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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM

Darda Advisors LLP

November 2022
Issue: 30

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We are pleased to present to you the thirtieth 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 October 2022.

During the month of October 2022, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as employee canteen and other recoveries not liable to GST, amount to be re-credited to ECL when refund is rejected along with other circulars and notifications.

In the thirtieth 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 October 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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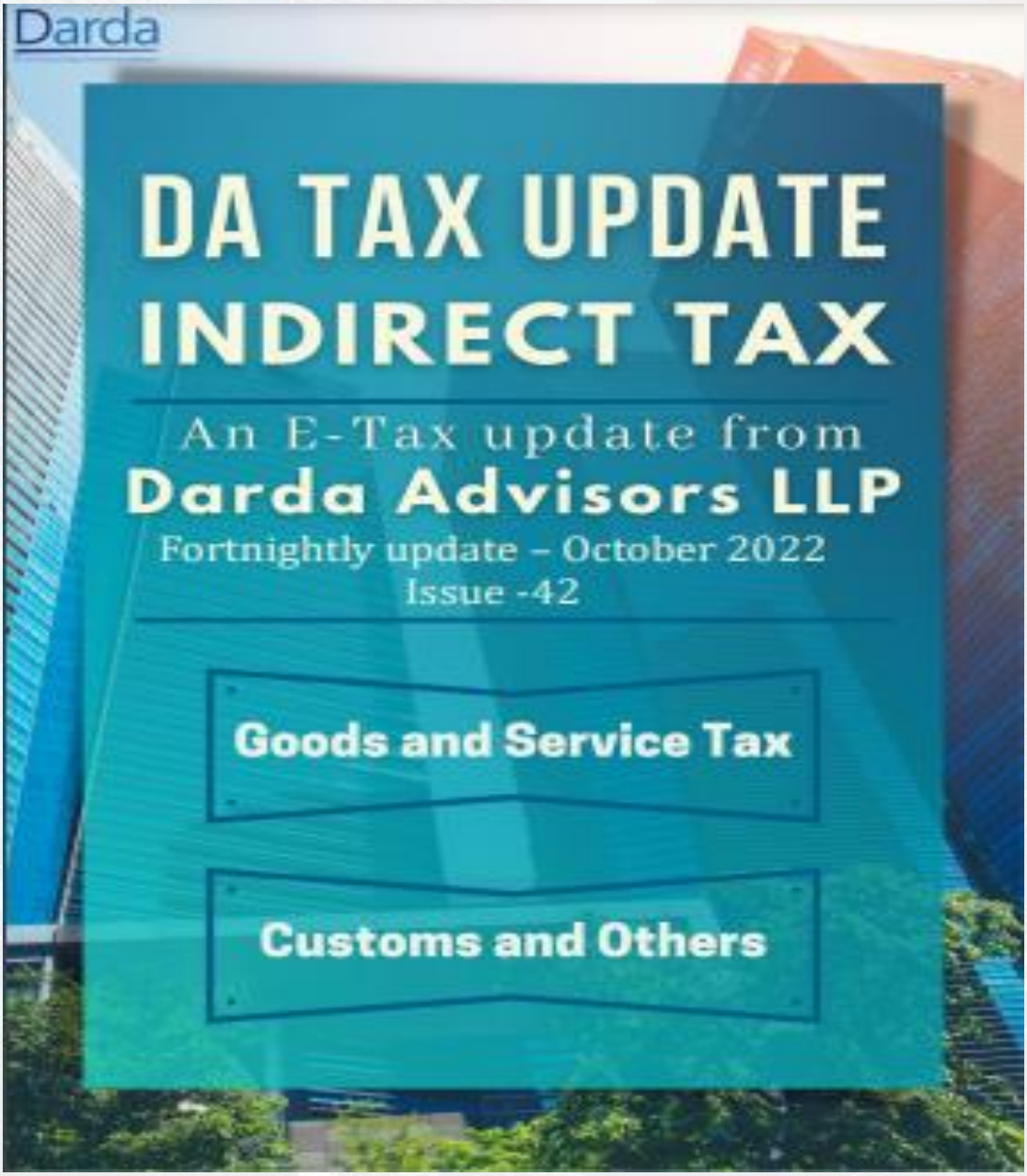
DA Updates and Articles for the month of October 2022

