

DA TAX ALERT INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

July 2022

Issue: 27

**GST COMPLIANCE
CALENDER**

**GOODS AND
SERVICE TAX**

**CUSTOMS AND
OTHER**

DA NEWS

PREFACE

We are pleased to present to you the twenty-seventh 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 July 2022.

During the month of July 2022, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as reopening of TRAN-1 portal, transfer of business concern not liable to GST along with other circulars and notifications.

In the twenty-seventh 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 July 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

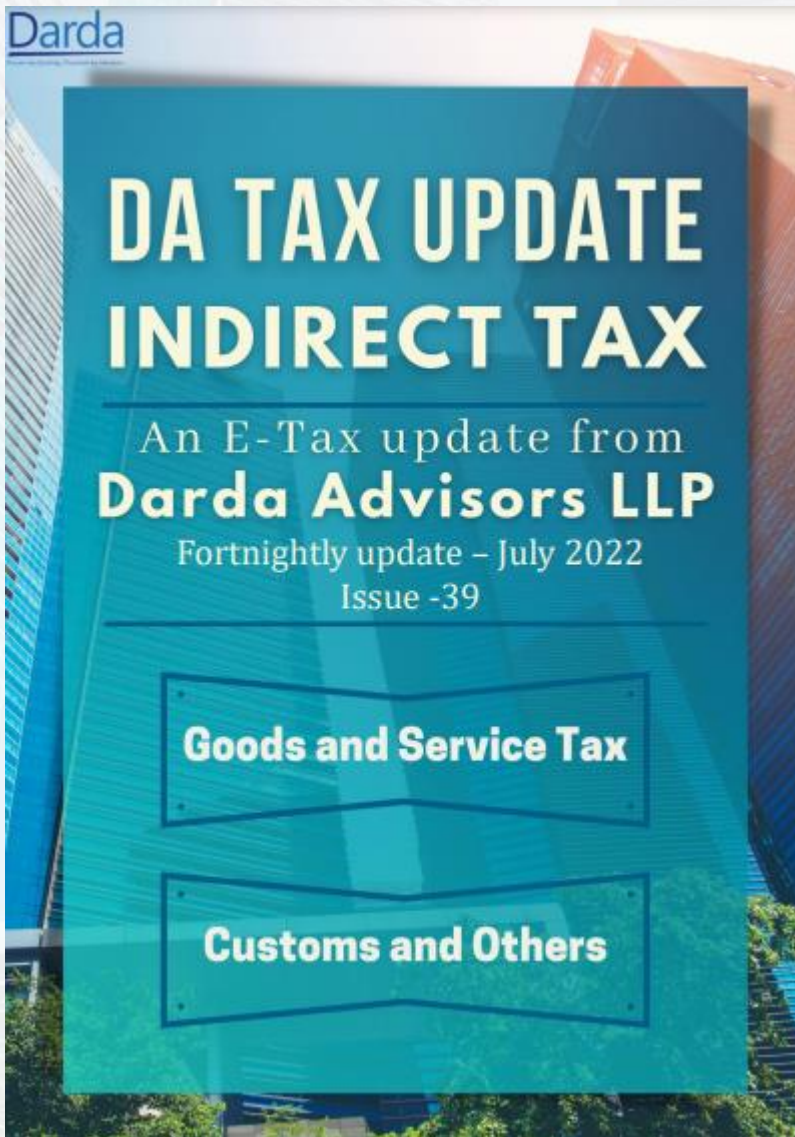
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DA Updates and Articles for the month of July 2022

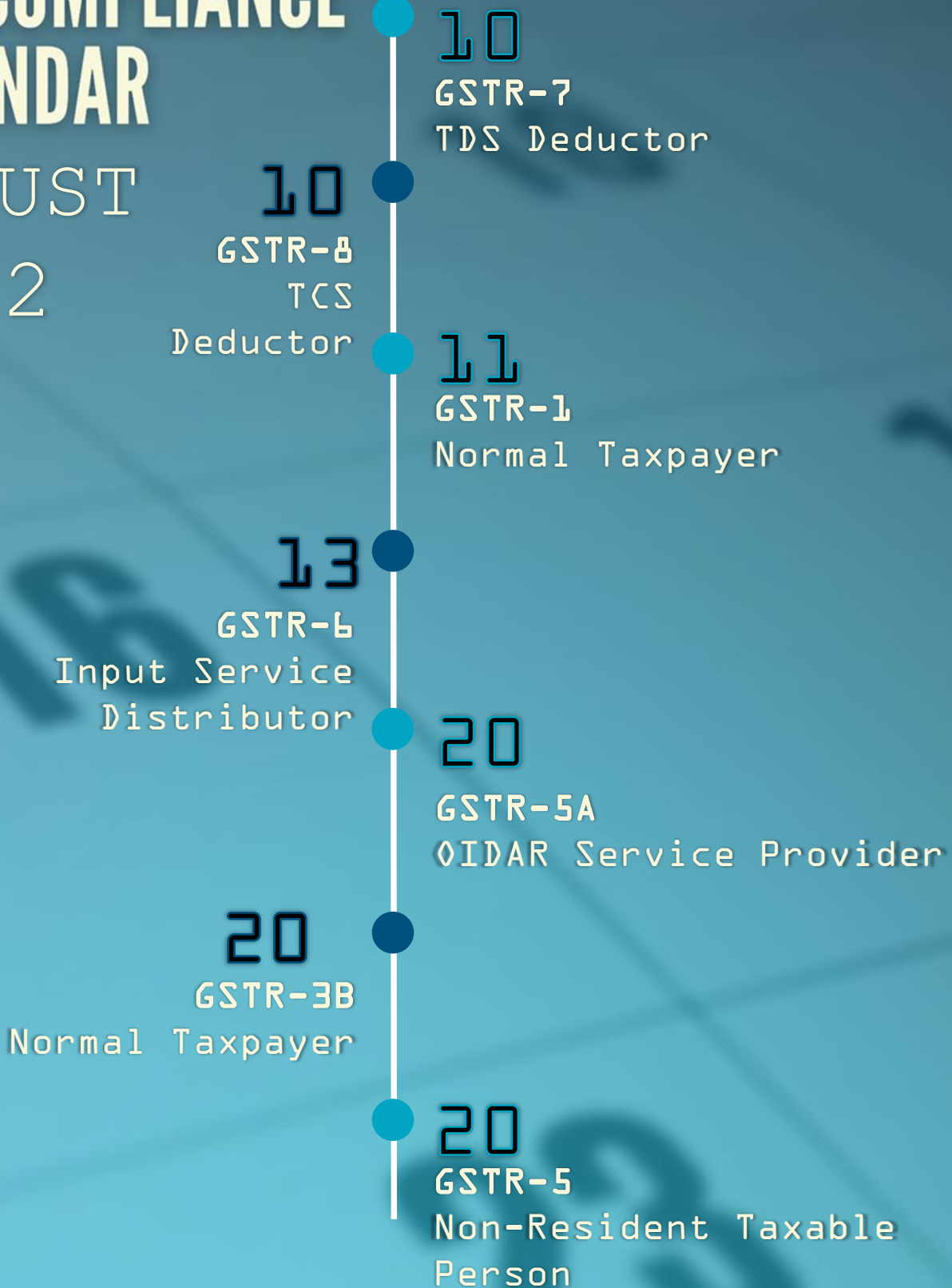
Indirect Tax Fortnightly Update for the month of July 2022

