

# DA TAX ALERT INDIRECT TAX

AN E-TAX ALERT FROM  
**Darda Advisors LLP**

June 2022  
Issue: 25

**GST COMPLIANCE  
CALENDER**

**GOODS AND  
SERVICE TAX**

**CUSTOMS AND  
OTHER**

**DA NEWS**

# PREFACE

We are pleased to present to you the twenty-fifth 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 May 2022.

During the month of May 2022, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as Ocean freight not liable to GST, mandatory deduction of one-third value of land is ultra vires, and secondment of employees from overseas group entities is liable to service tax.

In the twenty-fifth 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 May 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 May 2022

Indirect Tax Fortnightly Update for the month of May 2022

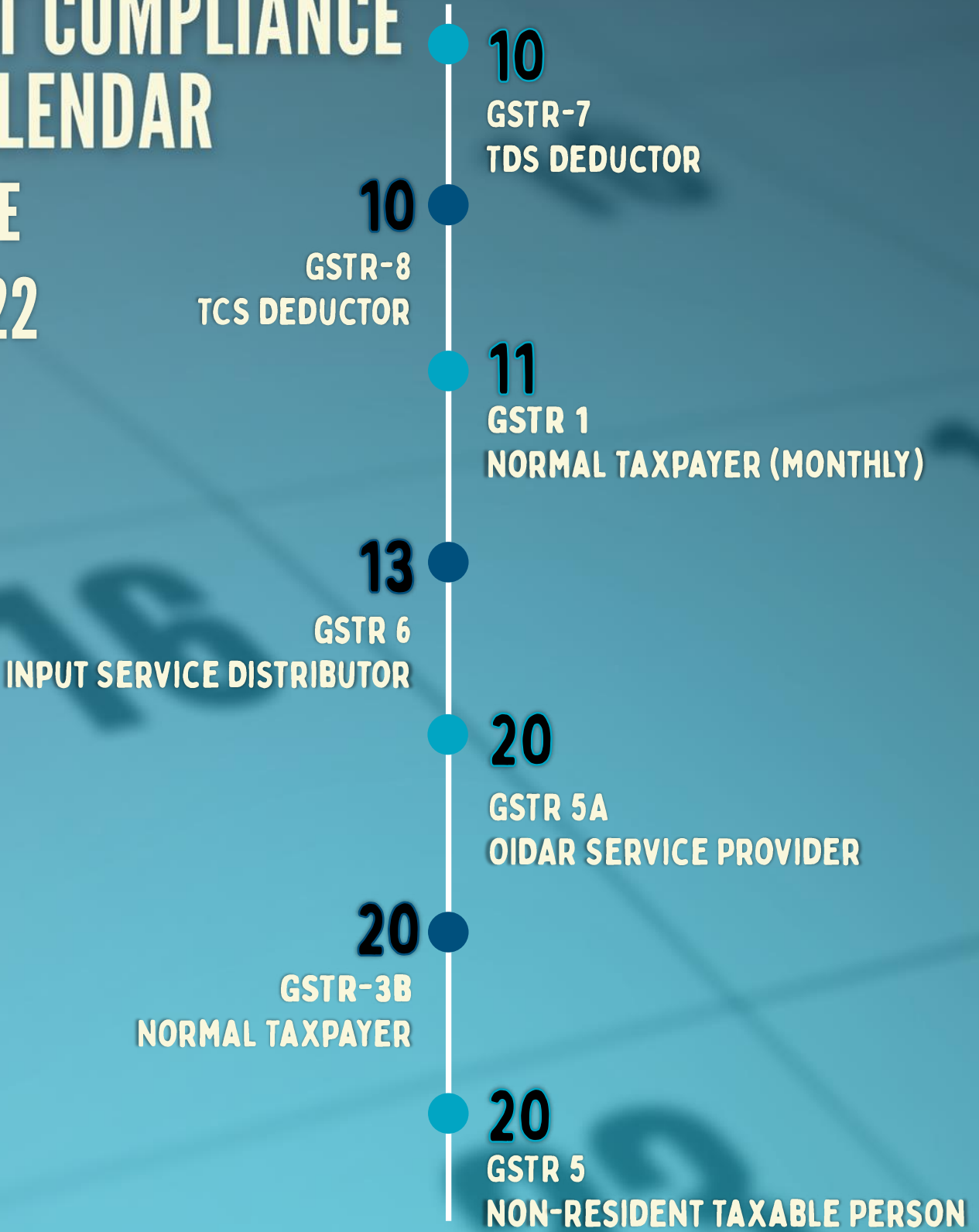
<https://dardaadvisors.com/wp-content/uploads/2022/05/DA-Indirect-Tax-Fortnightly-Update-May-2022.pdf>

Ocean Freight in CIF transaction not liable to GST being a 'Composite Supply'– A Big relief from Honorable Supreme Court

<https://dardaadvisors.com/tax-articles/ocean-freight-in-cif-transaction-not-liable-to-gst-being-a-composite-supply-a-big-relief-from-honorable-supreme-court/>

# GST COMPLIANCE CALENDAR

**JUNE  
2022**





# Ocean Freight in CIF transaction not liable to GST being a ‘Composite Supply’– A Big relief from Honorable Supreme Court

## Issue:

The bone of contention is whether an Indian importer can be subject to the levy of IGST on the component of ocean freight paid by the foreign seller to a foreign shipping line, on a reverse charge mechanism (‘RCM’) basis under GST regime.

The Division Bench of the Gujarat High Court held that the impugned notifications are unconstitutional for exceeding the powers conferred by the IGST Act and the CGST Act. The Union of India (UOI) is in appeal against a judgment of a Division Bench of the Gujarat High Court which allowed a petition instituted by the respondents under Article 226 for challenging the constitutionality of two notifications of the Central Government.

