

DA TAX ALERT INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

July 2022

Issue: 26

**GST COMPLIANCE
CALENDER**

**GOODS AND
SERVICE TAX**

**CUSTOMS AND
OTHER**

DA NEWS

PREFACE

We are pleased to present to you the twenty-sixth 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 June 2022.

During the month of June 2022, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as royalty is liable to GST at 18%, recommendations of 47th GST Council Meeting along with other circulars and notifications.

In the twenty-sixth 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 June 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

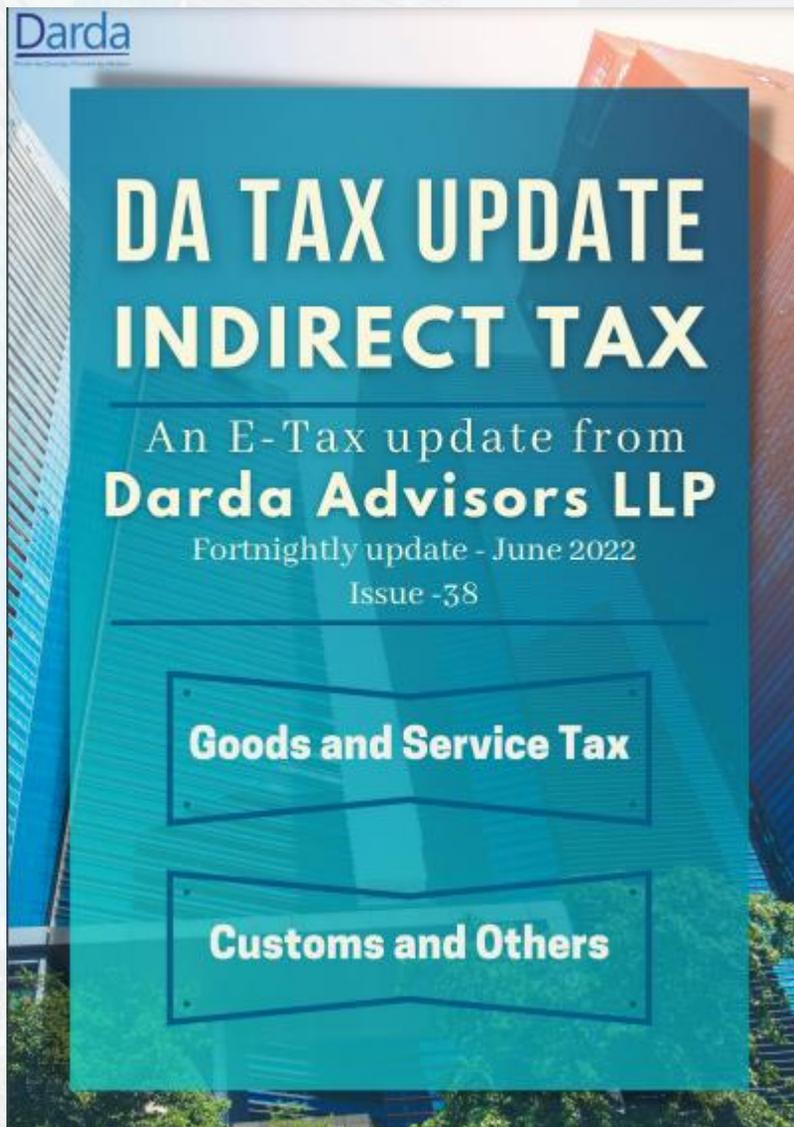
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DA Updates and Articles for the month of June 2022