https://dardaadvisors.com/wp-content/uploads/2022/07/DA-Indirect-Tax-Fortnightly-Update_July-2022.pdf



GST COMPLIANCE CALENDAR

AUGUST
2022





- Re-open GSTN Portal for claiming Transition Credit
- Annuity paid to the concessionaires in lieu of toll charges is exempted under GST
- GST recovery before expiry of time to file appeal is violation of law
- Transfer of business as going concern not liable to GST
- ITC not available on maintenance and works contract services related to Building
- Demo moto vehicles not eligible for ITC
- Vessel support services provided to foreign vessel considered as export of services
- Diesel provided Free of Cost by service recipient for the transportation of goods not to be included in the value of supply
- GST Portal Amendments, Circulars and Notifications

Re-open GSTN Portal for claiming Transition Credit - Supreme Court

Issue:

The issue before the Honorable Supreme Court was to allow filing Tran-1/Tran-2 on GSTN portal under writ petitions filed.

Legal Provisions:

Transition Provision under CGST Act, 2017

Observation and Comments:

The Honorable Supreme Court allowed to reclaim pending Transitional Credit on GSTN Portal with following directions:

1. Open common portal to file TRAN-1 and TRAN-2 for 2 months (W.e.f 01 September 2022 to 31 October 2022)
2. Any aggrieved person may file the relevant forms or revise the same irrespective whether the taxpayer has filed writ petition before the High Court or whether the case of has been decided by ITGRC
3. GSTN to ensure that there are no technical glitches during the referred time period
4. GST Authority to verify the transitional credit claim, within 90 days and pass appropriate order with an opportunity of personal hearing
5. Transitional credit to be reflected in Electronic Credit Ledger
6. GST council, if required, may also issue appropriate guidelines

DA Comments:

The window to claim the transitional credit is a long pending major relief to many taxpayers, who were stuck with GSTN's technical glitches and various other operational challenges to reflect the credit in the Electronic Credit Ledger. The decision, prima facie, looks to address genuine concerns in claiming the transitional credit, for the reasons stated in the order. However, credit missed/unavailable on account of legal interpretations or cases where it is specifically restricted under the law, needs careful evaluation to ascertain whether this opportunity if at all is available or continue the legal route. Operational guidelines are expected to be released by the GST Council, which needs to be evaluated for suitable compliance while opting for this limited window.

[Union Of India & Anr. vs Filco Trade Centre Pvt. Ltd. & Anr. \[2022 \(7\) TMI 1232 - SC ORDER\]](#)

Annuity paid to the concessionaires in lieu of toll charges is exempted under GST - Circular which clarifies the notification cannot have the effect of overruling the notification – Karnataka High Court

Issue:

As a consideration for construction and maintenance of the roads for the contract period, the petitioners are paid certain amounts termed as 'annuity'. The GST Council in its 22nd meeting held on 06 October 2017 decided to treat annuity at par with toll and to exempt from tax, service by way of access to a road or bridge on payment of annuity and accordingly two notifications viz., notification No. 32/2017 and notification 33/2017 were issued on 13 October 2017 and the service by way of access to a road or a bridge on payment of annuity was also exempted. The clarification was sought from the CBIC as to whether the entire annuity paid to the concessionaires was exempt from GST or not, for which the GST Council in its minutes of the 43rd GST Council meeting held on 28 May 2021 clarified that the notification does not exempt annuity paid for construction of roads and based on the same, a Circular bearing No. 150/06/2021-GST dated 17 June 2021 was issued and aggrieved by the same, the petitioners have preferred the instant writ petitions.

Legal Provisions:

Circular No. 150/06/2021-GST dated 17 June 2021

Observation and Comments:

The Honorable High Court observed and held that:

The reading of recommendation of the GST Council as well as the notifications issued make it clear that respondent No. 1 has treated the

annuity being paid to the concessionaires on par with toll charges which the concessionaires are permitted to collect from road users and both were exempted from GST.

It is a settled proposition of law that a Circular which clarifies the notification cannot have the effect of overruling the notification. In the instant case, what has to be considered is whether the impugned Circular is in violation of notification nos. 32 and 33/2017 dated 13.10.2017 or clarifies the said notifications.

The impugned circular has the effect of overriding the notifications bearing Nos. 32 and 33/2017 dated 13.10.2017 and has to be held as bad in law. Nothing prevents respondent No. 1 from imposing GST on the consideration paid to concessionaires like the petitioners on the payment received by them by way of annuity but that has to be done in the manner known to law. In the instant case, respondent No. 1 has issued the notifications under Section 11 of the Central Goods and Services Tax Act, 2017 and Section 6 of the Integrated Goods and Services Tax Act, 2017 exempting the consideration received by concessionaires from highway authorities as annuity from GST. The clarification issued is contrary to the said notifications for the reasons recorded above. If respondent No. 1 is desirous of altering the same, it has to issue fresh notifications amending its earlier notifications.