## Legal Provisions:

Entry 9(ii) of Notification 8/2017 dated 28 June 2017 and Notification 10/2017 dated 28 June 2017 read with section 8 of CGST Act, 2017

## Observation and Comments:

The Honorable Supreme Court observed and held that:

- The recommendations of the GST Council are not binding on the Union and States.
- On a conjoint reading of Sections 2(11) and 13(9) of the IGST Act, read with Section 2(93) of the CGST Act, the import of goods by a CIF contract constitutes an “inter-state” supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service
- The IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient – in this case the importer – by Notification 10/2017 is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge;
- Section 5(4) of the IGST Act enables the Central Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction on the delegated legislation. The impugned levy imposed on the

# Ocean Freight in CIF transaction not liable to GST being a ‘Composite Supply’– A Big relief from Honorable Supreme Court

‘service’ aspect of the transaction is in violation of the principle of ‘composite supply’ enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the ‘composite supply’, comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the ‘supply of services’ by the shipping line would be in violation of Section 8 of the CGST Act.

The same can be read in detail on below link:

<https://dardaadvisors.com/tax-articles/ocean-freight-in-cif-transaction-not-liable-to-gst-being-a-composite-supply-a-big-relief-from-honorable-supreme-court/>

## DA Comments:

The Honorable Supreme Court rightly said that if such artificial division is allowed, then the Government will be able to tax not just ocean freight, but also insurance services and such levy on contracts on a CIF basis will lead to hardships for the Indian recipients

[UOI and others vs M/s Mohit Minerals Private Limited \[Civil Appeal No. 1390 of 2022\] \[2022 \(5\) TMI 968 - SUPREME COURT\]](#)

# Mandatory deduction of one third (1/3) land value is ultra-vires: Honorable High Court

## Issue:

The writ applicant challenged impugned entry no. 3(if) of the Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017 read with para 2 of the said notification which deduct 1/3rd of the value towards the land in accordance with the impugned paragraph 2 of the said notification to determine the consideration without considering actual value of land. Thus, it appears that, because of the impugned notification, the entire consideration towards the sale of land has not been excluded for the purpose of computing tax liability under the GST Acts and 1/3rd of the total consideration has been deemed to be land value as per paragraph 2 of the impugned notification.

## Legal Provisions:

Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017

## Observation and Comments:

The Honorable High Court observed and held that:

- If that be so and if specific value of land and value of construction service is available, then can the notification provide for a fixed deduction towards land? The answer has to be in the negative.

When the statutory provision requires valuation in accordance with the actual price paid and payable for the service and where such actual price is available, then tax has to be imposed on such actual value. Deeming fiction can be applied only where actual value is not ascertainable.

- Such proposition is squarely supported by the judgement of the Supreme Court in the 2nd Gannon Dunkerley's case. At that point of time only the goods element of the construction contract was taxable and therefore deduction was required to be given for labour element. In this context it was held and observed that if actual labour value was available then the same was to be deducted and if in case actual value was not ascertainable then deeming fiction could be applied which was required to be approximate to the actual value.
- We are also supported by the judgement of the Supreme Court in the case of Wipro Ltd. (supra) wherein, in the context of valuation under the Customs Act, 1961 it was held that where actual amount of loading/ unloading



# Mandatory deduction of one third (1/3) land value is ultra-vires: Honorable High Court

charges is available, it was not permissible for the rule making authority to prescribe a flat rate of 1% addition to value. 100 Thus, mandatory application of deeming fiction of 1/3rd of total agreement value towards land even though the actual value of land is ascertainable is clearly contrary to the provisions and scheme of the CGST Act and therefore ultra-vires the statutory provisions.

- In fact if the 14th GST Council meeting minutes which led to the insertion of the impugned Notification is perused, it becomes clear that the deduction was contemplated only in the context of flats wherein it was difficult to ascertain the value of the undivided share of land. However when it came to actual issuance of Notification, a standard rate of deduction came to be provided irrespective of the nature of the transaction or whether it is a case involving transfer of land itself or undivided share in land.
- Such deeming fiction which leads to arbitrary and discriminatory consequences could be clearly said to be violative of Article 14 of the Constitution of India which guarantees equality to all and also frowns upon arbitrariness in law.
- It is the case of the Respondents that the impugned notification providing for a deeming fiction is issued in exercise of powers under Section 15(5) of the CGST Act. At the outset it is required to be noted that the term “prescribed” is defined under Section 2(87) of the CGST Act.
- Thus, the prescription under Section 15(5) of the CGST Act has to be by rules and not by notification. Be that as it may, wherever a delegated legislation is challenged as being ultra-vires the provisions of the CGST Act as well as violating Article 14 of the Constitution of India, the same cannot be defended merely on the ground that the Government had competence to issue such delegated piece of legislation. Even if it is presumed that the Government had the competence to fix a deemed value for supplies, if the deeming fiction is found to be arbitrary and contrary to the scheme of the statute, then it can be definitely held to be ultra-vires.
- When such detailed statutory mechanism for determination of value is available then the impugned deeming fiction cannot be justified on the basis that it is meant to curb avoidance of tax when in fact such fiction is leading to arbitrary consequences.