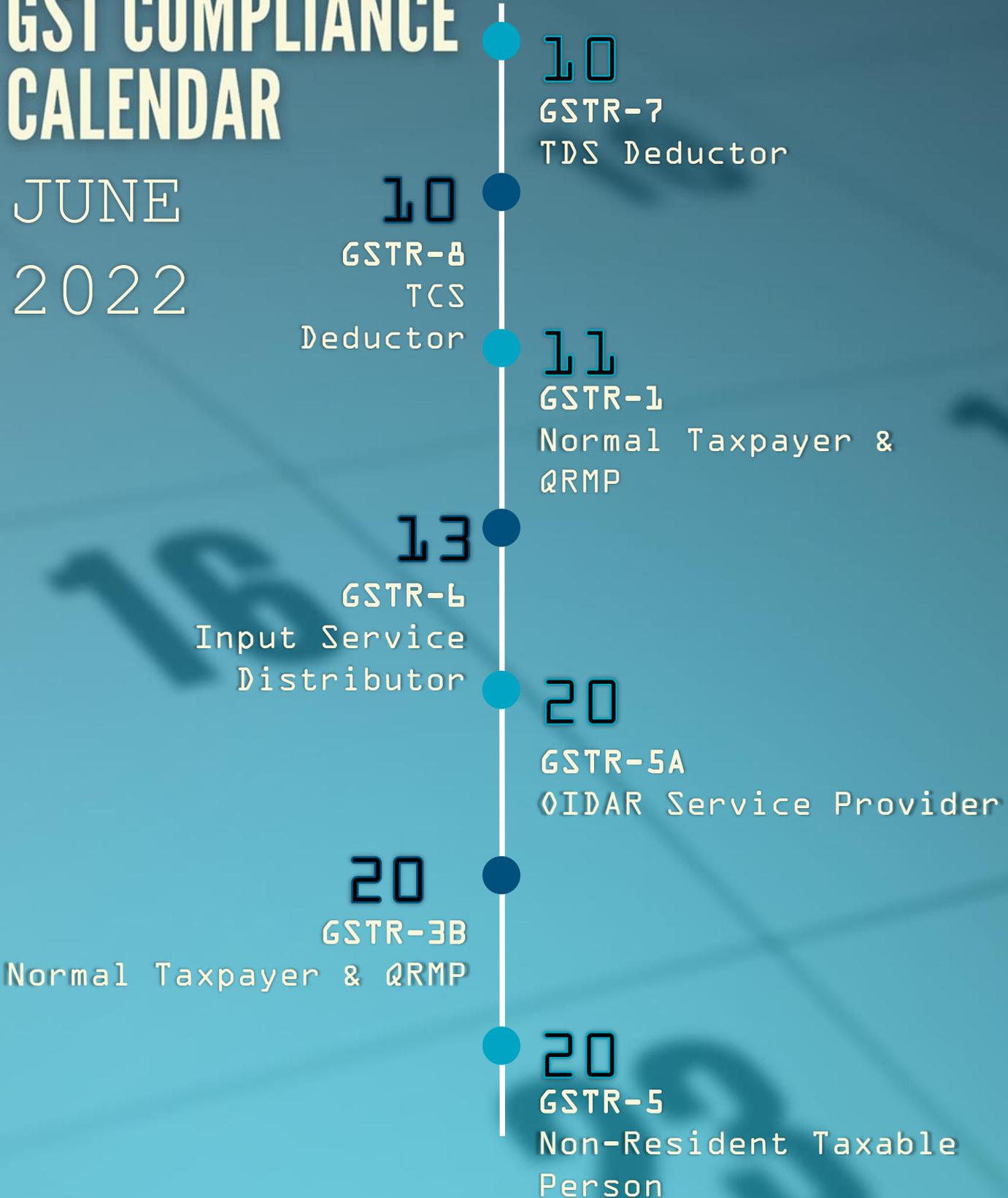
Indirect Tax Fortnightly Update for the month of June 2022

https://dardaadvisors.com/wp-content/uploads/2022/06/DA-Indirect-Tax-Fortnightly-Update_June-22.R.pdf



GST COMPLIANCE CALENDAR

JUNE
2022



Royalty including DMF and NFET on mining liable at residuary rate of 18%

Issue:

The applicant raised following queries:

1. Whether royalty paid in respect of Mining Lease can be classified under "Licensing services for the right to use minerals including its exploration and evaluation falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods involving transfer of title in goods"?
2. Determination of the liability to pay tax on contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) as per MMDR Act, 1957.

Legal Provisions:

Serial No. 17(viia) of Notification No. 11/2017 as amended vide Notification No. 27/2018 dated: 31.12.2018

Observation and Comments:

The AAR observed and held that:

The moot question in the issue raised is whether lease of land for mining constitutes 'leasing or renting of goods' as argued by the applicant

Thus in view of the judgment of (3) member bench of Hon'ble Supreme Court of India in the case of

State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. (2005) 142 STC 1:

- a. Mining lease is an interest in immovable property and therefore does not constitute lease

of goods.

