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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM

Darda Advisors LLP

October 2022
Issue: 29

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We are pleased to present to you the twenty- 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 September 2022.

During the month of September 2022, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as amendment in rule 89(2) has retrospective effect, ITC on free vouchers is not available along with other circulars and notifications.

In the twenty-nineth 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 September 2022.

The endeavor is to collate and share relevant amendments, updates, articles, and case laws under indirect tax laws with all the Corporate stakeholders.

We hope you will find it interesting, informative, and insightful. Please help us grow and learn by sharing your valuable feedback and comments for improvement.

We trust this edition of our monthly publication would be an interesting read.

Regards

Vineet Suman Darda
Co-founder and Managing Partner

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Tax and Regulatory Services

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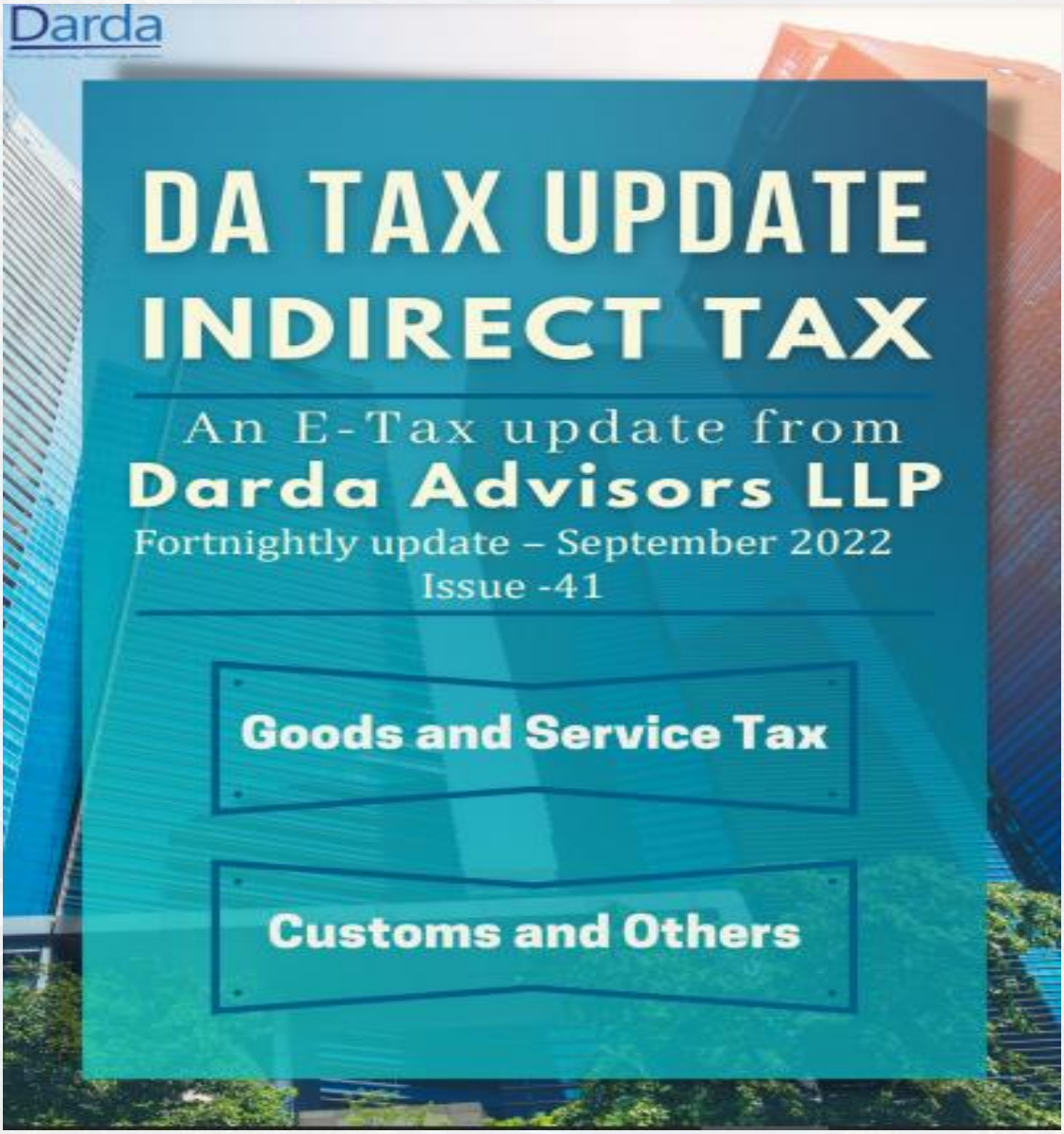
DA Updates and Articles for the month of September 2022

Indirect Tax Fortnightly Update for the month of September 2022

https://dardaadvisors.com/indirect-tax-alert/da-indirect-tax-fortnightly-update-_-september-2022/



GST COMPLIANCE CALENDAR

OCTOBER 2022

10
GSTR-7
TDS Deductor

10
GSTR-8
TCS
Deductor

11
GSTR-1
Normal & QRMP
Taxpayer

13
GSTR-6
Input Service
Distributor

20
GSTR-5A
OIDAR Service Provider

20
GSTR-3B
Normal & QRMP Taxpayer

20
GSTR-5
Non-Resident Taxable
Person

- Refund of Terminal Excise Duty denied under erstwhile law to be provided as credit in GST Electronic Credit Ledger
- Amended Rule 89(2) of CGST Rules, 2017 is clarificatory having retrospective effect - Refund in relation to electrical energy export
- Power to detain (Section 129 of CGST Act, 2017) cannot be converted to Power to confiscate (Section 130 of CGST Act, 2017) since both these provisions operate independently of each other
- ITC on vouchers and subscription packages not available when given Free of Cost to Customers – AAR
- Seizure of goods when e-way bill itself not applicable, is bad in law
- Registration cancellation order when gone beyond the frame of the SCN not sustainable
- Denial of refund and DDB as 'risky exporter' to be justified – HC
- Refund application rejected without mere physical submission not sustainable, allowed to file fresh refund application
- Limitation period excluded during Covid to be excluded for filing refund claims
- Other Notifications/Circulars/Press Release