Indirect Tax Fortnightly Update for the month of October 2022

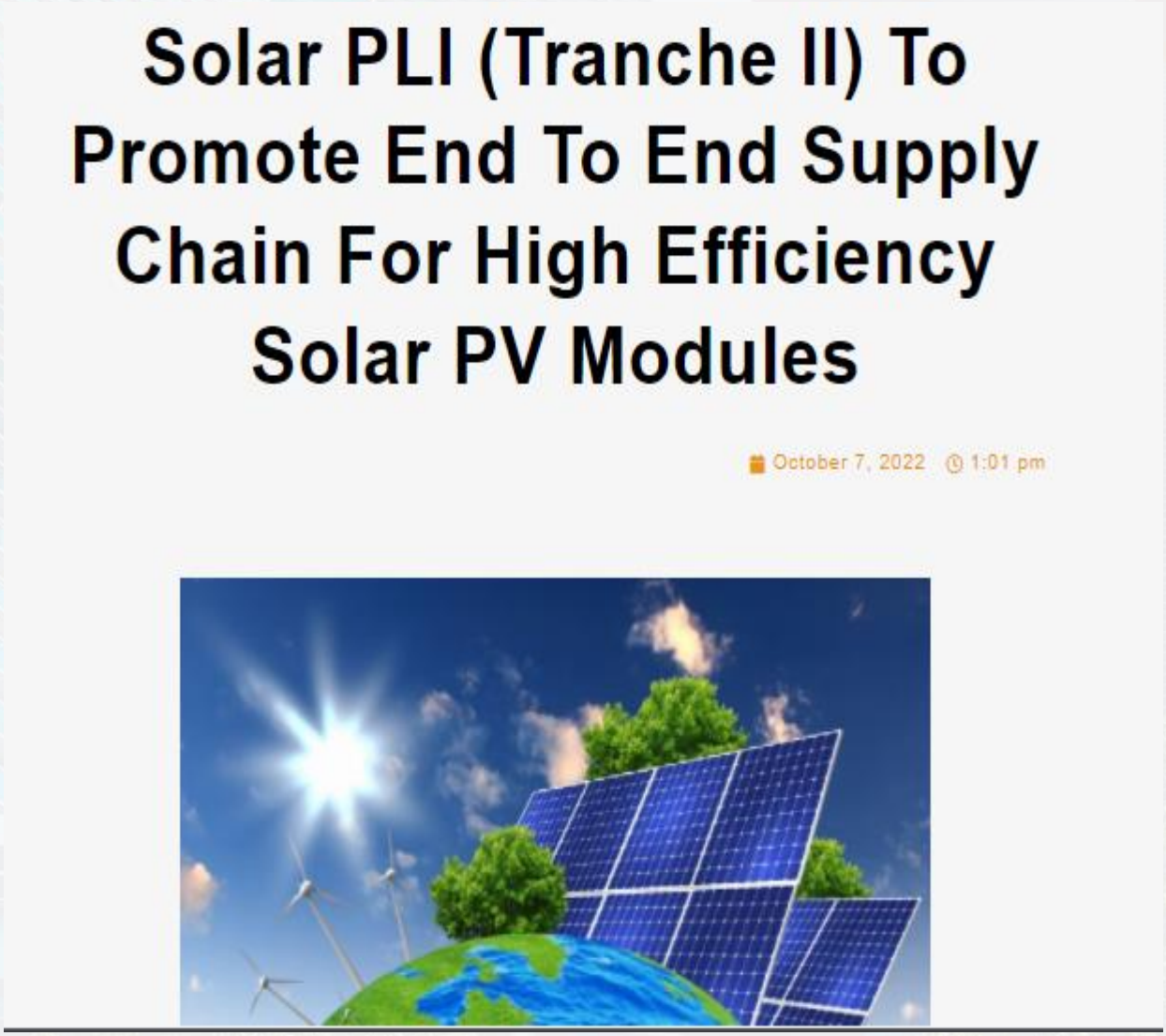
https://dardaadvisors.com/indirect-tax-alert/da-indirect-tax-fortnightly-update-_-october-2022/



DA Updates and Articles for the month of October 2022

Solar PLI (Tranche II) to promote end to end supply chain for high efficiency Solar PV Modules

https://dardaadvisors.com/tax-articles/solar-pli-tranche-ii-to-promote-end-to-end-supply-chain-for-high-efficiency-solar-pv-modules/



GST COMPLIANCE CALENDAR

NOVEMBER 2022

10
GSTR-7
TDS Deductor

10
GSTR-8
TCS
Deductor

11
GSTR-1
Normal Taxpayer

13
GSTR-6
Input Service
Distributor

20
GSTR-5A
OIDAR Service Provider

20
GSTR-3B
Normal Taxpayer

20
GSTR-5
Non-Resident Taxable
Person

- Employee canteen and other recoveries, liquidated damages not liable to GST based on clarification by CBIC Circular