- b. The right conferred by the lease deed to extract and remove the minerals is a 'profit a prendre'.
- c. A consideration of mining is the rent for the areas leased i.e., dead rent and royalty.
- d. Royalty is the payment made towards minerals extracted in proportionate to the quantity so extracted.

Therefore the contract for mining lease cannot be classified as 'Leasing or Renting of goods'. Further the CGST Act or rules made there under or Notifications issued do not create a legal fiction for mining to be classified as 'Leasing or Renting of goods'.

As against the above entry in the annexure to Notification No. 11/2017 the group head '99733' enumerates leasing services for right to use intellectual property and similar products. Under this group, the tariff item '997337' enumerates 'licensing services for the right to use minerals including its exploration and evaluation'. This is the appropriate entry concerning royalty on mining. Hence the rate of tax of the residual entry is attracted on the royalty paid for mining at the rate of 9% CGST & 9% SGST.

Royalty including DMF and NFET on mining liable at residuary rate of 18%

Both these amounts are paid in addition to the royalty payable and in a proportion to the royalty paid for extracting minerals from a contract of mining lease. Therefore they are consideration for the service of right to use

minerals including its exploration and evaluation which is enumerated as tariff item '997337', this is same as royalty and hence attract tax at the rate of 9% CGST & SGST each.

DA Comments:

The decision on taxability of royalty including DMF and NMET is pending at various Honorable High Courts and with such AAR ruling on applicable tax rate, the litigation would further prevail.

M/S. The Singareni Collieries Company Limited [2022 (6) Tmi 419 - Aar, Telangana]

Extension of GST Compensation Cess levy

The period for levy and collection of cess under sub-section (1) of section 8 of the Goods and Services Tax (Compensation to States) Act, 2017 shall be up to the 31st March, 2026.

Notification No. 1/2022–Compensation Cess, dated 24 June, 2022

GST Refund sanction in FORM GST RFD-06 should be speaking order

Instructs GST officials to upload Speaking Order along with GST Refund sanction order in FORM GST RFD-06 and also specified that post-Audit may be conducted within 3 months from issue of FORM GST RFD-06 order for GST Refund claims exceeding Rs. 1 Lakh.

Instruction No. 03/2022-GST, dated 14 June 2022

Waiver of interest for specified e-commerce operators under GST

Waiver of interest for specified electronic commerce operators for specified tax periods.

Notification No. 08/2022 –Central Tax, dated 07 June 2022

TNGST Act, 2017- Identification and prevention of bill traders

Bill traders after getting registrations, issue invoices without supply of goods or services for huge amount within a short span of time

Thereby, it is instructed that any application for new registration filed has to undergo the process of matching with the database as to whether any of the following six parameters pertaining to cancelled registration found to have been matched with details provided in the application for new registration, to invariably undertake pre-verification of the business premises, by the jurisdictional proper officer as per the notification in the reference cited, so as to deter the bill traders from applying for new registration.

- i. Place of business
- ii. PAN
- iii. Mobile number
- iv. E-mail ID
- v. Authorized signatory
- vi. Bank account number.

Circular No: 10/2022, dated 07 June 2022

GSTN Portal Changes

ITC as per GSTR 2B – Duplicate Reflection of Data

The taxpayers, have been facing issue in relation to duplicate entries in GSTR2B. In this regard, taxpayers while filing GSTR3B are advised to check and ensure that the value of ITC they are availing is correct as per the law.

They may check the correct ITC value from download of Auto drafted ITC statement GSTR2B or pdf of System Generated GSTR3B or on the ITC observed on the mouse hover of Table 4 in GSTR3B, particularly in any such case where there is any difference observed between the correct figures available at places as stated above and the prefilled GSTR3B observed on screen.