Refund of Terminal Excise Duty denied under erstwhile law to be provided as credit in GST Electronic Credit Ledger

Issue:

These three writ petitions have been filed seeking refund of terminal excise duty (TED) claimed by the petitioner in regard to the duty paid on supply of laptops to licence holders of Export Promotion Capital Goods (EPCG) Scheme.

Those appeals come to be rejected by the Director General of Foreign Trade, as non-maintainable in terms of Section 15(1) of the Foreign Trade Development and Regulation Act, 1992. The ground of rejection was that the orders impugned therein constituted administrative decisions and not orders of adjudication.

Legal Provisions:

Chapter 8 of Foreign Trade Policy

Observation and Comments:

The Honorable High Court observed and held that:

- On the merits of the matter, subject to the claim of the petitioner being in order, the position of law has been settled by a judgment of the Hon'ble Supreme Court in the case of Sandoz Private Limited Vs. Union of India and Others, [(2022) 1 TMI 225].
- There is thus no doubt in my mind and Mr. Chandrasekaran, learned Senior Panel for R1 to R5 would fairly accede to the position, that a supplier to a EOU/licence holder under the EPCG scheme, is entitled to refund of terminal excise duty. In the present case, there is no dispute on the position that the petitioner has, in fact, paid the refund at the first instance.
- Thus, the factum of payment of duty by the petitioner stands established. In the case of Sandoz Private Limited (supra), the Hon'ble Supreme Court has directed credit of the duty paid to the CENVAT Register of that assessee for the reason that, pending litigation, the era of Central Excise had been subsumed into Goods and Service Tax regime with no avenue available for receipt of the amount in cash.

Refund of Terminal Excise Duty denied under erstwhile law to be provided as credit in GST Electronic Credit Ledger

- The GST Authorities were thus impleaded to ascertain the mechanism presently in vogue. In their counter dated 10.08.2022, the GST & Central Excise Authority have merely distanced themselves from the present litigation stating that it is for the DGFT to take a view in regard to the refund. In view of the aforesaid discussion, the position of law in regard to refund not being res integra any longer as well as the admitted position that the petitioner has, indeed, paid the duty in the first instance, the impugned orders are set aside and R3 is directed to grant credit of the amount of duty paid in the electronic credit register of the petitioner. Let this exercise be done within a period of eight weeks from date of receipt of copy of this order. These writ petitioners are allowed in the aforesaid terms. No costs.

DA Comments:

The Honorable High Court followed the judgment of Honorable Supreme Court in the case of Sandoz India and rightly allowed refund amount in erstwhile law as credit in electronic credit ledger under GST.

M/S. Lenovo India Pvt Ltd vs DGFT and others [2022 (9) TMI 1353 - MADRAS HIGH COURT]

Amended Rule 89(2) of CGST Rules, 2017 is clarificatory having retrospective effect - Refund in relation to electrical energy export

Issue:

The various writ petitions filed against issuance of refund rejection orders related to export of electrical energy to Bangladesh. The reasons for rejection of refund orders are:

(1) The shipping bill, as required under Rule 89 (2)(b) of Central Goods and Service Tax Rules, 2017, is not submitted to the authorities and

(2) There is no evidence to show that the power transmitted by the petitioner from Bohrompur Substation, Murshidabad, India is the same power which reached Bheramara substation, Bangladesh.

Legal Provisions:

Rule 89 of CGST Rules, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- A perusal of Section 54 of CGST Act, 2017, which deal with claim for refund, would show that the petitioner is entitled to claim refund of Input Tax Credit. This provision nowhere refer to furnishing of shipping bill for claim of refund, which aspect is not disputed. However, the authorities only refer to Rule 89 2(b) of CGST Rules, 2017, for production of shipping bills, so as to accept the claim made. A situation of this nature would not have been contemplated, at the time when Rule 89 of CGST Rules was framed and incorporated inthe statute book. The transmission of electricity across the border is a phenomena that has come into existence from the recent past i.e. after incorporation of Rule 89, and as such, suitable amendments ought to have been made at the time when permissions are granted for transmission of electricity to other countries.

- As observed earlier, Rule 89 of CGST Rules, 2017, deals with a procedure for claiming refund. But, requiring them to produce shipping bills, as proof of export cannot be made applicable to electricity, as it is impossible to produce shipping bill for export of electricity, since the Custom Law does not refer to electricity and shipping bill is a Customs document. Export of electricity can only be through transmission line, but not through rail, road or water, for which, necessary documents can be made available.

Amended Rule 89(2) of CGST Rules, 2017 is clarificatory having retrospective effect - Refund in relation to electrical energy export

- Further, the amendment to Rule 89 (2)(ba) of CGST (Amendment) Rules, 2022 [July, 2022] clearly show that the number and date of the export invoices, details of energy exported, tariff per unit of export as per agreement, along with the copy of scheduled energy for exported electricity by Generation Plants, issued by the Regional Power Committee Secretariat, can be made the basis to show the number of units of electricity, transmitted and supplied across the border. This amendment makes it clear that information relating to generation of electrical energy and its transmission across the border, can be obtained from Regional Power Committee Secretariat or Regional Energy Account under the regulations of Central Regulatory Committee.