- GST Rules differentiating between registered and unregistered borrower for GST levy on second hand motor vehicle is irrational and arbitrary

- Amount to be re-credited to electronic credit ledger along with interest when refund is rejected irrespective of period of limitation

- 'Relevant date' under refund provisions is not provided when supplies made to SEZ

Employee canteen and other recoveries, liquidated damages not liable to GST based on clarification by CBIC Circular - AAR

Issue:

The applicant sought advance ruling on following aspects from AAR:

- Notice Pay Recovery
- Bond Forfeiture of the contractual employees
- Canteen Charges
- Recovery on account of Loss/Replacement of ID Cards
- Liquidated Damages due to delay in completion
- Taxability on the forfeiture of Earnest Money And Security Deposit/Bank Guarantee by the applicant
- Taxability of amount written off as Creditors balance in the books of account of the applicant

Legal Provisions:

CBIC Circular No. 178 dated 03 August 2022

Observation and Comments:

The AAR observed and held that:

Issue:	AAR's decision
Notice pay recovery - surety bond forfeiture	The amount received as notice pay recovery by the applicant from the employees who leave the applicant company without serving mandatory notice period mentioned in the employment contract is not a consideration for any supply or services. Similarly, the action of surety bond forfeiture by the applicant (which is furnished by the contractual employee at the time of joining) of the employees who leave the company without serving minimum contract period as per the employment contract is also not a consideration per se. These amounts are covered under Schedule HIM and not clause 5(e) of schedule II appended with the CGST Act, 2017. So, it is outside the scope of supply because the said amount recovered by the applicant is in lieu of un-served notice period/non-serving the contract period by the employees. It cannot be regarded as a consideration which has been defined in the section 2(31) of the Act - both are excluded from the definition of Supply under the GST Act.
Provision of the canteen facility at its premises by the applicant company for its employees	The facility of canteen is being provided by the companies to its employees under the Factory Act,1948 wherein it is mandatory to the applicant to make provisions of the canteen facility to its employees. There is no independent contract between the applicant and the employees for setting up the canteen facility at the company's premises. It is being undertaken on account of the legal obligation case upon the applicant. So, it is concluded that the said transaction of recovering the part payment of the meals from the staff by the applicant is outside the purview of scope of supply.
Whether the charges for re-issuance of ID card to the employees by the applicant company is an taxable event under the GST Act	It is noticed that the applicant uses the in-house printing facility for the services i.e. re-issuance of identity cards to the employees. Fee of Rs. 100 per card is charged for re-issuance by the applicant form its respective employee for issuance the new identity card. No third party contractor is availed for the printing of Id-cards. The Id-card is reissued in case of loss of the same or the card is in non serviceable condition - the authority is of view that this transaction does not fall under the taxable event under the GST as it's covered under the schedule III(1) appended with the CGST Act, 2017.
Taxability - transaction of liquidated damage charged due to delay in completion of work and forfeiture of Earnest Money/ Bank Guarantee /Security Deposit	The authority is of view that the matter stands clarified in the circular dated 03.08.2022 of the Board - the amount received as a compensation due to delay in completion of work will not be taxable due to the reason that it is not recovered on account of any services rendered to another person and instead, is claimed towards damages incurred on account of delay/any other reason as stipulated in the agreement.
Amount forfeited by the Applicant company pertaining to Earnest Money, Security Deposit & Bank Guarantee	The forfeiture of amount received as Earnest Money/Security Deposit or release/forfeiture of Bank Guarantee cannot be chargeable - The nature of Earnest Money is equivalent to penalty charged by the tenderer which is similar to the nature of 'liquidated damages' and therefore, cannot be treated to be 'consideration' - The Security Deposit is collected by the Applicant for the reason that if there is any break, deface, injure or destroy any part of building in which they may be working, or any building, road, road kerb, fence, enclosure, water pipe, cables, drains, electric or telephone post or wires, trees, grass or grassland. etc, the same may be adjusted and the balance shall be refunded back to the contractor – Bank Guarantee is also forfeited for the same reasons as Security Deposit is forfeited - thus not taxable.
Taxability - amount written off in the books of account of the applicant as creditors balance	The authority is of view that there are no services received or provided by the applicant company in this situations/transactions. So, this transaction of writing off unclaimed amount of the contractors/other creditors is basically an income and not a supply, hence outside the purview of scope of supply under the GST Act - not taxable.

Employee canteen and other recoveries, liquidated damages not liable to GST based on clarification by CBIC Circular - AAR

DA Comments:

The AAR in this ruling first time given detailed reasoning and based on legal provisions and also considered recent circular issued.