Annuity paid to the concessionaires in lieu of toll charges is exempted under GST - Circular which clarifies the notification cannot have the effect of overruling the notification – Karnataka High Court

Consequently, all actions pursuant to the said Circular is hereby set aside.

DA Comments:

In this case, circular issued is against the notifications which allowed exemptions for such services and accordingly set aside. Whether GST Council will issue new notification to levy GST on the same needs to look into.

GST recovery before expiry of time to file appeal is violation of law

Issue:

The petitioner challenged the impugned action of recovery of the demand arising out of the adjudication order by debiting from its electronic credit ledger such demand in violation of Section 78 of the WBGST Act, 2017 without giving any opportunity to the petitioner three months' time to file the statutory appeal which is mandatory before initiating any recovery proceeding.

Legal Provisions:

Section 78 of WBGST/CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

Considering the facts and circumstances of this case as appears from record and submission of the parties, this writ petition being WPA No.14288 of 2022 is disposed of by directing the authorities concerned to refund the money which it has collected in excess 10% of demand in question which is required to be deposited as a pre deposit for filing of appeal against the impugned adjudication order, within 15 days from date on condition that petitioner will file the appeal against the impugned adjudication order within 15 days from date and if such appeal is filed by the petitioner within the time stipulated herein, the appellate authority concerned will consider the issue of limitation by taking a lenient view.

In case petitioner fails to file appeal within the time stipulated herein, respondent authorities

concerned will be free to take action in future for realizing the demand in question again.

Liberty is given to the petitioner to file appeal offline since the time to file appeal online has already expired.

It is recorded that this Court has not gone into the merit of the adjudication order in question and that shall be decided by the appellate authority concerned.

DA Comments:

The appeal remedy is given in all cases and recovery without considering the appeal remedy under section 78 of CGST Act, 2017 by adjudicating authority is unjustifiable and undue hurdles to applicant which is also considered in the said case.

Transfer of business as going concern not liable to GST - AAR

Issue:

The AAI filed the application before AAR on following queries:

- Whether the transfer of business to M/s Adani Lucknow International Airport Limited be treated as Supply under section 7 of CGST Act, 2017
- Whether said transactions will be considered as Supply as going concern and covered under clause 4 of schedule II of CGST Act, 2017
- Whether the said transaction is covered under the exemption notification no. 12/2017- CT (Rate) dated 28 June 2017 at entry no. 2
- If the answer is negative, whether the GST is leviable on the same.

Legal Provisions:

Schedule II of CGST Act, 2017 and notification no. 12/2017-CT(R) dated 28 June 2017

Observation and Comments:

The AAR observed and held that:

- In exemption entry 2 of exemption notification, there is no specific mention to cover only permanent transfer. Hence it can be concluded that even temporary transfer are covered in the said entry. It is settled law that the words shall be interpreted with the literal meaning.
- Now the second question arises is whether the above transfer is a going concern or not.

[Airport Authority of India |AAR UP – ADRG-03/ 2021](#)

‘Going concern’ is not defined under CGST Act. However, going concern is an accounting principle which indicates that business would continue and management is not intending to liquidate or stop business for near future.

- In the present case, the above test is satisfied because even after transfer, concessionaire will be in position to manage, operate airport and undertake the functions as were undertaken by the applicant. Moreover, there will not be any interruption in the operation of the airport on account of the underlying transaction. Hence, it can be said that there is a going concern.
- Now the third question arises, whether the transfer is whole or an independent part thereof. In the current case, the same is transferred as independent unit which is also covered under exemption notification.

DA Comments:

The Ruling has considered each terms of contract to determine whether the transaction would be leviable to GST or not.

ITC not available on maintenance and works contract services related to Building - AAAR

Issue:

The Mall owner raised following questions before AAR in relation to expenses incurred for maintenance of building which is not capitalised in the books of account as per section 17(5) (c) and (d) of CGST Act, 2017:

- Whether ITC on purchase of goods for the purpose of maintenance of building such as vitrified tiles, marble, granite, ACP sheet, steel plates, TMT and sanitary items can be claimed in full
- Whether ITC on works contract services for maintenance of building can be claimed in full

The applicant referred the Honorable High Court Ruling in the case of Safari Retreats Pvt. Ltd vs CCCGST (2019) 35, GSTJ, 106 (Ori) which allowed ITC on civil construction materials for building which is further leased to shops and others. AAR given the Ruling in negative by stating that *“mere statement that expenditure is not capitalised cannot come to the rescue of applicant. Be that as it may, the eligibility of ITC does not depend on the treatment given to the expenditure.”*

Accordingly, the appeal filed against the AAR to AAAR.

Section 17(5)(c) and (d) of CGST Act, 2017

Observation and Comments:

The AAAR observed and held that:

- The goods are being purchased by the appellant for the maintenance of building which is housing his mall, theatre, food court, and retail apparel store. This transaction falls under clause (d) which stipulated that goods or services or both received by a taxable person for construction of an immovable property on his own account would be ineligible for ITC claim.
- Where these inward supplies of goods is received in own account from works contractors and such expenses are capitalised, it would become ineligible for claim of ITC.
- Capital goods has been defined as per section 2(19) of CGST Act, 2017. It simply means that classification of any goods as capital goods would be dependent at the sweet will of a taxpayer on making entry in the books of account. Capitalisation or non capitalisation of these expenses is certainly not a permanent indelible mark in the account books. These account entries may be modified, altered or deleted as per prevailing/changing contingencies. These entries are not static or dynamic.

Legal Provisions:

ITC not available on maintenance and works contract services related to Building - AAAR

DA Comments:

There is need to issue clarification on the same from CBIC. Further, the AAAR has not considered the submission and also taken its own interpretations on legal provision without considering the facts of the case and Orissa High Court judgment. However, in other ruling, AAAR only disallowed the ITC to the extent of capitalised in the books of account. [M/s Unity traders MA AAAR - Order no. MP/AAAR/03/2020]. There is urgent need of National AAAR.