- The situation reminds of an age-old maxim 'Lex Non Cogit ad impossibilia', meaning that the law does not compel a man to do things which he cannot possibly perform.

- Having to the above discussion and the judgments referred to above, we hold that the Rule 89 of CGST Rules, 2017 and the amendment made thereto cannot curtail the benefit of Input Tax Credit. The petitioner, inour view, was justified in not producing shipping bills to prove the quantity of energy units transmitted and that the reports of REA filed by the petitioner, could be made the basis to deal with the claim for refund of Input Tax Credit.

- Circular No.175/07/2022-GST dated 06.07.2022 issued by Ministry of Finance, Government of India, with regard to the manner of securing refund of unutilized ITC on account of export of electricity, and clearly establishes that amendment to Rule 89 of CGST (Amendment) Rules, 2022 was carried out to cure the defect in Rule 89 of CGST Rules, 2017, because of the problem faced by power generating units in filing refund claims of unutilised Input Tax Credit on export of electricity.

Amended Rule 89(2) of CGST Rules, 2017 is clarificatory having retrospective effect - Refund in relation to electrical energy export

- Further, a perusal of the amendment to Rule 89(2) of CGST Rules, would inter-alia show that the said Rule came to be amended only to clarify the anomaly that was existing with regard to production of material evidencing export of a thing which is intangible in nature. Hence, by no stretch of imagination, the amendment can be said to be declaratory in nature, but it can only be a one, which would be curing the defect by issuing necessary clarification as to how transmission of electrical energy can be proved. Hence, we are of the view that the Rule 89 of CGST (Amendment) Rules, 2022 is only clarificatory in nature.

- From the judgments referred to above, it is very clear that any benefit that gets accrued by way of legislation cannot be denied/curtailed, more so, when it is clarificatory in nature like the present one and as such it has to be made retrospective in operation.

- Accordingly, these writ petitions are allowed and the orders under challenge are set aside and theW.P.Nos.11194, 11206 & 11263 of 2021 are remanded back to Additional Commissioner [GST Appeals] and the W.P.Nos.11198, 17275, 28836 & 30292 of 2021 are remanded back to the Deputy Commissioner of Central Tax to deal with the claim of refund in terms of this common order. The petitioner shall file relevant reports evidencing transmission of electricity before appropriate authorities, if not already filed. There shall beno order as to costs.

DA Comments:

The Honorable High Court rightly held that clarificatory Rules having retrospective effect.

M/S. SEMBCORP ENERGY INDIA LIMITED vs State of AP [2022 (9) TMI 1386 - Andhra Pradesh High Court]

Power to detain (Section 129 of CGST Act, 2017) cannot be converted to Power to confiscate (Section 130 of CGST Act, 2017) since both these provisions operate independently of each other

Issue:

The officer passed an order of detention under Section 129 of the CGST Act, 2017 in Form GST MOV-06 and on the following day, the Deputy Director, DGGI, Zonal Unit, Belagavi, proceeded to issue a notice for confiscation of goods, conveyances and levy of penalty under Section 130 of the CGST Act,2017 in Form GST MOV-10. To this notice, the petitioner submitted a reply dated and after granting a personal hearing to the authorised representative of the petitioner, passed an order of confiscation under Section 130 of the CGST Act by issuing Form GST MOV-11.

Being aggrieved by the order of confiscation, the petitioner preferred an appeal to the Joint Commissioner (Appeals) and on consideration of the appeal, concurred with the view taken by the Deputy Director and proceeded to dismiss the appeal. Accordingly, the writ petition is filed.

Legal Provisions:

Section 129 and section 130 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

Power to detain (Section 129 of CGST Act, 2017) cannot be converted to Power to confiscate (Section 130 of CGST Act, 2017) since both these provisions operate independently of each other

Grounds under notice of confiscation	Observation by Honorable High Court
An e-way bill had not been generated with the intent to evade payment of tax	As stated above, the goods were accompanied by a tax invoice, which indicated payment of tax but an E-way bill had not been generated. Thus, the proper officer could have only imposed a penalty of ten thousand rupees or the amount equivalent to the tax evaded.
The goods appeared to be grossly undervalued (when compared to the valuation report submitted by CAMPCO) with the intent to evade payment of tax	As noticed above, Rule 46 does not mandate the market value of the goods or a prescribed value of the goods is required to be mentioned in the Tax invoice and the Rule also does not state the grade or quality of the goods are required to be mentioned. Thus, if the proper officer, had reason to believe that the applicable tax has not been paid either by mistake or by reason of fraud, such as undervaluation of the goods, it would be open for him to initiate proceedings under Section 73 and Section 74 of the Act. The proper officer, at the time of detention of the goods, cannot obviously convert the power to detain the goods and proceed to exercise of his power to confiscate, especially, when the proper officer has been conferred the power to determine the tax in a specified manner under Sections 73 and 74 of the Act.

Power to detain (Section 129 of CGST Act, 2017) cannot be converted to Power to confiscate (Section 130 of CGST Act, 2017) since both these provisions operate independently of each other

Grounds under notice of confiscation	Observation by Honorable High Court
The weight of the goods was mis-declared with the intent to evade payment of tax.	As far as the mis-declaration of the weights of the goods is concerned, as the same amounted to an offence as prescribed under Section 122(1)(i) 6, the proper officer could impose the penalty as prescribed in Section 122 and that could not entitle him to invoke his power to confiscate the goods itself.
The grade and quality of areca nuts were not mentioned in the invoice with the intent to evade payment of tax.	In fact, in confiscation proceedings, the concept of determining the under-valuation of the goods would not really arise since that is an exercise which has to be undertaken under Section 74 of the Act against the registered person. Therefore, the entire basis that there was undervaluation was completely incorrect and the consequential conclusion that there was under-valuation with an intent to evade payment of tax, cannot also be accepted.