# Mandatory deduction of one third (1/3) land value is ultra-vires: Honorable High Court

- In the result, the impugned Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28.6.2017 and identical notification under the Gujarat Goods and Services Tax Act, 2017, which provide for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land is ultra-vires the provisions as well as the scheme of the GST Acts. Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India

## DA Comments:

The detailed reasoning of the judgment by the Honorable High Court could lead to challenging any similar notifications which are contrary to GST law and its provisions

[Munjaal Manishbhai Bhatt Vs Union of India \(Special Civil Application No.1350 of 2021 - Gujarat High Court\) \[2022 \(5\) TMI 397 - GUJARAT HIGH COURT\]](#)

# No exemption from GST on GTA services on mere non-issuance of consignment note – AAAR

## Issue:

The appellant sought advance ruling as to whether transportation by own vehicles on the basis of Invoice(s) and E-way Bill without issuing the LR/GR by the appellant transporter will be covered under exempted supply/non-GST supply. The AAR held that the appellant is a registered GTA Service provider under GST and is not exempted from paying GST. Against the said ruling, the applicant filed appeal to AAAR against the said ruling.

## Legal Provisions:

Notification No. 12/2018-Central Tax, dated 07 March 2018

## Observation and comments:

The AAAR observed and held that:

In this process of transportation, two types of services either by way of activity described as goods transport agency services or by way of rental services of transport vehicles can be provided. In the instant case of the appellant, if the lien of the goods is transferred and the appellant becomes responsible for the goods till its safe delivery to the consignee, the services will be classifiable as goods transport

agency services and issuance of consignment note or its non-issuance does not make any difference so far as the nature of the activity carried out by them is concerned.

Mere non-issuance of the consignment note in such cases does not make them entitled for exemption from payment of GST. However, if the vehicles are provided to the client on rental for use as per their requirement, the services will be classifiable as ‘rental services of transport vehicles’.

In any case, mere nonrequirement of mentioning of any detail in E-way Bill does not affect liability of payment of GST on any service unless the service has been exempted through an exemption Notification issued by the Government . Hence, we find that the contentions of the appellant concerning format of e-way bill are not relevant to the instant issue.

In view of the above discussion, we find that the services to be provided by the appellant will be liable to payment of GST as specified under Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017 (as amended) read with exemption Notifications, under the services relating to transportation of

# No exemption from GST on GTA services on mere non-issuance of consignment note – AAAR

goods or rental services of transport vehicle including supporting service, depending upon the exact nature of activity to be carried out by them.

## DA Comments:

When notification is conditional for taxability, the same cannot be read partially to determine its applicability. It may be finally settled by Honorable Courts based on appeal filed by the applicant against the said AAAR.

# ITC cannot be denied on genuine transactions with suppliers whose registration cancelled retrospectively after transaction

## Issue:

The writ petitions have been filed being aggrieved by the action of the GST authority by denying the benefit of Input Tax Credit (ITC) on purchase of the goods in question from the suppliers and asking to pay the penalty and interest under the relevant provisions of GST Act, on the ground that the registration of the suppliers in question has already been cancelled with retrospective effect covering the transaction period in question.

## Legal Provisions:

Section 16 of CGST Act, 2017

## Observation and comments:

The Honorable High Court observed and held that:

- The Petitioners in support of their contention have relied on unreported judgment of this Court dated 13th December, 2021 in a similar case in the case of M/s. LGW Industries Limited & Ors. Vs. Union of India & Ors. In W.P.A No.23512 of 2019.
- Considering the submission of the parties and on perusal of records available, these writ petitions are disposed of by setting aside the aforesaid impugned orders and remanding these cases of the petitioners to the respondents officer concerned to consider afresh on the issue of their entitlement of benefit of input tax credit in question by considering the documents which the petitioners intend to rely in support of their claim of genuineness of the transactions in question and the respondent concerned shall also consider as to whether payments on purchase in question along with GST were actually paid or not to the suppliers (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also to consider as to compliance of statutory obligation by the petitioners in verification of identity of the suppliers (RTP).
- Considering the facts as recorded, without any further verification it cannot be said that there was any failure on the part of the petitioners in compliance of any obligation required under the statute before entering into the transactions in question and that there was no verification of the genuineness of the suppliers in question by the petitioner during the relevant period.

# ITC cannot be denied on genuine transactions with suppliers whose registration cancelled retrospectively after transaction

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

## DA Comments:

There is need of detailed clarification from CBIC on scenarios various ITC can be denied to avoid undue hardship to genuine tax payers

*Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax (Calcutta High Court) [2022 (5) TMI 786 - CALCUTTA HIGH COURT]*

# GST refund cannot be denied as paid through common ITC – Honorable High Court

## Issue:

The contractors preferred a representation with the Railways for granting reimbursement of the additional tax liability under the GST Act in respect of the contracts which were entered into prior to the GST regime. This was particularly because the GST Act has conferred a right to the suppliers of goods or services to collect tax from the recipients by way of issuance of tax invoice. The railways partially denied the refund by stating the reason that GST paid through common ITC is not eligible for refund. Against the said issue, the contractor filed writ petition before the Honorable High Court.

## Legal Provisions:

Section 49 of CGST Act, 2017 and Joint Procedure Order of Indian Railways

## Observation and Comments:

The Honorable High Court observed and held that:

- The parties to the agreement have clearly agreed to the GST neutralization in respect of such contract. Moreover, the writ-applicants have produced a certificate of the Chartered Accountant certifying that no GST-paid inputs have been used in the execution of the

contract and, therefore, there was no input tax credit pertaining to this contract. Such facts are not in dispute. If that be so, then the writ-applicants are entitled to refund in terms of the order for the GST neutralization issued by the Ministry of Railways read with the JPO and the supplementary agreement. In fact, it appears that this was also determined by the respondents themselves by generating a pay order in favour of the writ-applicants.