Jabalpur Entertainment Complexes Pvt. Ltd (MP AAAR - Order no. MP/AAAR/03/200)

Demo moto vehicles not eligible for ITC – AAAR

Issue:

The appellant is an authorised dealer of motor vehicles and raised following query before AAR:

- Whether the applicant is eligible for ITC on inward supply of motor vehicles which are used for demonstration purpose in the course of business of supply of motor vehicles as ITC on capital goods for the payment of output tax liability.

The AAR ruled that the applicant is not eligible for ITC as the same is restricted under section 17 (5) (a) of CGST Act, 2017. Accordingly, the appeal is filed against the said ruling.

Legal Provisions:

Section 17(5)(a) of CGST Act, 2017

Observation and Comments:

The AAAR observed and held that:

- The primary intention of appellant to purchase demo vehicle is to use it for demonstration and trail for the customers. He has, as per his statement, capitalised these purchases of demo vehicles in his books of account and these demo vehicles are used and replaced earlier of following (a) 40,000 km or above (b) continuation of model. It means that these vehicles have very specific object to serve and after that these are subsequently supplied by way of sale as old, used, and second hand vehicle.
- It is worthy to mention that there is no question of cascading effect since the issue is

already clear in light of notification no. 8/2018- CT(R) dated 25 January 2018, explanation no. (i) of this notification stated that ‘ in case of a registered person who has claimed depreciation under section 32 of Income Tax Act, 1961 on the said goods, the value that represents the margin of supplier shall be the different between the consideration received for supply of such goods on the date of supply and where the margin of such supply is negative, it shall be ignored.

- We derive the conclusion that the demo vehicles used for demonstration and for offering to customers are not covered in above exceptions.

DA Comments:

The AAAR did not consider the fact that the vehicle can be sold in future and thus eligible for credit. There is need to have national level AAAR to have consistency in the rulings by AAAR.

Vessel support services provided to foreign vessel considered as export of services – AAR

Issue:

The applicant is engaged in vessel management services and raised following query to AAR:

Whether the vessel support services provided by the applicant to its Group company outside India qualify as 'Export of Services' under GST?

Legal Provisions:

Section 2 of IGST Act, 2017

Observation and Comments:

The AAAR observed and held that:

- In the case at hand, to determine whether the supply amounts to 'Export of Services', the 'place of supply' is to be determined and 'Place of Supply' is not within the ambit of this authority as per section 97(2) above. In this regard, the applicant has put reliance on the ruling of Sutherland Mortgage Services Inc vs the principal commissioner and others [2020 (3) (TMI)186].
- Hence applying the ration of the above decision of Kerala High Court, the question raised by the applicant is taken up for consideration for merits.
- Accordingly, in the cases, when the vessel under management calls on the taxable territory then the place of supply of service in respect of that vessel under management is the location of in the taxable territory and the service rendered in respect of that vessel is not covered under 'Export of Services'.

- In case, vehicle does not enter any of the location in the taxable territory and the entire services relating to the water transport of vessels are extended in locations outside the taxable territory then in such terms the services extended are 'Export of Services'

DA Comments:

The AAR has considered the Ruling on 'Place of Supply' is relevant in this case as the same is not allowed under legal provision of GST law.

Diesel provided Free of Cost by service recipient for the transportation of goods not to be included in the value of supply

Issue:

The applicant is about to enter into contract with its customer for providing services of transportation of goods by road and raised following query before AAR:

Whether the value of diesel supply by the recipient Free of cost need to be included in the value of supply of road transportation services.

Legal Provisions:

Section 15 of CGST Act, 2017

Observation and Comments:

The AAR observed and held that:

- It is seen that section 15(2) (b) includes the amount that the supplier is liable to pay in relation to such supply, but which has been incurred by the recipient and not included in the price actually paid or payable. Hence trigger of section 15(2)(b) of CGST Act can be said to apply when the contractual liability is that of the supplier, but the same stands paid by the recipient.
- In the issue at hand, it is seen that the contractual liability of FOC diesel is not that of the applicant. Therefore, FOC diesel cannot be included in the scope of supply proposed to be made by the applicant. There is not economic activity gain made by the applicant and no consideration received in

reference to FOC diesel. Since contractual liability of FOC diesel is not proposed to be vested on the applicant, the present proposed transaction cannot fall under section 15(2)(b) of CGST Act, 2017. FOC diesel is condition of the contract and not a consideration of the contract.

DA Comments:

The AAR rightly held that FOC diesel is condition of the contract and not a consideration of the contract.

Amendment of Section 49 & 50 of CGST Act, 2017

Section 49 of CGST Act, 2017 which related to Payment of tax, interest, penalty and other amounts. In this section for sub-section (10), the following sub-section shall be substituted, namely:

(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,

(a) integrated tax, central tax, State tax, Union territory tax or cess; or integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

In section 50 of the Central Goods and Services Tax Act, for sub-section (3), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:

(3) Where the input tax credit has been wrongly availed and utilized, the registered person shall pay interest on such input tax credit wrongly availed and utilized, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

[Notification No. 09/2022 – Central Tax, dated 5 July 2022](#)

Amendment of Section 49 & 50 of CGST Act, 2017

CBIC exempts taxpayers having AATO up to Rs. 2 crores from the requirement of furnishing annual GST return (GSTR-9) for FY 2021-22

[Notification No. 10/2022–Central Tax, dated 5th July, 2022](#)

Extends due date of furnishing FORM GST CMP-08 for June 2022

Seeks to extend due date of furnishing FORM GST CMP-08 for the quarter ending June, 2022 till 31.07.2022

[Notification No. 11/2022–Central Tax, dated 5th July, 2022.](#)

Extends waiver of late fee for delay in filing FORM GSTR-4

CBIC extend the waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 till 28th day of July, 2022

[Notification No. 12/2022–Central Tax, dated 5th July, 2022.](#)

CBIC extends compliance dates related to tax recovery & GST Refund

- i. Extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;
- ii. Excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of erroneous refund;
- iii. Excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.