Power to detain (Section 129 of CGST Act, 2017) cannot be converted to Power to confiscate (Section 130 of CGST Act, 2017) since both these provisions operate independently of each other

Grounds under notice of confiscation	Observation by Honorable High Court
There were non-existent suppliers and recipient which was discovered during the investigation and follow-up searches.	The fifth ground that there was a non-existent/ dummy supplier and a recipient can only be a ground for determination of tax under Section 74 and cannot really be raised and determined in a confiscatory proceeding, given the fact that the petitioner was a registered person and its registration had been accepted by the Department.

DA Comments:

The Honorable High Court has given detailed observations on each and every allegations under confiscation notice and rightly held that detention power cannot be converted to confiscation power.

M/S. Rajeev Traders [2022 (9) TMI 786 - Karnataka High Court]

ITC on vouchers and subscription packages not available when given Free of Cost to Customers – AAR

Issue:

The applicant is a major Indian fashion e-commerce company engaged in the business of selling of fashion and lifestyle products through the portal. The loyalty program is sought to be introduced with an object of increasing customer base of the applicant's platform which will lead to increased footfall and sales through the said platform and thus the said loyalty program will directly impact and enhance the amount of commission earned by the Applicant in the course of their business. The applicant has sought advance ruling in respect of the following question.

Whether the applicant would be eligible to avail the input tax credit (ITC), in terms of Section 16 of the CGST Act 2017, on the vouchers and subscription packages procured by the applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned / accumulated by the said customers.

Legal Provisions:

Section 16 and section 17 (5) of CGST Act, 2017

Observation and Comments:

The AAR observed and held that:

- The vouchers printed on paper are undoubtedly goods, as they are tangible. Now the question is whether the e-vouchers, which are intangible, are also goods or not.
- The term 'goods' is not restricted to tangible property, instead refers to every kind of movable property which is capable of being transmitted or supplied. Vouchers are a movable property, capable of being transmitted electronically or supplied physically, thus they qualify as 'goods'.
- Thus voucher is undoubtedly a moveable property and squarely gets covered under intangible goods. Further Schedule II to Section 7 of the CGST Act 2017 stipulates the activities or transactions to be treated as supply of goods or supply of services. Para 1(a) of Schedule II to Section 7 specifies that any transfer of the title in goods is supply of goods. The transaction of supply of vouchers in the instant case involves transfer of the title and hence they are covered under supply of goods.

ITC on vouchers and subscription packages not available when given Free of Cost to Customers – AAR

- It can be seen from the loyalty program that the applicant, on the basis of a particular transaction /purchase by the customer through their e-commerce platform and subject to acceptance of the terms and conditions of the applicant by the customer, allows the customer to earn loyalty points. The applicant in the said transaction recovers the full amount from the customer and gives the loyalty points free of cost. Further the said loyalty points, in the applicants own admission, do not have any monetary value, are non-transferable and cannot be converted to cash. The redemption of loyalty points, admittedly involves no flow of consideration from the customer. Thus redemption of loyalty points by the customer for receiving vouchers from the applicant implies that the vouchers are issued free of cost to the customer and amounts to disposal of vouchers(goods) by way of gift and squarely covered under clause (h) of Section 17(5) of the Act, ibid.

DA Comments:

Without looking to the "in the course of and furtherance of business' and evaluating eligibility of ITC independently on 'Free of Cost' leading to denial of ITC and said decisions at AAR. CBIC need to clarify the same.

M/S. Myntra Designs Private Limited [2022 (9) TMI 842 - Authority For Advance Rulings, Karnataka]

Seizure of goods when e-way bill itself not applicable, is bad in law

Issue:

The goods of the petitioner in movement from Kolkata to Budaun were seized on the ground that they were not accompanied with the E-way bill. The submission of learned counsel for the petitioner is that during the period from 1 February 2018 to 31 March 2018 the requirement of E-way bill was not applicable to the transaction of the petitioner.

Legal Provisions:

Section 129 of CGST Act, 2017

Observation and Comments:

The Hon'ble High Court observed and held that:

- This aspect of the matter has been considered by the Division Bench of this Court in Writ Tax No. 587 of 2018 (M/S Godrej and Boyce Manufacturing Co. Ltd. vs. State of U.P. and two others) decided on 18.9.2018 and in para 56 it has been held that the goods were not covered with the requirement of E-way bill during 1 February 2018 to 31 March 2018.

- The goods in the present case were seized on 11 February 2018 that is only for the reason they were not accompanied with the E-way bill. Since the requirement of the E-way bill was not applicable for the petitioner during the above period, the seizure itself is bad in law. Accordingly, the impugned seizure order passed under Section 129(1) of U.P. GST (Annexure 2 to the writ petition) is hereby quashed and all consequential proceedings stands dropped. The writ petition is allowed.

DA Comments:

There are multiple reasons for which detention of vehicles are done which are beyond the legal provisions and need to be adequately clarified by CBIC.

M/S Techno Fabs vs ADC (Appeal) [2022 (9) TMI 1205 - Allahabad High Court]

Registration cancellation order when gone beyond the frame of the SCN not sustainable

Issue:

The writ petition is filed against the order passed by the adjudicating authority by which the GST registration has been cancelled.

