Provision:

Section 18 of Customs Act, 1962

Observation and comments:

The Honorable CESTAT observed and held that:

- It is seen that the order of (Appeals) has decided certain issues have not been challenged by either of sides. Both the sides have accepted the order consequently limited the scope of arguments that they can make in proceedings.

Refund of Customs Duty - Principles of unjust enrichment not satisfied due to artificial accounting juggleries

- Having accepted the order of the Commissioner(Appeals) it is not open to the Revenue to now raise the issue relating to non-applicability of the decision of Hon'ble High Court of Gujarat in the case of Hindalco Industries Ltd. (supra) and the decision of Larger Bench of Tribunal in the case of Hindustan Ltd (Supra). In the aforesaid background, we find that the sole ground raised by the Revenue in its appeal relying on the decision of Hon'ble High Court of Bombay in the case of M/s Bussa Overseas and Properties Ltd. approved by the Hon'ble Apex Court cannot been accepted, and therefore, the Revenue's appeal is dismissed.
- The ledgers on the one hand recognizes the disputed amount of customs duty as receivables (an asset) and simultaneously, creates a provision (a liability) for the same amount. These are obviously artificial accounting juggleries as the net combined effect of these two ledger entries in the profit and loss account is that the customs duty gets reflected in the profit and loss as expenditure.
- As soon as a particular amount is charged to expenditure, it is deemed to have been recovered in the shape of the price of the goods. In the instant case, by creating an entry for receivables and thereafter, creating an entry for provision in the ledgers, the appellant has nullified these entries. Consequently, the entire amount of duty paid is passed on as an expenditure to the profit and loss account. Thus the appellant has failed to discharge the burden of unjust enrichment.
- In these facts and circumstances, we find ourselves in total agreement with the order of the Commissioner (Appeals). Both revenue & assessee appeals are dismissed.

DA Comments:

To substantiate 'unjust enrichment', there is need to consider the final recovery from the customer in addition to books of account which the Honorable Tribunal has not considered in the said order.

C.C. Ahmedabad vs Shell Energy India Private Limited [2022 (4) TMI 1213 - CESTAT AHMEDABAD]

Customs Valuation – Only provision in the books of account for royalty does not make inclusion under transaction value, till it is not paid

Issue:

The SVB order issued by the SVB Cell by DC(Customs) wherein he observed that royalty shown in the balance sheet was net taxes and not includible in the declared and accordingly filed appeal before the Commissioner (Appeals) which set aside original order and directed the authority to reconsider the matter on issues and further ordered to collect EDD of the value of goods. Against such order, appellant filed appeal before the Tribunal. Tribunal while remanding the matter to the adjudicating authority directed that the issue to be examined by the adjudicating authority is with reference to the payment royalty and no other payments made to foreign suppliers can be considered in the readjudication. The Tribunal also ordered the EDD should be 1% and not 5% as by the Commissioner (Appeals).

Subsequently, the DC Customs (SVB) Denovo order and held that the royalty shown to have been paid should be added invoice value. The appeal filed before the Commissioner (Appeals) was rejected the order passed by the adjudicating Aggrieved by such order, the appellant is before the Tribunal.

Observation and Comments:

The Honorable Tribunal observed and held that:

- From the facts narrated above, it is seen there is no agreement between the or the foreign supplier. It is then difficult understand whether the royalty is a condition for sale of the imported the present case, the appellant contends they have made provision for royalty have not actually paid any amount and the amount was reversed in the year 15.

- In such circumstances, we deem it fit matter requires to be remanded to the adjudicating authority who shall look the aspect whether the appellant has royalty to the foreign supplier or not. In the appellant has not paid such amount, there is no question of including the the transaction value.

- In the result, the impugned order is set to this effect and the matter is the adjudicating authority who shall reconsider the issue as per the above directions. The appeal is disposed of in above terms.

Legal Provisions:

Customs Valuation Rules, 2007

Customs Valuation – Only provision in the books of account for royalty does not make inclusion under transaction value, till it is not paid

DA Comments:

It is rightly held by the Honorable Tribunal that mere provision in the books of account does not lead amount to be included in the transaction value, till it is paid.

M/S. Doosan Bobcat India Pvt. Ltd. Vs CC [2022 (4) TMI 1006 - CESTAT Chennai]

When SCN and OIO contain errors that are impossible to repair or rectify, not sustainable

Issue:

The appellant (revenue authority) is order passed by Honorable CESTAT and proposed the following substantial law:

"Whether the CESTAT is right in law in aside demand of ₹ 1,00,47,253/- together interest thereon and penalty of ₹ imposed u/s 112 of the Customs Act, 1962 holding that the Show Cause Notice and in-Original contain errors that are repair or rectify?"

Legal Provisions:

Section 112 of Customs Act, 1962

Observation and Comments:

The Honorable High Court observed and that:

- In our view, having considered the show cause notice, same is not sustainable. appellant is alleging that respondent availed of MODVAT credit or inputs or material, the onus is on appellant to that respondent had availed of credit on inputs produced from local
- In our view, appellant has failed to substantiate these allegations against respondent. Even show cause notice bereft of any particulars.
- Annexure is totally blank. It does not indicate what was bill of entry number of entry date or quantity or value etc.
- In the circumstances, since no details been provided even in the show cause to direct respondent to appear and such show cause notice would be only to their agony. In our view it would not even possible to answer the show cause notice without any particulars therein.
- In the circumstances, in our view, the Tribunal has not committed any applied incorrect principles to the given and when the facts and circumstances properly analysed and correct test is to decide the issue at hand, then, we do think that question as pressed raises any substantial question of law.
- The appeal is devoid of merits and it is dismissed with no order as to costs.

DA Comments:

The Honorable High Court reiterated the views of CESTAT which rightly held that since no details have been provided even in the show cause notice to direct respondent to appear and answer such show cause notice would be only adding to their agony.

CC vs Navbharat Enterprises Ltd. [2022 (4) TMI 1218 - Bombay High Court]

Extension of Integrated Good and Service Tax (IGST) and Compensation cess exemption under Advance Authorisation, EPCG and EOU scheme

a. Exemption from Integrated Tax and compensation Cess under Advance Authorization under Para 4.14 of FTP 2015 - 20 is extended up to 30.06.2022.

b. Exemption from Integrated Tax and Compensation Cess under EPCG scheme under Para 5.01 (a) of FTP 2015-20 is extended up to 30.06.2022.

c. Exemption from Integrated Tax and Compensation Cess under EOU scheme under Para 6.01(d)(ii) of FTP 2015-20 is extended up to 30.06.2022.

Notification No. 66/2015-20, dated 1 April, 2022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Goods and Services Tax

- GST Council for hiking rates of 143 items, asks states for views
- Rs 79,000 crore of GST dues to states pending for FY22
- Maharashtra to lose Rs 30,000 cr if GST compensation not extended
- GST Council may do away with 5% rate; move items to 3% and 8% slabs
- Fruit-based fizzy drinks to draw 40% rate under GST after Gujarat ruling

Customs and other

- Duty free import of raw cotton to push exports of value-added textiles
- IPL promotions: Anil Kumble exempt from service tax
- 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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