[Notification No. 13/2022-Central Tax, dated 5th July, 2022](#)

Amendment in Rules

Rule 21A-Suspension of Certificate- in sub-rule (4), after the proviso, the following proviso shall be inserted:

Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

If the registration has been suspended due to non-filing of GST return but not cancelled by proper officer, shall be deemed to be revoked upon filing of all pending returns.

Rule 46-Tax Invoice

-Added clause (s)

a declaration as below, that invoice is not required to be issued in the manner specified under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner so specified under the said sub-rule (4) of rule 48, by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under the said sub-rule (4) of rule 48.

Rule 87-Electronic Cash Ledger

in sub-rule (3), after clause (i),

the following clauses shall be inserted, namely: - “

(ia) Unified Payment Interface (UPI) from any bank;

(ib) Immediate Payment Services (IMPS) from any bank;”;

In sub-rule (5), after the words “Real Time Gross Settlement”, the words “or Immediate Payment Service” shall be inserted

After sub-rule (13), the following sub-rule shall be inserted

“(14) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in FORM GST PMT- 09: Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.”;

Duty Credit Scrips

Explanation 1 to rule 43, after clause (c), the following clause shall be inserted, namely: –

“(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017.”;

SO now the amended explanation to the rule 42 and 43 is given below;

For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a) [****]

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017.

Omitted Rule 95A-

Rule 95A which relates to Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist shall be deemed to have been omitted with effect from the 1st July, 2019.

Rule 86-Electronic Cash Ledger

In rule 86, after sub-rule (4A), the following sub-rule shall be inserted, namely: –

“(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him,

(a) under sub-section (3) of section 54 of the Act

(b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,

along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.

88B. Manner of calculating interest on delayed payment of tax. –

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

Explanation. –For the purposes of this sub-rule, –

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be, –

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other”;

Circular on reversal of ineligible/blocked ITC in Form GSTR-3B & GSTR-1

In order to ensure uniformity in return filing, the Board, in exercise of its powers conferred under sub-section (1) of section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), hereby clarifies various issues

- a. Furnishing of information regarding inter-State supplies made to unregistered persons, composition taxable persons and UIN holders
- b. Furnishing of information regarding ITC availed, reversal thereof and ineligible ITC in Table 4 of GSTR-3B

It is clarified that the reversal of ITC of ineligible credit under section 17(5) or any other provisions of the CGST Act and rules thereunder is required to be made under Table 4(B) and not under Table 4(D) of FORM GSTR-3B.

[Circular No 170/02/2022-GST, dated 06 July 2022](#)

Clarification on issue of claiming refund under inverted duty structure

Vide para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020, it was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output supply are same

It was given that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same."

Accordingly, para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 stands substituted.

It is clarified that in such cases, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.

[Circular No. 173/05/2022-GST, dated the 6th July, 2022](#)

Re-credit in electronic credit ledger using FORM GST PMT-03A

It can be stated that in respect of the following categories of refund sanctioned erroneously, re-credit of amount in the electronic credit ledger can be done through FORM GST PMT-03A, on deposit of such erroneous refund along with interest and penalty, wherever applicable, by the taxpayer:

- a. Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
- b. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
- d. Refund of unutilised ITC due to inverted tax structure.

Procedure for re-credit of amount in electronic credit ledger has been prescribed through the circular.

[Circular No. 174/06/2022-GST, dated the 6th July, 2022](#)

Manner of filing refund of unutilized ITC on account of export of electricity

Prescribes the following procedure for filing and processing of refund of unutilised ITC on account of export of electricity

- a. The applicant would be required to file the application for refund under “Any Other” category electronically in FORM GST RFD-01, on the portal.
- b. The applicant would be required to furnish/upload the details contained in Statement 3B (and not in statement 3) of FORM GST RFD-01 (in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.
- c. Relevant date for filing of refund.
- d. Processing of refund claim by proper officer

[Circular No. 175/07/2022-GST, dated the 6th July, 2022](#)

CBIC Withdraws Circular No. 106/25/2019-GST dated 29.06.2019

Circular No. 106/25/2019-GST dated 29.06.2019 wherein certain clarifications were given in relation to rule 95A, inserted in the Central Goods and Services Tax Rules, 2017 w.e.f. 01.07.2019, for refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.

The said rule 95A has been omitted, retrospectively w.e.f. 01.07.2019, vide notification No. 14/2022-Central Tax, dated 05.07.2022. Accordingly, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, hereby withdraws the earlier circular

[Circular No. 176/08/2022-GST, dated the 6th July, 2022](#)

CBIC clarifies GST rates & exemptions on 16 services

- a. It is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6.10.2021, the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.
- b. It is clarified that the amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is covered by exemption under No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.
- c. It is clarified that service by way of storage or warehousing of cotton in ginned and or baled form was covered under entry 24B of notification No. 12/2017- Central Tax (Rate) dated 06.2017 in the category of raw vegetable fibres such as cotton. It may however be noted that this exemption has been withdrawn w.e.f 18.07.2022.
- d. It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.
- e. It is clarified that if such services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification 12/2017- Central Tax (Rate).

[Circular No. 177/09/2022-TRU, dated 03 August, 2022](#)

Amendment in GST Rate on Services wef 18th July, 2022

Hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017,

[Notification No. 03/2022- Central Tax \(Rate\) , dated 13th July, 2022](#)

Amendment in GST Rate on Goods wef 18th July, 2022

Hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28th June, 2017

[Notification No. 06/2022- Central Tax \(Rate\) , dated: 13th July, 2022](#)

Change in GST E-invoice limit wef 01 October 2022

With effect from 1st October, 2022, Every registered taxable person whose aggregate annual turnover exceeds Rs. 10 Cr in any of the financial year since 2017-18 shall liable to issue E-Invoice. Earlier the limit was Rs. 20 Crores.

The registered person who is required to issue E-Invoice shall upload its' tax invoice in json file on Invoice Registration Portal (IRP) in accordance with e-invoice schema in INV-01 and shall get back digitally signed json from IRP with IRN and QR Code.