- It is unfortunate to note that the respondents have not been able to understand the basic scheme of the GST Act. The input tax credit is admissible under Section 16(1) of the GST Act of the tax paid on goods and services used in the course of the business. The input tax credit claimed by a taxable person gets credited into his electronic credit ledger. Such amount is the actual tax that such taxable person has paid to his supplier, which is further paid to the Government treasury. Thereafter, while making the payment of the output tax, Section 49 of the GST Act entitles a taxable person to utilize the balance available in the electronic credit ledger. Thus, the tax which was already paid by a taxable person is effectively allowed to be set off against the output tax liability

# GST refund cannot be denied as paid through common ITC – Honorable High Court

- Therefore, the tax payment through the electronic credit ledger is a legally recognized mode of payment under the GST Act. In fact, it is settled legal position that the input tax credit is ‘as good as tax paid’ by the assessee.
- Thus, the payment of tax by utilization of the tax credit is a valid mode of payment. The denial to release refund/reimbursement on the ground that only part amount has been paid by the writ-applicants through the electronic cash ledger is not legally tenable. The entire amount of the output tax paid under the GST Act in relation to the contract in respect of which the supplementary agreement has been entered into with the writ applicants needs to be forthwith released irrespective of the fact, whether such amount has been paid through electronic cash ledger or through electronic credit ledger.
- However, insofar as the utilization of the input tax credit from the electronic credit ledger is concerned, the same is only a mode of payment of the output tax. For the purpose of payment of tax, the electronic credit ledger is a homogeneous pool of credit which cannot be vivisected. It appears that the respondents have not been able to

understand this distinction between the availment and the utilization of the input tax credit which has led to the present controversy. The non-payment of refund to the writ-applicants is contrary to the order of the Ministry of Railways read with the JPO and the supplementary agreement and the same ought to be forthwith released.

## DA Comments:

The judgment is on private contract terms between contract or and Indian railways, however, the Honorable High Court has rightly held that electronic credit ledger is a homogeneous pool of credit which cannot be vivisected and thus no one to one correlation is required for utilization of ITC



# Refund claim cannot be rejected merely on ground of manual filing

## Issue:

The writ petition is filed against the rejection order of adjudicating authority for its manual refund claim of amount in electronic cash ledger (ECL) which wrongly paid on export of services transaction and reflecting in ECL as per provision of section 54 of CGST Act, 2017.

## Legal Provisions:

Section 54 of CGST Act, 2017 read with Rule 97A of CGST Rules, 2017

## Observation and comments:

The Honorable High Court observed and held that:

- In the writ application, the writ applicant has raised various grounds wherein it is categorically stated that the respondent authority has straight way rejected application on technical ground and has failed to assigned reasons. At the outset, we notice that the impugned order is a non-speaking order. Further, the respondent authority without giving any opportunity of hearing has straight way passed the impugned order on highly technical ground. We find that the respondent authority acted de hors the basic principles of natural justice. Hence, on the sole ground of violation

of principles of natural justice, the writ petition is required to be allowed.

- However, it seems that the respondent No.4 has no idea about Rule 97A of the Rules which starts with the non-obstante clause. Rule 97A clarifies that notwithstanding anything contained in Chapter x of the Rules any reference to electronic filing of an application would include manual filing of the said application. The Bombay High Court in the case of Laxmi Organic Industries Ltd. (Supra) has explained the true purport of Rule 97A of the Rules referred to above
- We further direct the Deputy State Tax Commissioner, Circle-2, Ahmedabad to treat the manual application dated 01 September 2020 as an application for refund. The respondents are further directed to permit the writ applicant to furnish it's stance to any objections, before the same is relied upon by the respondent authority, by providing sufficient opportunity to produce supporting documents and also to provide opportunity of hearing to the writ applicant. If any such documents are relied upon, it is expected of respondent to deal with such submissions and passed reasoned order.

# Refund claim cannot be rejected merely on ground of manual filing

## DA Comments:

There are number of transition credit claims which were manually filed are still pending to process and the said judgment could further strengthen such issues

# Refund cannot be denied merely on mistakes in GST returns filing – Honorable High Court

## Issue:

The petitioner filed writ against the rejection of refund order by the adjudicating authority due to a mistake was committed in GSTR-3B under Rule 61(5) of the CGST Rules, 2017 by giving the details of the export as outward taxable supply (other than zero rated, nil rated and exempted).

## Legal Provisions:

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

## Observation and comments:

The Honorable High Court observed and held that:

- The export incentives have been given to encourage exports, so that there is inward remittance of foreign currency. The procedure prescribed under the aforesaid Rules is not intended to defeat such legitimate export incentives, if indeed on facts there is export on payment of integrated tax under the provisions of IGST Act, 2017 r/w CGST Act, 2017.
- In my view, the procedures under Rule 96 of CGST Rules, 2017 cannot be

applied strictly to deny legitimate export incentives that are available to an exporters. In this connection, a reference was made to the decision of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax, U.P. Vs. Auriya Chamber of Commerce, Allahabad reported in 1986(25) E.L.T.867 (S.C), wherein the Hon'ble Supreme Court held that procedures are nothing but handmaids of justice and not mistress of law. In my view, the procedures prescribed under the aforesaid Rules should not be applied strictly so as to defeat the legitimate export incentives, which an exporter otherwise would have been entitled to but for the technicality involved in the system.