Legal Provisions:

Section 29(2) of CGST Act, 2017

Observation and Comments:

The Hon'ble High Court observed and held that:

- The order dated 04.05.2022 is founded on the show-cause notice ("SCN") dated 31.03.2022. It is, therefore, relevant for the purpose of adjudication of this writ petition, that the SCN is extracted hereafter, as we have a grave concern about the manner in which the SCN has been framed.

- As a matter of fact, the concerned authority, ironically, put the onus on the petitioner to demonstrate that registration has been obtained by fraud, willful misstatement statement or suppression of facts.

- We would have thought, that in the first instance, the concerned authority would have adverted to some broad facts, which would have demonstrated that the petitioner had employed fraud, willful misstatement or suppression of facts, while obtaining registration. Nothing of this kind has been stated in the SCN.

- Clearly, the SCN did not advert to the facets, which were referred to in the impugned order, whereby the petitioner's registration has been cancelled.

- Although, as per the impugned order, the Range Inspector appears to have physically verified the petitioner's premises, neither was any notice given of the physical verification, nor is the report which was generated after the verification, uploaded on the portal.

- Apart from anything else, there is, certainly, an infraction of the provisions of Rule 25 of the CGST, and that apart, as indicated above, the impugned order has gone beyond the frame of the SCN. Accordingly, the prayer made in the writ petition is allowed. The impugned order is set aside. The respondents/revenue will restore the registration of the petitioner. It is made clear though, that this order will not come in the way of the respondents/revenue issuing afresh SCN or carrying on investigation against the petitioner, albeit as per law.

Registration cancellation order when gone beyond the frame of the SCN not sustainable

DA Comments:

The Honorable High Court rightly held that impugned order issued outside the SCN frame and thus not sustainable.

M/S. Balaji Enterprises vs PADG, DGGI [2022 (9) TMI 1107 - DELHI HIGH COURT]

Denial of refund and DDB as 'risky exporter' to be justified – HC

Issue:

The principal grievance of the petitioner is that it was not accorded the refund of IGST and duty drawback, only on the ground that it was categorised as a "risky exporter". In accordance with the Standard Operating Procedure [SOP] in CBIC Circular No.131/1/2020-GST, while carrying forward the export consignments/ shipments, the petitioner was subjected to an examination, in which it is found to be clear. It appears that the aforementioned CBIC"s circular has been further amended on 20 May 2020.

Legal Provisions:

CBIC Circular No.131/1/2020-GST

Observation and Comments:

The Hon'ble High Court observed and held that:

- The Learned counsel for the petitioner says, that the petitioner would be satisfied, if the respondents are directed to treat the writ petition as a representation, and determine afresh, as to whether the petitioner falls in the category of "risky exporter."
- The writ petition is, accordingly, disposed of with the following directions:
- The respondent no.3/Commissioner will treat the writ petition as a representation. The said respondent will also examine the stand taken by the petitioner, in its rejoinder.
- For this purpose, respondent no.3/Commissioner will afford an opportunity of personal hearing to the authorized representative (AR) of the petitioner.
- The AR of the petitioner will appear before the respondent no.3/Commissioner on 23.09.2022, at11:00 AM.
- The respondent no.3/Commissioner will, thereafter, pass a speaking order, a copy of which would be furnished to the petitioner.
- In case the petitioner is aggrieved by the order passed by the respondent no.3/Commissioner, it will have liberty to assail the same, albeit as per law. List the matter for compliance on 23.11.2022. Needless to add, the respondent no.3/Commissioner will act with due expedition. The entire exercise will be completed no later than 13.10.2022.

DA Comments:

It is fundamental right of assessee to have detailed reasons for considering as 'risky exporter' and adequate opportunity to represent its case.

M/S. MG Global vs Directorate General Of Analytics And Risk Management & Ors. [2022 (9) TMI 1333 - Delhi High Court]

Refund application rejected without mere physical submission not sustainable, allowed to file fresh refund application – HC

Issue:

The Petitioner has filed refund application and acknowledgments to that affect were also given by the adjudicating authority. In the month of February, 2020, the Petitioner attempted to submit physical documents in support of the above refund claims with the respective jurisdictional Department. However, the Department did not accept the documents. The Department informed the Petitioner that, in the light of Circular, dated18 November 2019, issued by CBIC, the Petitioner is required to file refund application along with all supporting documents electronically on common portal with effect from 26 September 2019. However, on 21 July 2020, authority informed the Petitioner that his Office has issued Form GST RFD-06,[rejection order], on the ground of non-submission of application for refund claim along with necessary supporting documents. In view of the above circumstances, the present Writ Petition filed.

Legal Provisions:

Section 54 of CGST Act, 2017 read with Rule 89 of CGST Rules, 2017

Observation and Comments:

The Hon'ble High Court observed and held that:

- Both the Counsel reiterated the averments made in the affidavit filed in support of Writ Petition and the Counter, in support of their arguments, and ultimately it was agreed upon that the Petitioner herein shall make a fresh application seeking refund, in terms of Circular No.125/44/2019-GST, dated 18.11.2019, issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing, within a period of three [03] weeks from today.

- Having regard to the above and with the consent of both the parties, the Writ Petition is disposed of directing the Petitioner to make a fresh application for refund claim enclosing necessary supporting documents in terms of Circular No. 125/44/2019- GST, dated 18.11.2019, issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing, within a period of three [03] weeks from today. In which event, the authorities shall dispose of the same on merits and in accordance with law as early as possible, preferably within a period of Three weeks thereafter.

Refund application rejected without mere physical submission not sustainable, allowed to file fresh refund application – HC

DA Comments:

The denial of refund on procedural issue in all such cases leading to delayed refunds and multiple cases being filed at various Honorable High Courts.