[Notification No. 17/2022-Central Tax ,dated 1st August, 2022](#)

Applicability of GST on liquidated damages, compensation & penalty out of breach of contract

Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a “supply” within the meaning of the Act. The said expression has following three limbs:

- a. Agreeing to the obligation to refrain from an act.
- b. Agreeing to the obligation to tolerate an act or a situation-
- c. Agreeing to the obligation to do an act-

The Circular has clarified the scope of entry “agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” with respect to taxability of certain transactions.

Have listed below the relevant scenarios as referred in the Circular for your reference:

- a. Liquidated damages
- b. Forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period-Accordingly, the same are not taxable under GST. Further, there are multiple advance rulings in which it is held that GST is not payable on notice pay recovery.
- c. Cheque dishonour fine/ penalty: The fine/ penalty that the supplier or banker imposes for dishonour of a cheque, is a penalty imposed for not tolerating the act or situation, but penalizing with the aim to deter and discourage such an act or situation. Therefore, such fine/ penalty is not a consideration for any service and accordingly, not taxable.
- d. Penalty imposed for violation of Laws: Penalty imposed for violation of laws such as traffic violations, pollution norms violation, etc. are also not consideration for any supply received and are not taxable under GST.
- e. Late payment charges: Late payment charges are ancillary supply naturally bundled and supplied in conjunction with the principal supply. Therefore, taxability for the same should be assessed basis taxability of the principal supply.

[Circular no. 178/10/2022 – GST, dated 03 August 2022](#)

Clarification on GST rates & classification (goods)

Clarifications, with reference to GST levy, related to the following are being issued through this circular:

- a. Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%: -it is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5%.
- b. Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry-It is clarified that S. No. 123 in schedule-I to the notification No. 1/2017- Central Tax (rate) dated 28.06.2017 covers minor polished stones.
- c. Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate- Accordingly, it is hereby clarified that mangoes, fresh falling under heading 0804 are exempt; Mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%; while all other forms of dried mango, including Mango pulp, attract GST at the rate of 12%.

To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of notification no. 1/2017-Central Tax (Rate), dated 28th June, 2017, has been amended vide notification No. 6/2022-Central Tax (Rate), dated the 13th July, 2022. 4.4. Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017.

- d. Treated sewage water attracts Nil rate of GST-It is hereby clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry vide notification No. 7/2022-Central Tax (Rate), dated the 13th July, 2022.

- e. Nicotine Polacrilex Gum attracts a GST rate of 18%-It is hereby clarified that the Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

GSTN Portal Changes

Removal of negative balance in cash ledgers of some composition taxpayers

Due to the reversal of amount in the cash ledger of some composition taxpayers, the balance in the cash ledgers had become negative.

The government has now decided that the negative balance in the cash ledgers of such taxpayers should be nullified. Accordingly, the negative balance has been nullified. All such taxpayers have been informed through email also.

Implementation of mandatory mentioning of HSN Codes in GST-1:

It is mandatory for the taxpayers to report minimum 4 digits or 6 digits of HSN Code in Table-12 of GSTR-1 on the basis of their Aggregate Annual Turnover (AATO) in the preceding Financial Year.

Part 1 of Phase I has already been implemented from 01st April 2022 and is currently live on GST Portal.

From 01st August, 2022, Part-II of Phase-I would be implemented on GST Portal and the taxpayers would need to report HSN in table 12 of GSTR-1.

To facilitate the taxpayers, these changes are being implemented in a phase-wise manner on GST Portal as below:

Phases		Taxpayers with AATO of up-to 5 cr.	Taxpayers with AATO of more than 5 cr.
Phase 1	Part I	<p>Taxpayers are required to mandatorily report 2-digit HSN codes for goods & services.</p> <p>Manual user entry is allowed for entering HSN or description and warning or alert messages shall be shown in case of manual HSN.</p> <p>However, taxpayers will be able to file GSTR-1 after manual entry.</p>	<p>Taxpayers are required to mandatorily report 4-digit HSN codes for goods & services.</p> <p>Manual user entry is allowed for entering HSN or description and warning or alert message shall be shown in case of incorrect HSN code.</p> <p>However, taxpayers will be able to file GSTR-1 after manual entry.</p>
	Part II	Same as above	<p>Taxpayers will now have to mandatorily report 6-digit HSN code.</p> <p>No change in other conditions</p>
Phase 2 to Phase 4		To be communicated in due course.	

Introducing new Table 3.1.1 in GSTR-3B for reporting supplies u/s 9(5)

According to section 9(5) of CGST Act, 2017, Electronic Commerce Operator (ECO) is required to pay tax on supply of certain services notified by the government such as Passenger Transport Service, Accommodation services, Housekeeping Services & Restaurant Services, if such services are supplied through ECO.

For reporting of such supplies, a new Table 3.1.1 is being added in GSTR-3B wherein both ECOs and registered persons can report their supplies made under section 9(5) respectively.

- An ECO is required to report supplies made u/s 9(5) in Table 3.1.1(i) of GSTR-3B and shall not include such supplies in Table 3.1(a) of GSTR-3B. The applicable tax on such supplies shall be paid by ECO in Table 3.1.1(i) of GSTR-3B in cash only and not by ITC.
- A registered person who is making supplies of such services as specified u/s 9(5) through an ECO, shall report such supplies in Table 3.1.1(ii) and shall not include such supplies in Table 3.1(a) of GSTR-3B. The registered person is not required to pay tax on such supplies as the ECO is liable to pay tax on such supplies.

3.1.1. Details of supplies notified under sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 and corresponding provisions in Integrated Goods and Services Tax/Union Territory Goods and Services Tax/State Goods and Services Tax Acts.