- Under these circumstances, I am inclined to dispose of this writ petition by directing the respondent to get the data directly from the petitioner and from their counterparts in the customs department. If indeed there was an export and a valid debit of tax by the petitioner on the exports made to foreign buyers, the refund shall be granted. The petitioner is also directed to furnish the details to the respondent within a period of 30 days from the date of receipt of a copy of this order. On receipt of the same, the respondent shall consider, verify the same from the counterparts from the customs department and proceed to sanction

# Refund cannot be denied merely on mistakes in GST returns filing – Honorable High Court

the refund claim, if the petitioner otherwise is entitled to such refund. It is made clear that procedural infraction shall not come in the legitimate way of grant of refund under the IGST Act, 2017 r/w CGST Act, 2017 and the Rules made thereunder

## DA Comments:

The Honorable High Court rightly held that procedural aspects cannot impact the refund eligibility and data can be directly taken by the tax payer itself in case there is mistake occurred on GSTN portal during filing of the returns

*[Abi Technologies Vs Assistant Commissioner of Customs \(Madras High Court\) \[2022 \(5\) TMI 1136 - MADRAS HIGH COURT\]](#)*

# Computation of Annual Aggregate Turnover for FY 2021-22

The functionality of AATO for the FY 2021-22 made live on taxpayers' dashboards with the following features:

- a. The taxpayers can view the exact Annual Aggregate Turnover (AATO) for the previous Financial Year (FY).
- b. The taxpayers can also view the Aggregate Turnover of the current FY based on the returns filed till date.
- c. The taxpayers have also been provided with the facility of turnover updation in case taxpayers feel that the system calculated turnover displayed on their dashboard varies from the turnover as per their records.
- d. This facility of turnover update shall be provided to all the GSTINs registered on a common PAN. All the changes by any of the GSTINs in their turnover shall be summed up for computation of Annual Aggregate Turnover for each of the GSTINs.
- e. The taxpayer can amend the turnover twice within the month of May, 2022. Thereafter, the figures will be sent for review of the Jurisdictional Tax Officer who can amend the values furnished by the taxpayer wherever required

[Press Release No. 537, dated 02 May 2022](#)

## Extension of due date of filing Form GSTR 3B for the month of April 2022

- CBIC Extends due date of filing FORM GSTR3B for the month of April 2022 till the 24 May 2022

[Notification No. 05/2022-Central Tax, dated 17 May 2022](#)

## Extension of due date of payment under QRMP Scheme

- CBIC extends due date of payment of tax for the month of April, 2022 by taxpayers under QRMP scheme in FORM GST PMT-06 till 27 May 2022

[Notification No. 06/2022-Central Tax, dated 17 May 2022](#)

# Waiver of late fees for GSTR -4

- Seeks to waive off the late fee under section 47 for the period from 01 May 2022 till 30 June 2022 for delay in filing FORM GSTR4.

*Notification No. 07/2022-Central Tax, dated 26th May, 2022*

## GSTN clarification on Incomplete GSTR-2B for April 2022

1. In a few cases, certain records are not reflected in the GSTR-2B statement for the period of April 2022. However, such records are visible in GSTR-2A of such recipients.
2. The technical team is working to resolve this issue for the impacted taxpayers and generate fresh GSTR-2B at the earliest
3. In the interim, affected taxpayers interested in filing GSTR-3B are requested to file the return on self-assessment basis using GSTR-2A.

*Press Release No. 542, dated 13 May 2022*

# GSTN Portal Changes

## Reporting 6% rate in GSTR-1

A new tax rate of 6% IGST or 3% CGST+ 3% SGST has been introduced on certain goods vide Notification No. 02/2022 dated 31st March 2022. Changes are being made on the GST portal to include this rate in GSTR-1

As a temporary measure, taxpayers who have to report goods at this rate may do so by reporting the entries in the 5% heading and then manually increasing the system computed tax amount to 6%.

This can be done by entering the value in the 'Taxable value' column next to 5% tax-rate and then increasing the system computed tax-amount to 6% IGST or 3% CGST + 3% SGST in the 'Amount of Tax' column under the relevant Table, namely B2B, B2C or Export, as applicable. This will ensure that correct tax amount is reported in GSTR-1. Meanwhile, this rate will be made available on the GST portal shortly.

## Annual Aggregate Turnover (AATO) computation for FY 2021-22

The functionality of AATO for the FY 2021-22 has now been made live on taxpayers' dashboards with the following features:

1. The taxpayers can view the exact Annual Aggregate Turnover (AATO) for the previous Financial Year (FY).
2. The taxpayers can also view the Aggregate Turnover of the current FY based on the returns filed till date.
3. The taxpayers have also been provided with the facility of turnover updation in case taxpayers feel that the system calculated turnover displayed on their dashboard varies from the turnover as per their records.
4. This facility of turnover update shall be provided to all the GSTINs registered on a common PAN. All the changes by any of the GSTINs in their turnover shall be summed up for computation of Annual Aggregate Turnover for each of the GSTINs.
5. The taxpayer can amend the turnover twice within the month of May, 2022. Thereafter, the figures will be sent for review of the Jurisdictional Tax Officer who can amend the values furnished by the taxpayer wherever required.

# GSTN Portal Changes

## Addition of 6% tax rate in GSTR-1 online

1. It may be noted that 6% tax rate has been added in the item details section of all the tables of form GSTR-1, except HSN table 12.
2. In case your outward supplies attract 6% tax rate, you are required to upload the details against 6% tax rate in the item details section.
3. In respect to HSN table 12 of form GSTR-1, 6% tax rate shall be added shortly. Meanwhile, you may report the HSN details of supplies attracting 6% tax rate under tax rate 5% by updating the values/tax amounts as per the actual supplies made by you.