Recommendations of 47th GST Council Meeting

Rate Rationalization to remove inverted duty structure

| Sl.no | Description | From-to |
|-------|---|------------|
| 1 | Printing, writing or drawing ink | 12% to 18% |
| 2 | Knives with cutting blades, Paper knives, Pencil sharpeners and blades therefor, Spoons, forks, ladles, skimmers, cake-servers etc | 12% to 18% |
| 3 | Power driven pumps primarily designed for handling water such as centrifugal pumps, deep tube-well turbine pumps, submersible pumps; Bicycle pumps | 12% to 18% |
| 4 | Machines for cleaning, sorting or grading, seed, grain pulses; Machinery used in milling industry or for the working of cereals etc; Pawan Chakki that is Air Based Atta Chakki; Wet grinder; | 5% to 18% |
| 5 | Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce and its parts, Milking machines and dairy machinery | 12% to 18% |
| 6 | LED Lamps, lights and fixture, their metal printed circuits board | 12% to 18% |
| 7 | Drawing and marking out instruments | 12% to 18% |
| 8 | Solar Water Heater and system | 5% to 12% |
| 9 | Prepared/finished leather/chamois leather / composition leathers | 5% to 12% |
| 10 | Services supplied by foreman to chit fund | 12% to 18% |
| 11 | Job work in relation to processing of hides, skins and leather | 5% to 12% |
| 12 | Job work in relation to manufacture of leather goods and footwear | 5% to 12% |
| 14 | Job work in relation to manufacture of clay bricks | 5% to 12% |
| 15 | Works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium etc. | 12% to 18% |
| 16 | Works contract supplied to central and state governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & sub-contractor thereof | 12% to 18% |
| 17 | Works contract supplied to central and state governments, union territories & local authorities involving predominantly earthwork and sub-contracts thereof | 5% to 12% |

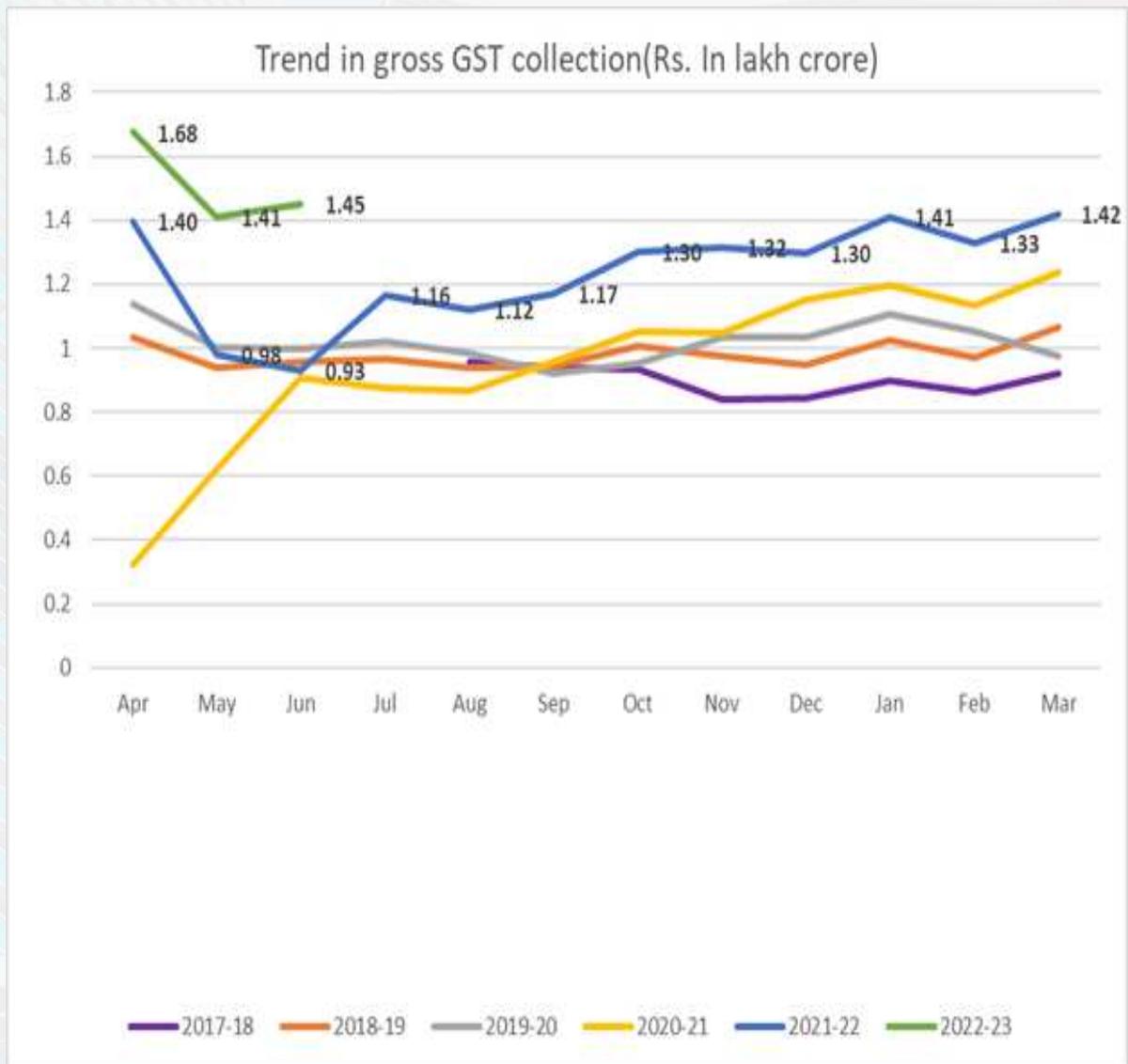
Recommendations of 47th GST Council Meeting