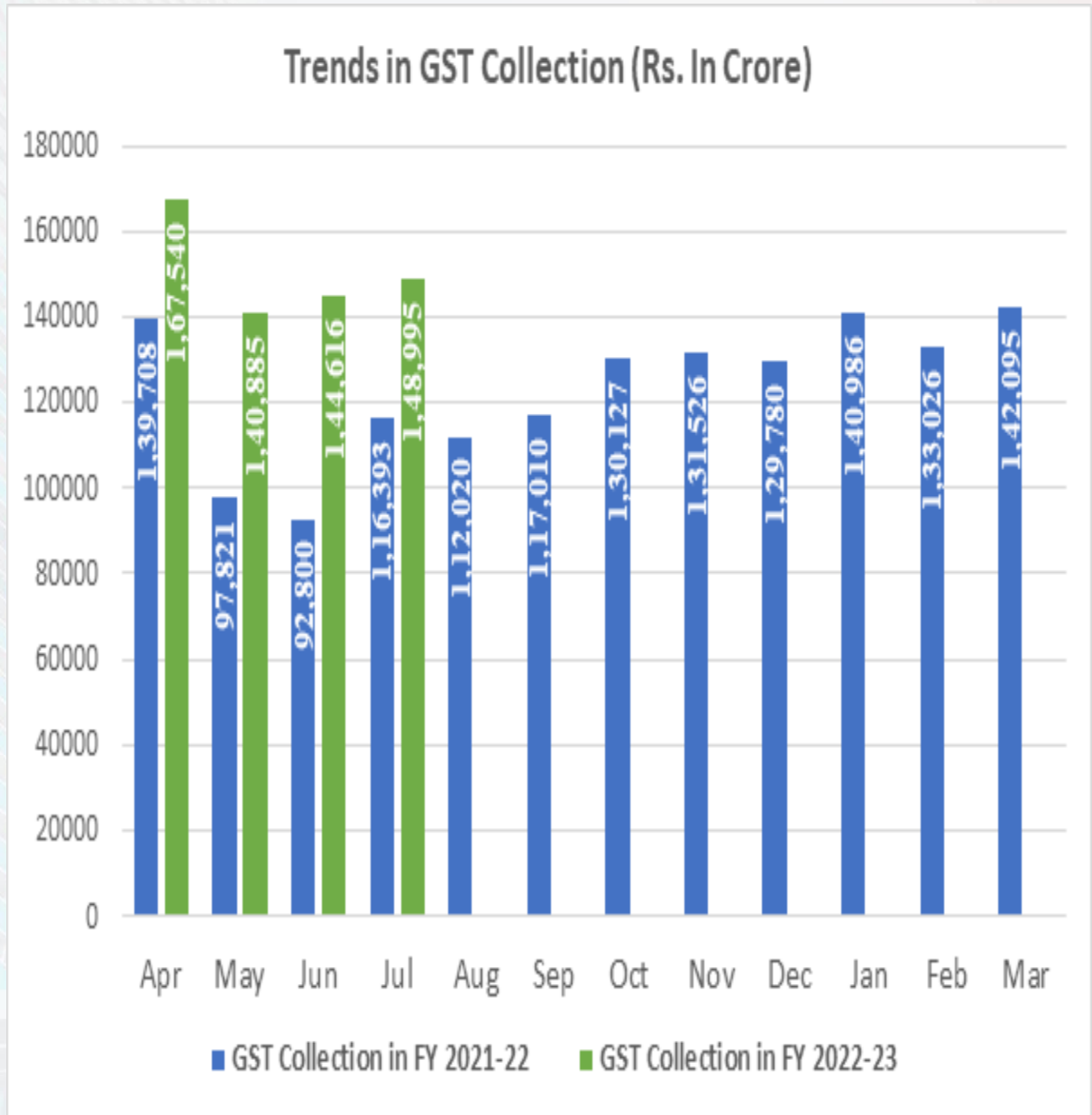
Description	Total Taxable Value	Integrated Tax	Central Tax	State/UT Tax	Cess
(1)	(2)	(3)	(4)	(5)	(6)
(i) Taxable supplies on which electronic commerce operator pays tax under Sub-section (5) of Section 9 [To be furnished by the electronic commerce operator]					
(ii) Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under Sub-section (5) of Section 9 [To be furnished by the registered person making supplies through electronic commerce operator].					

Advisory on Upcoming Changes in GSTR-3B

Few changes have been notified in Table 4 of Form GSTR-3B requiring taxpayers to report information on ITC correctly availed, reversal thereof and declaring ineligible ITC in Table 4 of GSTR-3B.

The notified changes in Table 4 of GSTR-3B are being implemented on the GST Portal and will be available shortly. Until these changes are implemented on the GST Portal, taxpayers are advised to continue to report their ITC availment, reversal of ITC and ineligible ITC as per the current practice. The taxpayers will be duly informed once these changes are made available on the GST Portal.

GST Revenue Collection in July 2022- Rs. 1,48,995 Cr.



Source: [PIB](#)



- Extension of Customs clearances beyond normal working hours in Inland Container Depot
- Seeks to amend notification for withdrawing IGST Exemption
- Warehousing of solar power generating units or items like solar panel, solar cell etc
- Exemption of IGST and Compensation Cess under Advance Authorisation, EPCG & EOU scheme
- Implementation of Paper Import Monitoring System (PIMS) - Clarification
- Rules for Work from Home for Special Economic Zones

Extension of Customs clearances beyond normal working hours in Inland Container Depot

- a. The facility of Customs clearance may be made available on a 24×7 basis, similar to the current Board guidelines for Sea Ports and Air Cargos/Airports;
- b. The facility of Customs clearance may be extended on all seven (7) days of the week (including holidays), with stipulated timings (say from 9 :30 AM to 6 :00 PM);
- c. The facility of Customs clearance may be extended beyond normal working hours for specified days in a week and with specified timings.
- d. The decision to designate an ICD in any manner under above, based on location requirement and resources availability, could be for specified imports viz. goods covered by 'facilitated' Bills of Entry only, or specified exports viz. refer containers with perishable/ temperature sensitive export goods sealed in the presence of Customs officials only or goods exported under free Shipping Bills only, or for all the three categories mentioned.