## Addition of additional trade name in the application of registration

New Registration		16/06/2022	01/06/2022	0%
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Business Details	Promoter / Partners	Authorized Signatory	Authorized Representative	Principal Place of Business	Additional Places of Business	Goods and Services	State Specific Information	Aadhaar Authentication	Verification
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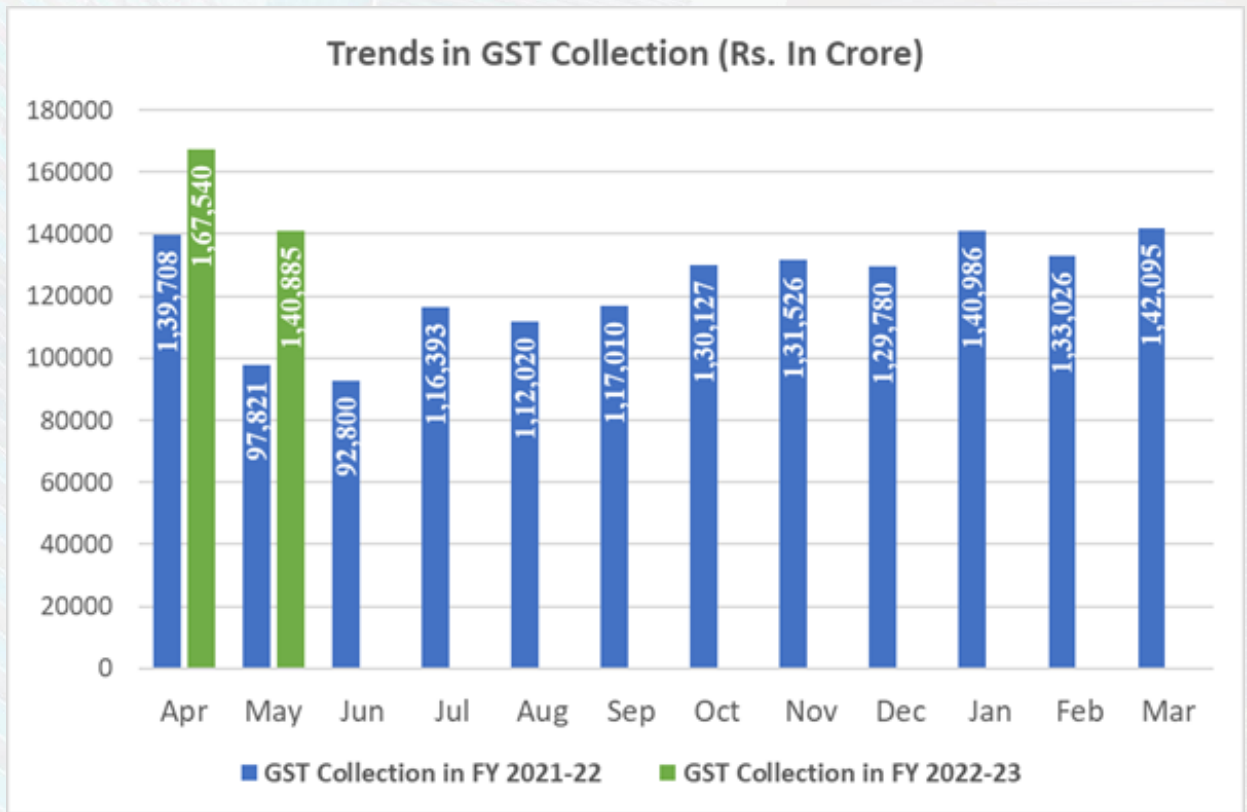
**Details of your Business**

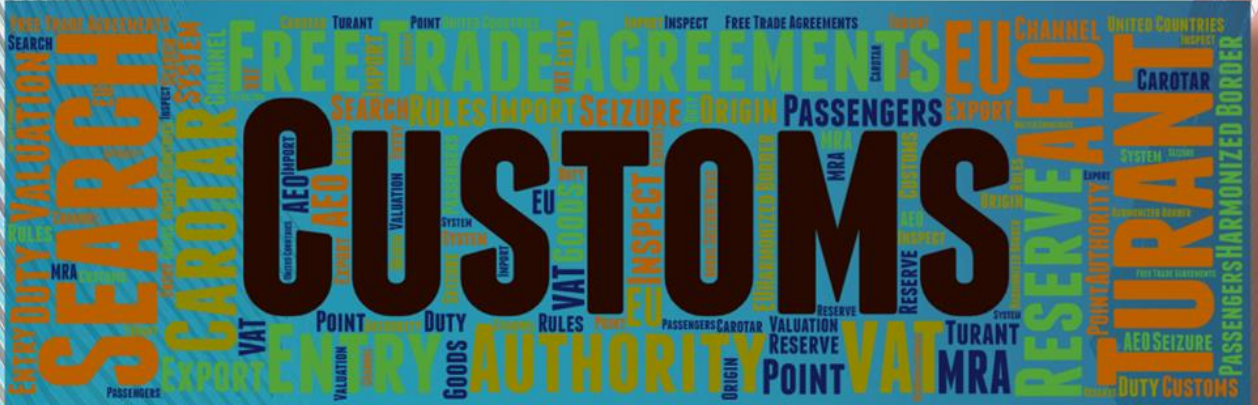
Legal Name of the Business A*	Permanent Account Number (PAN)	Date of Creation of PAN <b>Pan date not available</b>			
Trade Name .....vin	Constitution of Business (Select Appropriate) • Proprietorship				
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Additional Trade Name Enter Trade Name	<b>+ ADD</b>	<b>✕ CANCEL</b>			
Name of the State Gujarat	District • Surat				



# GST Revenue Collection in May 2022- Rs. 1,40,885 Cr.

## TRENDS IN GST COLLECTION IN RS. CRORE





- Indian company liable to service tax on secondment of employees from overseas group entities as recipient of manpower supply: Supreme Court
- Waiver of late fee vide Finance Act 2022
- Exemption of deposits from provisions of Section 51 A of Customs Act
- Telangana State One-Time Settlement Scheme 2022 – To settle disputed taxes
- Shipping bills on which RoSCTL scrip has been availed, e-BRC to be uploaded by 15 July 2022
- New RoDTEP Schedule -Appendix 4R wef 01 May 2022
- WFH permission to IT/ITES units
- Selection of proper accounting head at the time of making e-payment of Central Excise
- Standard Operating Procedures for NCLT cases of IBC 2016

# Indian company liable to service tax on secondment of employees from overseas group entities as recipient of manpower supply: Supreme Court

## Issue:

The proceedings were initiated against the assessee alleging non-payment of service tax concerning agreements entered into by it with its group companies located in USA, UK, Dublin (Ireland), Singapore, etc. to provide general back office and operational support to such group companies and accordingly various orders issued against which the assessee got relief at Commissioner (A) or CESTAT.