Other GST rates changes recommended by the council

| Sl.no | Description | From -To |
|-------|--|----------------------------------|
| 1. | Ostomy Appliances | 12% to 5% |
| 2. | Orthopedic appliance- Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens. | 12% to 5% |
| 3. | Tetra Pak (Aseptic Packaging Paper) | 12% to 18% |
| 4. | Tar (whether from coal, coal gasification plants, producer Gas plants and Coke Oven Plants. | 5%/18% to 18% |
| 5. | IGST on import of Diethylcarbamazine (DEC) tablets supplied free of cost for National Filariasis Elimination Programme | 5% to Nil |
| 6. | Cut and Polished diamonds | 0.25% to 1.5% |
| 7. | IGST on specified defence items imported by private entities/vendors, when end-user is the Defence forces. | Applicable rate to NIL |
| 8. | Transport of goods and passengers by ropeways. | 18% to 5% (With ITC of services) |
| 9. | Renting of truck/goods carriage where cost of fuel is included | 18% to 12% |

- Issuance of the various circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large
- Other Recommended changes including exemption from filing return for taxpayers having AATO upto 2 crores and UPI/IMPS to be enabled as an additional mode of payment of GST under Rule 87(3)

GST Revenue Collection in June 2022- Rs. 1,44,616 Cr.



Source: PIB

Depreciation to be computed till duty payment date for de-bonding of goods - CESTAT

Issue:

The appellant is a unit engaged in development and export of Software as 100% export-oriented unit. The unit availed the benefit of exemption from payment of Customs duty under the provisions of Notification 13/81-Cus., dated 9-8-1981 and imported capital goods and applied for D-Bonding of the 100% EOU without payment of duty and to gift the imported capital goods to an educational institution which was eligible to import such goods without payment of duty.

By applying the depreciation upto the date of payment of duty, the Appellant submitted before the Deputy Commissioner that duty payable was NIL which was rejected and negative order was issued. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), who rejected the appellant's appeal. Therefore, the appellant filed the present appeal.

Legal Provision:

Notification 13/81-Cus., dated 9 August 1981

Observation and comments:

The Honorable CESTAT observed and held that:

- On a careful consideration, we have to place on record our disapproval of the action of both the Lower authorities in not following the directions of the Tribunal. Both the

authorities have clearly violated the terms of remand order of the Tribunal.

- It is on record that, vide Order-In-Original dated 28.03.2002 Ld. Lower Adjudicating authority held that depreciation was allowed only upto the date of permission for de-bonding which has been categorically held to be incorrect by the tribunal in its above remand order. Clearly, lower authorities are not following the directions given by Tribunal. Therefore, the impugned order is not sustainable in law. As per the above tribunal's clear observation, the adjudicating authority is bound to allow the depreciation upto the date of payment of duty. As per the submission made by the Appellant that if the depreciation is considered upto the date of payment then duty comes to Nil. There is no rebuttal to this fact. Hence the demand is not sustainable.
- Accordingly, we set aside impugned order and allow the appeal with consequential relief, if any arise, in accordance with law.