[Circular No. 11/2022-Customs, dated 29 July 2022](#)

Seeks to amend notification for withdrawing IGST Exemption

Notification NO 51/96 dated 23 July 1996 which states Exemption to research equipment imported by public funded and non-commercial research institutions and I.I.T. etc, which provided exemption the whole of integrated tax leviable thereon under sub-section (7) of section

3 of the said Customs Tariff Act stands withdrawn.

This notification shall come into force on the 18th day of July, 2022.

[Notification No. 42/2022-Customs, dated 13 July 2022](#)

Customs Authority for Advance Rulings (Amendment) Regulations, 2022

The Central Board of Indirect Taxes and Customs hereby makes the following regulations to amend the Customs Authority for Advance Rulings Regulations, 2021.

Few points have been listed below;

- a. These regulations may be called the Customs Authority for Advance Rulings (Amendment) Regulations, 2022.
- b. It shall come into force on the date of their publication in the Official Gazette.
- c. Withdrawal of application. - The applicant may withdraw his application at any time before an advance ruling is pronounced.”

- d. Mode of service of notices, etc. -The service of notices or documents required to be served on the parties to the application or petition and in the case of a Principal Commissioner or Commissioner may be served as per the provisions of the Act.

Notification No. 63/2022 – Customs (N.T.), dated 20 July 2022

Warehousing of solar power generating units or items like solar panel, solar cell etc

MOOWR is not applicable for warehousing of solar power generating units or items like solar panel, solar cell etc. for power plants with resulting goods ‘electricity’ -

As the identical goods, i.e., electricity, may also be cleared for home consumption, the provision

for removal for export shows that those goods, i.e., electricity, which are of the nature to which it is incapable to affix one-time-lock to the load compartment of the means of transport in which such goods are removed, fall squarely outside the scope of MOOWR 2019 because of inability to satisfy the essence of the prescribed condition.

Instruction No. 13/2022-Customs, dated 09 July 2022

Exemption of IGST and Compensation Cess under Advance Authorisation, EPCG & EOU scheme

Para 4.14, Para 5.01(a) and Para 6.01(d)(ii) of FTP 2015-20 are amended to provide exemption from Integrated Tax and Compensation Cess.

[Notification No. 16/2015-20- DGFT, dated 1st July, 2022](#)

Relaxation in provision of submission of 'Bill of Export' as an evidence of export obligation discharge for supplies made to SEZ units in case of EPCG Authorization

Relax the condition of requirement of submission of 'Bill of Export' in case of exports made to SEZ units under EPCG Authorization, for all such supplies made prior to 01.04.2015.

For the purpose of discharge of export obligation under EPCG Authorizations, 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' such as

- ARE-I form duly attested by jurisdictional Central Excise authorities of EPCG authorization holder.
- Evidence of receipt of the supplies by the recipient in the SEZ.
- Evidence of payment made by the SEZ, unit to the EPCG authorization holder

[Policy Circular No. 43/2015-20, dated 27 July 2022](#)

Implementation of Paper Import Monitoring System (PIMS) Clarification

- PIMS Registration shall be required at the point of import by a Unit in SEZ/FTWZ or at the time of import by an EOU of the items covered under PIMS.

- PIMS Registration shall not be required by the DTA Unit at the time of Customs Clearance from the SEZ/FTWZ/EOU to DTA if no processing has taken place of the item of paper that has already been registered under

PIMS at the time of entry into a SEZ/FTWZ/EOU.

- However, if processing has taken place in the SEZ/FTWZ/EOU with change in HS Code at 8-Digit level, then the importer in DTA will require to register under PIMS, if the processed item falls under any of the tariff lines covered under PIMS.

[Policy Circular No. 41/2015-2020-DGFT, dated 5th July, 2022](#)

Excisability of waste/ residue arising during the process of manufacture

Rule 6 of the CENVAT Credit Rules, 2004 was amended with effect from 1.03.2015 by inserting Explanation 1 and 2 in sub-rule (1) of rule 6, which provides that exempted goods or final product shall include non-excisable goods cleared for consideration from the factory.

Accordingly, Circular No. 1027/15/2016-CX dated 25.04.2016 was issued highlighting that Bagasse, Dross and Skimmings of non-ferrous metals or any such by-product or waste, which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input and input services,

The issue again came before the Hon'ble Supreme court in the case of Union of India Vs. M/s. Indian Sucrose Limited [SLP (C) No. 1700/2021], wherein the Hon'ble Supreme Court vide its judgement dated 04.03.2022, referred to its observations in the Union of India vs. M/s. DSCL Sugar Ltd & Ors. (supra) holding that Bagasse is non-excisable to which the CENVAT Credit Rules have no application, and held that the Circular dated 25.04.2016 is unsustainable in law.

In light of the above judgement, Circular No. 1027/15/2016-CX dated 25.04.2016 has been withdrawn.

[Circular No. 1084/05/2022-CX, dated 07 July 2022](#)

Transfer of appeals filed after the 30th June 2017

The Central Government directs that the powers exercisable by the Central Board of Indirect Taxes and Customs under rule 3 of the Central Excise Rules, 2017 and rule 3 of the Service Tax Rules, 1994, may be exercised also by-

- i. the Principal Chief Commissioner of Central Excise and Service Tax; or
- ii. the Chief Commissioner of Central Excise and Service Tax,

for the purpose of transfer of appeals filed after the 30th June 2017 under his jurisdiction to the Commissioner of Central Excise and Service Tax (Appeals) under his jurisdiction, under the provisions of the Central Excise Act, 1944 (1 of 1944) or the Finance Act, 1994 (32 of 1994), as the case may be.

Notification No. 03/2022-Central Excise (N.T.), dated 20 July, 2022

Rules for Work from Home for Special Economic Zones

The Department of Commerce has notified a new Rule, namely Rule 43A - Work from Home in Special Economic Zones Rules, 2006 across all Special Economic Zones.

The notification was issued on demand from the industry for making a provision for a country wide uniform Work from Home (WFH) policy across all Special Economic Zones.

Notification No G.S.R 576(E), dated 14th July, 2022



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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

- CBIC vetting paperless customs rules for SEZs
- Oppo India under Govt scrutiny for alleged Customs duty evasion of ₹4,389 crore
- 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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