The CESTAT held that those seconded to the assessee working in the capacity of employees and receiving salaries by group companies were only for disbursement purposes.

Accordingly, the appeal filed by the revenue authorities before the Honorable Supreme Court against the order of CESTAT in favour of tax payer in relation to taxability of secondment of employees from overseas company to Indian company on secondment of employees under reverse charge mechanism (RCM).

## Legal Provisions:

Section 65,66,73 of ST Act,1994

## Observation and comments

The Honorable Supreme Court observed and held that:

- One of the cardinal principles of interpretation of documents, is that the nomenclature of any contract, or document, is not decisive of its nature. An overall reading of the document, and its effect, is to be seen by the courts.
- As discussed previously, there is not one single determinative factor, which the courts give primacy to, while deciding whether an arrangement is a contract of service (as the assessee asserts the arrangement to be) or a contract for service. The general drift of cases which have been decided, are in the context of facts, where the employer usually argues that the person claiming to be the employee is an intermediary. This court has consistently applied one test: substance over form, requiring a close look at the terms of the contract, or the agreements.
- Taking a cue from the above observations, while the control (over performance of the seconded

# Indian company liable to service tax on secondment of employees from overseas group entities as recipient of manpower supply: Supreme Court

employees' work) and the right to ask them to return, if their functioning is not as is desired, is with the assessee, the fact remains that their overseas employer in relation to its business, deploys them to the assessee, on secondment. Secondly, the overseas employer- for whatever reason, pays them their salaries. Their terms of employment – even during the secondment – are in accord with the policy of the overseas company, who is their employer. Upon the end of the period of secondment, they return to their original places, to await deployment or extension of secondment.

- The mere payment in the form of remittances or amounts, by whatever manner, either for the duration of the secondment, or per employee seconded, is just one method of reckoning if there is consideration. The other way of looking at the arrangement is the economic benefit derived by the assessee, which also secures specific jobs or assignments, from the overseas group companies, which result in its revenues. The quid pro quo for the secondment agreement, where the assessee has the benefit of experts for limited periods, is implicit in the overall scheme of things.
- This court is also of the view, for similar reasons, that the orders of the CESTAT, affirmed by this court, in Volkswagen and Computer Sciences Corporation, are unreasoned and of no precedential value.
- In view of the above discussion, it is held that the assessee was, for the relevant period, service recipient of the overseas group company concerned, which can be said to have provided manpower supply service, or a taxable service, for the two different periods in question (in relation to which show cause notices were issued).
- The fact that the CESTAT in the present case, relied upon two of its previous orders, which were pressed into service, and also that in the present case itself, the revenue discharged the later two show cause notices, evidences that the view held by the assessee about its liability was neither untenable, nor mala fide. This is sufficient to turn down the revenue's contention about the existence of "wilful suppression" of facts, or deliberate misstatement. For these reasons, the revenue was not justified in invoking the extended period of limitation to fasten liability on the assessee.

# Indian company liable to service tax on secondment of employees from overseas group entities as recipient of manpower supply: Supreme Court

- It is held, for the foregoing reasons, that the assessee was the service recipient for service (of manpower recruitment and supply services) by the overseas entity, in regard to the employees it seconded to the assessee, for the duration of their deputation or secondment. Furthermore, in view of the above discussion, the invocation of the extended period of limitation in both cases, by the revenue is not tenable.

## DA Comments:

The Honorable Supreme Court ruling is completely based on facts and looking to economic benefits arising to assessee in other contracts which are not directly connected. The judgment could have limited impact on new litigations due to period limitation aspects. However, the pending litigations would have negative impact except if the said judgment is asked for review by the assessee. The judgment would have impact under GST law also as the concept or fact of the dual employment structure is not considered

*C.C., C.E. & S.T. – Bangalore (Adjudication) Etc Vs M/S Northern Operating Systems Pvt Ltd. [Civil Appeal No. 2289-2293 OF 2021] [2022 (5) TMI 967 - SUPREME COURT]*

# Waiver of late fee vide Finance Act 2022

Due to difficulties in filing of Bills of Entry for the vessel arrived on 01 May 2022 & 02 May 2022 for Systems Error code 523.

Hence, “Late Fee” impossible in terms of Bill of Entry (forms) amendment Regulations, 2017 vide Notification No.

27/2017-Customs (N.T.) dated 31.03.2017 have been waived off in respect of Bills of Entry filed belatedly, which pertains to IGM’s filed on 01 May 2022 & 02 May 2022 for on production of negative acknowledgement.

*Public Notice No. 08/2022, dated 02 May 2022*

# Exemption of deposits from provisions of Section 51 A of Customs Act

It is necessary and expedient so to do, hereby exempts the deposits pertaining to all classes of persons and all categories of goods, from the provisions of the said section 51A.