Depreciation to be computed till duty payment date for de-bonding of goods - CESTAT

DA Comments:

The Honorable Tribunal rightly noted the point where the adjudicating authorities are not following the direction of Tribunal and leading to prolonged litigation.

Anjaleem Enterprise P Ltd vs C.C.E. & S.T. [2022 (6) TMI 995 - CESTAT Ahmedabad]

Changes in System with respect of AD Code Registration in exports

- a. AD code with associated bank account will now require to be registered in the System at only one port.
- b. The AD code would be available at all Customs locations.
- c. For any new AD code registration (or updation) at any port, the same has to be registered through online request at ICEGATE.
- d. The option to Add/modify the AD code and account against an IEC has been disabled in ICES under “CLK” role.
- e. Further, any change/amendment in the particular AD code account details will have to be done at that port of registration only i.e., the port chosen by the IEC at the time of making application for registration

[Advisory No. 10/2022, dated 14 June 2022](#)

Exemption from IGST & Compensation Cess on goods imported under AA/EPCG/EOU Schemes

The exemption from Integrated Tax (IGST) and Compensation Cess on goods imported under

AA/EPCG/EOU Schemes continues.

[Notification No. 37/2022- Customs, dated 30 June 2022](#)

Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2022

The Central Board of Indirect Taxes and Customs hereby makes the following regulations further to amend the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 to Courier Imports and

Exports (Electronic Declaration and Processing), Amendment, Regulations, 2022 for facilitating E-commerce exports of jewellery.

[Notification No. 57/2022-Customs \(N.T.\), dated 30 June 2022](#)

Sea Cargo Manifest and Transhipment (First Amendment) Regulations, 2022.

The Central Board of Indirect Taxes and Customs hereby makes the following regulations further to amend the Sea Cargo Manifest and

Transhipment Regulations, 2018 called the Sea Cargo Manifest and Transhipment (First Amendment) Regulations, 2022.

[Notification No. 56/2022-Customs \(N.T.\), dated 30 June 2022](#)

Customs Brokers Licensing (Amendment) Regulations, 2022

The Central Board of Indirect Taxes and Customs, hereby makes the following regulations to amend the Customs Brokers Licensing

Regulations, 2018 called the Customs Brokers Licensing (Amendment) Regulations, 2022.

[Notification No. 52/2022-Customs \(N.T.\), dated 24 June 2022](#)

Exemption from additional Custom duty on imports of Petroleum Crude & ATF

Exempt imports of Petroleum Crude and ATF from whole of the additional duty of Customs leviable thereon under sub-section (1) of section

3 of the said Customs Tariff Act, as is equivalent to the Special Additional Excise Duty

[Notification No. 32/2022-Customs, dated 30 June 2022](#)

CBIC exempt gold imports from Social Welfare Surcharge

Exempts all goods falling under heading 7108 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India,

from the whole of the Social Welfare Surcharge leviable thereon under the section 110 of the said Finance Act.

[Notification No. 34/2022-Customs, dated 30 June 2022](#)

Extension in deadlines for submission of applications under MEIS

The last date of submitting applications under MEIS, for exports made in the period

01.09.2020 to 31.12.2020, has been extended up to 31.08.2022.

[Notification No. 15/2015-2020-DGFT, dated 01 July 2022](#)

Migration of e-BRC Portal/Website to new IT platform

The existing eBRC module is now being upgraded to a new IT platform and it is proposed to discontinue the earlier version (<http://dgftebrc.nic.in/>) from end of July 2022.

Existing users of the eBRC module i.e., the AD Banks will need to migrate to the new environment (<https://dgft.gov.in>) on an urgent basis so that services to the exporting community do not get impacted.

[Trade Notice No. 13/2022-23-DGFT, dated 30 June 2022](#)

DGFT clarifies on Chip Import Monitoring System (CHIMS)

Based on clarifications received it is given that the Importer may include multiple products in one registration number. However, for each shipment a separate registration number is required.