M/S Lupin Ltd vs UOI and others [2022 (9) TMI 664 - Andhra Pradesh High Court]

Limitation period excluded during Covid to be excluded for filing refund claims – HC

Issue:

The petitioner filed the writ petition and has prayed to set aside the refund rejection order which is passed by adjudicating authority being barred by limitation under section 54 of CGST Act, 2017 and which was further rejected by JC (Appeal) on similar ground. It is also prayed to remit the case back to the adjudicating authority to decide the refund application on merits.

Legal Provisions:

Section 54 of CGST Act, 2017

Observation and Comments:

The Hon'ble High Court observed and held that:

- During the pendency of this Special Civil Application, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, issued notification No.13/2022-Central Tax dated 05.07.2022, whereby the computation of period of limitation for filing refund application under Section 54 of the Act came to be excluded from 01 March 2020 to 28 February 2022.

- In the present case, the refund application was filed on 02.05.2020, however in view of the above notification, in particular clause (iii) thereof, the period from 01.03.2020 to 28.02.2022 was excluded from the limitation period. The petitioner would be entitled to the benefit of the same.

- In above view, the competent authority is directed to reconsider the claim of refund of the petitioner by applying its mind and pass appropriate order following the aforesaid Circular dated 05.07.2022.

DA Comments:

Based on Honorable Supreme Court ruling on exclusion of limitation period during covid for refund claims also, the notification was issued by CBIC.

M/S Supernova Engineers Limited vs JC (A) [2022 (9) TMI 936 - GUJARAT HIGH COURT]

Pre deposit for appeal from Electronic Credit Ledger is allowed

Issue:

The petitioner filed the writ petition against the appellate authority which rejected the appeal on basis that the mandatory pre-deposit of 10% was made by the through electronic credit ledger instead of the electronic cash ledger.

Legal Provisions:

Circular No. 172/04/2022-GST dated 6 July 2022

Observation and Comments:

The Hon'ble High Court observed and held that:

- Reliance has been placed upon the clarificatory circular, issued by Government of India, on 06.07.2022 wherein it has been clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

- The First Appellate Authority, solely on the ground that the compliance has not been made by depositingthrough electronic cash ledger, had rejected the appeal without deciding the issue on merit. Subsequently, on25.6.2022, the petitioner Firm had made deposit through cash ledger.

- After hearing the counsel for the petitioner as well as learned Standing Counsel, this Court finds that pre-deposit has been made by the Firm before the Appellate Authority, and the Appellate Authority shall not insist the Firm to make deposit through electronic cash ledger and shall proceed to decide the appeal on merits strictly in accordance with law. In the result, writ petition stands partly allowed.

DA Comments:

The Honorable High Court rightly held that electronic credit ledger can be utilised to pay pre deposit amount which is also clarified by recent circular.

M/S. Tulsi Ram And Company vs Commissioner [2022 (9) TMI 1265 - Allahabad High Court]

Order without digital signature will have no effect in the eyes of law

Issue:

The petitioner is impugning an order by which petitioner's appeal came to be dismissed on the ground that appeal was not filed within a period of three months provided under Section 107(1) of the CGST Act, 2017 and in any case the appeal was delayed more than one month provided under Sub Section 4 of Section 107 of the CGST Act, 2017.

It is petitioner's case that the order in original dated 14th November 2019 which was impugned in the appeal filed before Respondent No.3 has not been digitally signed. Therefore, it was not issued in accordance with Rule 26 of the CGST Rules. Hence, the time limit for filing the appeal would begin only upon digitally signed order being made available.

Legal Provisions:

Section 107 of CGST Act, 2017

Observation and Comments:

The Hon'ble High Court observed and held that:

- In the affidavit in reply it is not denied that the order in original dated 14th November 2019 was not digitally signed. In the affidavit in reply it is specifically stated that the show cause notice was digitally signed by the issuing authority but when it refers to the order in original dated 14th November 2019 there is total silence about any digital signature being put by the issuing authority. Conveniently, respondent stated that petitioner cannot take stand of not receiving the signed copy because the unsigned order was admittedly received by petitioner electronically. However, if this stand of respondent has to be accepted, then the Rules which prescribe specifically that digital signature has to be put will be rendered redundant.

- In our view, unless digital signature is put by the issuing authority that order will have no effect in the eyes of law.

- In the circumstances, we have to agree with petitioner's stand that only on the date on which the signature of Respondent No.4 issuing authority was put on the order dated 14th November 2019 for the purpose of attestation, time to file appeal would commence.

- In the circumstances, we hereby quash and set aside the impugned order. The appeal is restored to file of Respondent No.3 who shall consider the appeal on merits and pass such order as deemed fit in accordance with law.

- Before passing any order, personal hearing shall be given to petitioner with at least seven working days advance notice. The order passed shall be a reasoned order.

Order without digital signature will have no effect in the eyes of law

DA Comments:

The Honorable High Court rightly held that any order not following procedural law have no effect in the eyes of law.

Ramani Suchit Malushte vs UOI And Ors. [2022 (9) TMI 1263 - BOMBAY HIGH COURT]

Extension of claim of ITC till 30 November

The Government of India on 28 September 2022 has notified the provisions of section 100 to 114 (except clause (c) of section 110 and 111) of Finance Act 2022 with effect from 01 October 2022. Vide this notification, the timeline to claim credit or issuance of GST Credit notes has been extended from the month of September to 30 November of the succeeding financial year.