This notification shall come into force with effect from the 1st June, 2022 and shall be effective up to the 29th of November 2022

*Notification No. 47/2022-Customs (N.T.), dated 31 May, 2022*

# Amendment to Notification no 19/2022-Customs (N.T)

CBIC and Customs, it is necessary and expedient to do so, hereby amends the notification No.19/2022-Customs (N.T.) dated the 30th March 2022, published in

the Gazette of India, in the said notification, in clause 2, for the figures, letters and word “1st June, 2022”, “30th November, 2022”, shall be substituted

*Notification No. 48/2022-Customs (N.T.), dated 31 May, 2022*

# Telangana State One-Time Settlement Scheme 2022 – To settle disputed taxes

The Government have decided to introduce a One Time Settlement Scheme to settle disputed tax under the legacy Acts such as Andhra Pradesh General Sales Tax Act, 1957, the Telangana Value Added Tax Act, 2005, the Central Sales Tax Act, 1956 and the Telangana Entry of the Goods into Local Areas Act, 2001 and hereby issued the following orders.

- a. This scheme shall be known as The Telangana State One-Time Settlement Scheme 2022.
- b. The provisions of this scheme shall apply to all registered and unregistered dealers under the Andhra

Pradesh General Sales Tax Act, 1957, the Telangana Value Added Tax Act, 2005, the Central Sales Tax Act, 1956 and the Telangana Entry of the Goods into Local Areas Act, 2001.

- c. For settlement of disputes under this Scheme, each year of assessment shall be a distinct unit.
- d. 100% of undisputed tax will be payable.
- e. The timeframe under the One Time Settlement is as follows: -

Particulars	Timeline
Application to avail OTS	16 May 2022 to 30 June 2022
Scrutiny of application for confirming the arrear and intimation	01 July 2022 to 15 July 2022
Submission of settlement letter by tax payer and payment of agreed amount	16 July 2022 to 15 August 2022

[G.O.Ms. No. 45, dated 09 May 2022](#)

## Shipping bills on which RoSCTL scrip has been availed, e-BRC to be uploaded by 15 July 2022

All shipping bills up to 31 December 2020 would have their export proceeds realized by now. Accordingly, all exporting firms, who have been issued scrips under RoSCTL for exports / shipping bills up to 31 December 2020 , are requested to get

the relevant e-BRCs uploaded in the DGFT server by their AD banks latest by 15 July 2022 failing which action as per para 4.96 of HBP, as notified vide PN 58 dated 29 January 2020 would be initiated by the jurisdictional RAs.

[Trade Notice No. 12/2022-23-DGFT, dated 30 May 2022](#)

# New RoDTEP Schedule -Appendix 4R wef 01 May 2022

Consequent to Finance Act, 2022, certain changes in the Customs Tariff Schedule shall take effect from 01 May 2022.

RoDTEP schedule (Appendix 4R) is being notified for implementation with effect from 01 May 2022

Accordingly, after alignment, a new

[Notification No. 12/2015-2020-DGFT, dated 01 June, 2022](#)

## WFH permission to IT/ITES units

To facilitate the transition for units, the WFH (Work from home) facility is extended up to 31 December 2022.

The units are encouraged to increase the physical presence of their employees in the premises based on the situation.

[Circular No :10/311/2010-SEZ/4299, dated 27 May 2022](#)

## Selection of proper accounting head at the time of making e-payment of Central Excise

For payment of applicable duties of Excise in respect of the aforementioned commodities, the Major Accounting Head Code for Central Excise is “0038” and the relevant Minor Accounting Head Codes are as under:

Further, under the CBIC Tax Payer portal (cbic-gst.gov.in) with regard to the e-payment, in the electronic form for generation of challan, a List of Values (LOV) of Accounting Head Codes for

various duties of excise is available for selection by the taxpayer.

This LOV includes certain other levies pertaining to legacy (Pre-GST) period, to facilitate legacy Tax payers who are required to make payment of any arrears of duty on demands or any amount payable under amnesty schemes, or who intend to make belated e-filing of return and related payments.

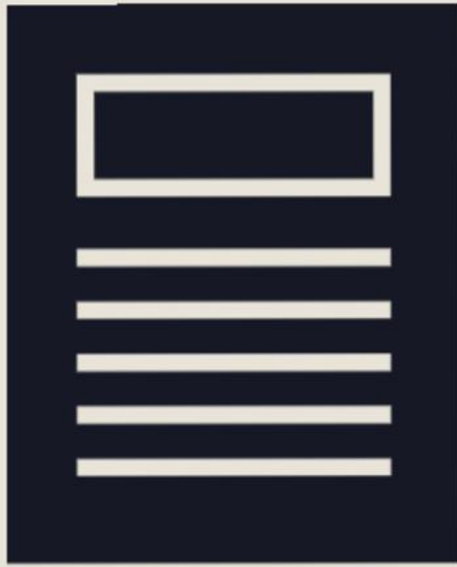
[Advisory No. 12/2022 – ACES-GST \(CE&ST\), dated 18 May 2022](#)



# Standard Operating Procedures for NCLT cases of IBC 2016

Detailed SOP to be followed has been stated in Annexure A

*Instruction No. 1083/04/2022-CX9 dated 23 May 2022*



# DA NEWS

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# Goods and Services Tax

- Gaming industry in a fix after GoM proposes application of GST at 28%
- Non-commercial construction in education institutions to draw less GST
- Taxpayers can now claim refund of IGST on ocean freight
- GST Council may consider modification in monthly tax payment form for better input tax credit reporting
- Centre clears entire GST compensation payable to states till date
- E-art auctions face 12% GST on price differential

# Customs and other

- Domestic steel industry hit by moving train: ICRA on govt's duty-related measures
- Do your due diligence before sending show cause notices on service tax defaults: CBIC tells officers
- Supreme Court: Salary of seconded employees reimbursed to overseas group companies is liable to service
- India, Canada look to expedite FTA negotiations
- India-UK free trade agreement (FTA) could be ready by Diwali: Piyush Goyal
- India-Australia Free Trade Agreement: Why the FTA is different, unprecedented

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