The CHIMS is applicable for air/sea shipments also. The CHIMS registration can also be made

on the same day of arrival of import.

The microprocessors covered under ITC (HS) code 84733010 and memory modules under ITC (HS) code 84733099 are excluded from CHIMS.

[Policy Circular No. 40/2015-2020, dated 27 June 2022](#)

DGFT extends last date for filing annual returns under HBP 2015-20

Extension of last date for filing of annual returns under Para 5.15 of HBP 2015-20 along with a clarification that imposition of penalty of

Rs.5000/- for late filing of annual returns is applicable from 2022-23.

[Public Notices No. 13/2015-2020-DGFT, dated 9 June 2022](#)

DGFT reduces compliance burden for applying EODC

Para 2 (b)(i) of the 'Guidelines for Applicants' under ANF4F of Handbook of Procedures 2015-2020 has been amended to simplify the

procedure and reduce the compliance burden for applying EODC in case of deemed exports.

[Public Notice No. 11/2015-2020-DGFT, dated 7 June 2022](#)

DGFT relaxes provision of submission of 'Bill of Export' for Advance Authorisation

It has been decided to relax this condition of requirement of submission of 'Bill of Export' in case of exports made to SEZ units under Advance Authorisation, for all such supplies made prior to 01.04.2015.

export obligation under Advance Authorisations, in case of supplies made to SEZ units prior to 01.04.2015, the exporters can submit corroborative evidence in lieu of 'Bill of Exports'

Accordingly, for the purpose of discharge of

[Policy Circular No. 39/2015-20, dated 7 June 2022](#)

The Development of Enterprise and Service Hubs (DESH) Bill 2022

A draft law has been introduced to update the Special Economic Zones (SEZs) into Development of Enterprise and Service Hubs (DESH).

For granting time-bound approvals for the establishment and operation of these hubs, a proposal has been made to set up an integrated single-window clearance mechanism which will also include the single application forms and returns.

The draft has lived up to the industry's demand to permit partial denotification to free up the areas which are not in demand.

Telangana State -One time Settlement (OTS) Scheme 2022-To settle disputed taxes

- a. OTS has been extended to luxury tax, Entertainment Tax, RD Cess Act, Profession tax Act, Entry of motor vehicles into local areas tax Act. Opting for OTS shall pay 50% of balance tax.
- b. Statutory forms are pending would be treated as demands under dispute.OTS would be applicable where it has not been preferred under any appeal and is awaiting receipt of forms.
- c. Cases where tax has been paid and only interest and penalty are pending, would be brought under the scheme upon payment of 15% balance.
- d. Cases pending before DRT, BIFR, NCLT, Government Stay cases would be treated as dispute under the scheme.
- e. Deferment cases who have disputed the levy of tax would be treated as 'undisputed cases' and would be given waiver of interest.

[G.O. Ms No.61, dated 25 June 2022](#)



DA NEWS

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Goods and Services Tax

- G.O. Ms No.61, dated 25 June 2022
- Online gaming industry worried at possible GST hike on skill-based games
- 12 states demand extension of GST compensation beyond June
- GST tweak on food items to plug revenue leakages, says CBIC chief
- Govt approves deregulation of sale of domestically-produced crude oil

Customs and other

- India raises basic import tax on gold to 12.5% from 7.5%
- Govt slaps export tax on petrol, diesel; windfall tax on domestic crude oil
- SME Chatroom: 'IGCR Rules apply only when exemption notifications say so'
- Iron ore miners want Govt to remove duty on low grade ore export

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- Start-Up India and MSME Services



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www.dardaadvisors.com



da@dardaadvisors.com

Our Locations

Hyderabad

6-3-1086, 5th Floor, Vista Grand Towers, Raj Bhavan Road, Somajiguda, Hyderabad - 500082, TS

Chennai

13, T.K. Mudali Street, Choolai, Chennai - 600112, Tamil Nadu

Delhi-NCR

N 93, Ground floor, Mayfield garden, Sector 51, Gurgaon, Haryana - 122018

Bhilwara

Moti Chambers, 62&63, Sancheti Colony, Pur Road. Bhilwara - 311001, Rajasthan

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