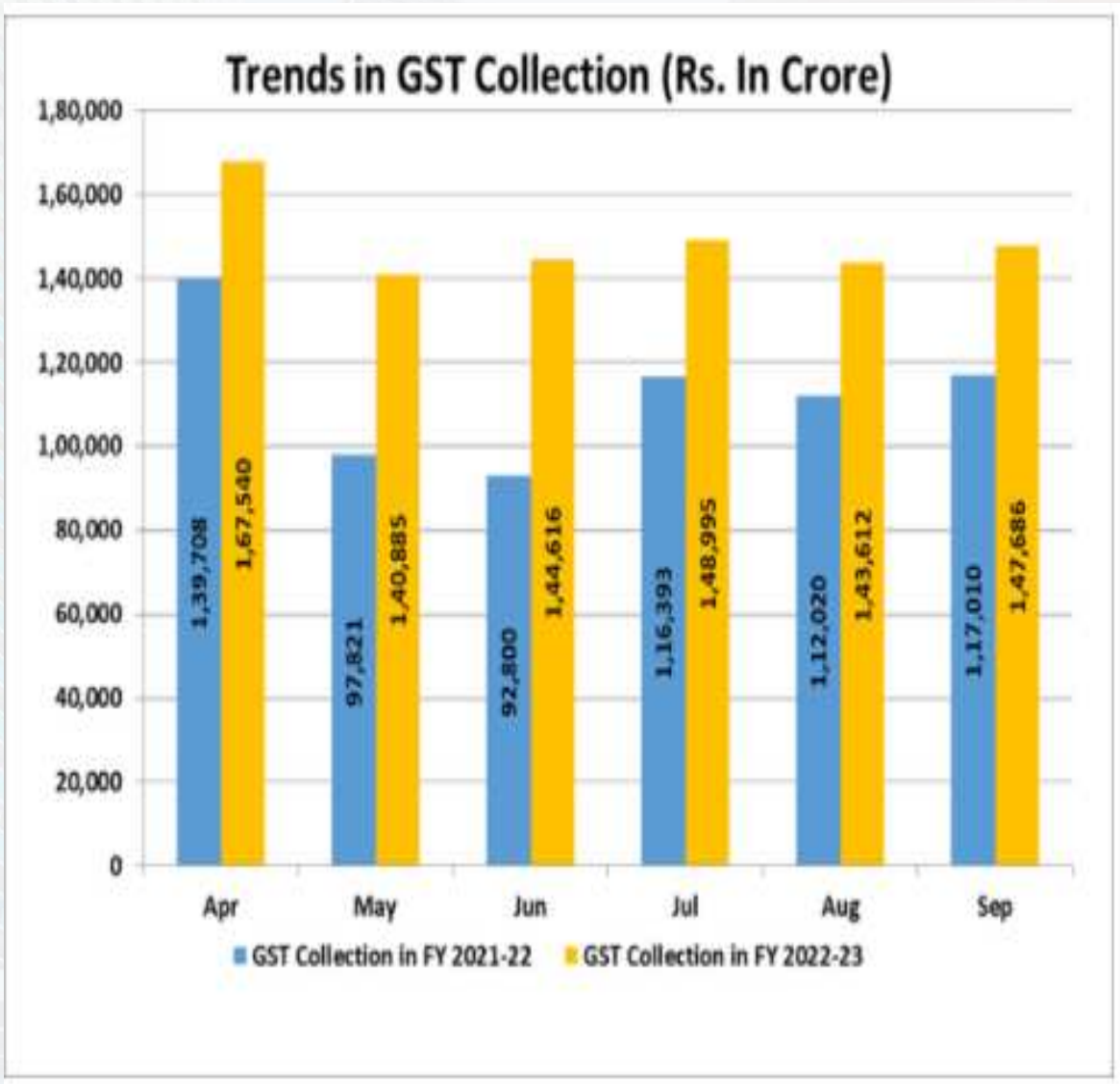
Notification No 18/2022-Central Tax, dated 28th September 2022

Amendment of CGST Rules 2017 from 01 October 2022

Multiple amendments have been carried out by the Government of India which shall come into effect from 01 October 2022. The prominent one being the implementation of mandatory cancellation of registration of taxpayers who have not furnished their monthly returns for a continuous period of six months or returns for two tax periods in case of other than monthly filers. Invoice level matching of Input Tax Credit has also been omitted from rule 42 of CGST Rules 2017.

Notification No. 19/2022 Central Tax, dated 28th September, 2022

GST Revenue Collection in September 2022- Rs. 1,47,686 Cr.



Source: PIB

- Extended period of limitation applicable for utilisation of forged DEPB scrips to pay customs duty
- Appeal not maintainable on non-compliance to pre-deposit
- Other Notifications/Circulars/Instructions

Extended period of limitation applicable for utilisation of forged DEPB scrips to pay customs duty

Issue:

The appellant imported consignments and on verification, it was found that the DEPB Licensees on the basis of which TRAs were issued, were not genuine. Assistant Commissioner informed the appellant that TRAs issued against the DEPB Scripps were forged and the appellant was required to deposit the duty with interest in lieu of DEPB benefit availed by it. The appellant informed the Department that it was surprised to learn about the forgery and was taking steps to lodge F.I.R. against the transferor and sought time to make payment. The appellant deposited the amount of duty under protest.

After completion of investigation, show cause notice was issued and accordingly, the Commissioner of Customs passed order holding that DEPB Scrips were forged and thus void ab initio and, therefore, the exemption availed of was inadmissible; goods were liable to confiscation and appellant was liable to interest and penalty. Further, the Tribunal and Honorable High Court also passed the order against the appellant and accordingly the appeal filed before the Honorable Supreme Court.

Legal Provisions:

Section 25 of Customs Act, 1962

Observation and Comments:

The Hon'ble Supreme Court observed and held that:

- From the judgment and order passed by the Tribunal and even from the findings recorded by the Department, it has been found that the DEPB licenses/Scripps, on which the exemption benefit was availed of by the appellant(s) (as buyers of the forged/ fake DEPB licenses/Scripps) were found to be forged one and it was found that the DEPB licenses/Scripps were not issued at all. A fraud was played and the exemption benefit was availed on such forged/fake DEPB licenses/Scripps.

- In that view of the matter and on the principle that fraud vitiates everything and such forged/fake DEPB licenses/Scripps are void ab initio, it cannot be said that the Department acted illegally in invoking the extended period of limitation. In the facts and circumstances, the Department was absolutely justified in invoking the extended period of limitation.

Extended period of limitation applicable for utilisation of forged DEPB scrips to pay customs duty

- Now, so far as the submission on behalf of the buyer(s) – appellant(s) relying upon the decision of this Court in the case of Aafloat Textiles India Private Limited and Ors. (supra) is concerned, whether the buyer(s)had a knowledge about the fraud or the forged / fake DEPB licenses/Scripps and whether the appellant(s) –buyer(s) was/were to take requisite precautions to find out about the genuineness of the DEPB licenses/Scripps which they purchased, would have a bearing on the imposition of the penalty, and has nothing to do with the duty liability. It is to be noted that in the present case so far as the penalty proceedings are concerned, the matter is remanded by the Tribunal to the adjudicating authority, which is reported to be pending.

- In view of the above and for the reasons stated above, both the appeals fail and are accordingly dismissed. As the penalty proceedings are reported to be pending pursuant to the remand order passed by the Tribunal, we direct the adjudicating authority to complete the penalty proceedings on remand, at the earliest preferably within a period of six months from today. With this, both the appeals are dismissed. No costs.

DA Comments:

This judgment would have impact in current scenario also where purchased FPS/MLFPS/FMS/MEIS/SEIS/RODTEP are used to pay customs duty and found forged one.

M/S. Munjal Showa Ltd. vs CCE (Delhi – Iv)And M/S. Friends Trading Co. vs UOI And Ors. [2022 (9) TMI 1076 - Supreme Court]

Appeal not maintainable on non-compliance to pre-deposit

Issue:

This appeal was filed in the office with certain defects, including the defect relating to mandatory deposit. The appeal was listed on many occasions, but learned Counsel for the appellant had not been appearing. It is for this reason that on 13 June 2022, the bench ordered that the Department may make an attempt to serve the respondent within two months.

Legal Provisions:

Section 129E of Customs Act, 1962

Observation and Comments:

The Hon'ble CESTAT observed and held that:

The requirement of pre-deposit, as contemplated under section 129E of the Customs Act, has not been complied with by the appellant. It would be seen from a bare perusal of section 129E of the Customs Act that after 6 August 2014 neither the Tribunal nor the Commissioner (Appeals) have the power to waive the requirement of pre-deposit, unlike the situation which existed prior to the amendment made in section 129E on 06 August 2014 when the Tribunal, if it was of the opinion that the deposit of duty and interest demanded or penalty levied would cause undue hardship, could dispense the said deposit on such conditions as it deemed fit to impose so as to safeguard the interest of the Revenue.

The Supreme Court in Narayan Chandra Ghosh vs. UCO Bank and Others [(2011) 4 SCC 548], examined the provisions contained in section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 relating to pre deposit in order to avail the remedy of appeal. The provisions are similar to the provisions of section 129E of the Customs Act. The Supreme Court emphasised that when a Statue confers a right to appeal, conditions can be imposed for exercising of such a right and unless the condition precedent for filing appeal is fulfilled, the appeal cannot be entertained.

The principles laid down in the aforesaid decision of the Supreme Court in Narayan Chandra Ghosh were reiterated by the Supreme Court in Kotak Mahindra Bank Pvt. Limited vs. Ambuj A.Kasiwal & Ors [Civil Appeal No. 539 of 2021 decided on 16.02.2021].

The appellant has not made the pre-deposit. In view of the aforesaid decisions of the Supreme Court, the Delhi High Court and the Madhya Pradesh High Court, it is not possible to permit the appellant to maintain the appeal without making the required pre-deposit. Thus, for all the reasons stated above, the appeal stands dismissed.

Appeal not maintainable on non-compliance to pre-deposit

DA Comments:

It is now well settled in all tax regime to have fixed pre deposit for every appeal and stay appeals are not filed separately.

M/S R.K. Trading CO. vs CC [2022 (9) TMI 1222 - CESTAT NEW DELHI]

Electronic Duty Credit Ledger (Amendment) Regulations, 2022

The e-scrip shall be valid for a period of two years from the date of its creation in the ledger and any duty credit in the said e-scrip remaining unutilized at the end of this period shall lapse

Circular No. 22/2022-Customs, dated 26th September 2022

Insertion of Para 2.54(d) under Foreign Trade Policy in sync with RBI Circular

Invoicing, payment and settlement of exports and imports is also permissible in INR. Accordingly, settlement of trade transactions in INR may also take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, in accordance to the following procedures:

- Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.
- Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

Notification No. 33/2015-20- DGFT, dated 16th September, 2022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- Counter-Move By Companies To Evade 5 Per Cent GST On Pre-Packaged Food
- Govt mulls star rating system under GST to curb illegal Input Tax Credit
- Shippers oppose GST on export freight, say unwarranted burden on business
- GST Issues On "Classification Of Games"

Customs and other

- Govt to plug duty loophole in solar equipment imports
- 6-month extension for concessional customs duty on imported edible oil March 2023 is new deadline
- India proposes 15% retaliatory duties on 22 items imported from UK
- Govt extends concessional custom duty on edible oil import till March 2023
- Customs on high alert at TN airports over gold smuggling

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