M/S. Rites Limited [2022 (10) TMI 949 - Authority For Advance Ruling, Haryana]

GST Rules differentiating between registered and unregistered borrower for GST levy on second hand motor vehicle is irrational and arbitrary – Interim relief to assessee by HC

Issue:

The petitioner has prayed before Honorable High Court in its writ petition:

(i) to declare proviso to Rule 32(5) of the Central Goods and Services Tax Rules, 2017, and proviso to Rule 32(5) of the Gujarat Goods and Services Tax Rules, 2017, to be arbitrary and discriminatory as it distinguishes between a registered borrower and unregistered borrower.

(ii) It is further prayed to declare the provision to the said Rule to be unjust, arbitrary and illegal when it discriminates between the persons like the petitioner and second-hand motorcar dealers, creating the arbitrary distinction between registered and unregistered defaulting borrower under the Goods and Services Tax Act.

(iii) The petitioner has next prayed to declare that Notification No. 8/2018-Central Tax (Rate), dated25.01.2018 would apply to all the sellers of second-hand motor vehicles and the reference to purchase price in the said notification would read as purchase price of defaulting borrower in case of sale of second-hand repossessed vehicle.

(iv) The petitioner has prayed to set aside show-cause notice dated 12 January 2022 issued under section 74 of the Central Goods and Services Tax Act, 2017.

Legal Provisions:

Rule 32(5) of CGST Rules, 2017 read with Notification No. 8/2018-Central Tax (Rate), dated 25 January 2018

Observation and Comments:

The Honorable High Court observed and held that:

- It was submitted and elaborated that when the petitioner repossesses the vehicle from the borrower and proceeds to sell the same, provision to Rule 32(5) operates highly irrationally and arbitrarily. It was submitted that the proviso provides that purchase value of the goods repossessed from an unregistered defaulting borrower for the purpose of recovery of loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced as indicated for every quarter between the date of purchase and the date of disposal of repossessed vehicle or goods.

GST Rules differentiating between registered and unregistered borrower for GST levy on second hand motor vehicle is irrational and arbitrary – Interim relief to assessee by HC

- Learned senior advocate thereafter drew attention of the Court to the contents of the aforesaid Notification dated 25.01.2018 and the explanation. It was submitted that distinction between registered borrower and unregistered borrower is arbitrary and ultra vires. It was submitted that on reading of Rule 32(5) along with Tariff Entry No. 8703, it becomes clear that whether the borrower is registered borrower or unregistered borrower, the result to ensue has to be same and there cannot be any distinction in respect of GST liability. It was submitted that the petitioner is penalised for the reason that the borrower may be unregistered person.

- There is prima facie substance in the submissions and contentions raised on behalf of the petitioner.

- In order to avoid irreversible situation, in the event the petitioner succeeds in the petition, interim relief deserves to be granted. By way of ad interim relief, it is directed that the competent authority of the respondent shall not take any further steps pursuant to the impugned show-cause notice.

DA Comments:

The issue is impacting Banking/NBFC industry in negative way and final judgment may provide certain relief by setting aside such arbitrary rule.

ICICI Bank Ltd. vs UOI [2022 (10) TMI 994 - Gujarat High Court]

Amount to be re-credited to electronic credit ledger along with interest when refund is rejected irrespective of period of limitation

Issue:

In this writ petition, the short question that arises is whether the period of two years for filing refund claim under Section 54 of the CGST Act would be applicable upto date of filing application on common portal or date of submitting printout of application for refund uploaded on common portal. The stand of the respondent is that the circular dated 15 November 2017 prescribes the procedure to file application physically and the actual date of filing of the refund claim would be counted from the said date, when physical tendering of the application/documents happened, and not when the application was entered into the portal and acknowledged.

Legal Provisions:

Section 54 of CGST Act, 2017 and refund Circular dated 15 November 2017

Observation and Comments:

The Honorable High Court observed and held that:

- The Circular provided for procedure of filing application and filing of physical application with documents cannot have have an overriding operation to the detriment of the assessee, who filed the refund application in the common portal of the respondents, which was acknowledged and ARN was also generated. The date of application filed on the portal has to be treated as one to reckon whether it was filed within two two years as contemplated under Section 54 of the CGST Act.

- Resultantly, it has to be held that the date of filing of the application by the petitioner on common portal would be liable to be treated as date of filing claim for refund to the satisfaction of requirement of Section 54of the CGST Act and Rule 89 of the CGST Rules. The procedure evolved in Circular dated 15.11.2017 cannot operate as delimiting condition on the applicability of statutory provisions.

- For all the aforesaid reasons, the present petition deserves to be allowed. The respondents are directed to re-credit the amount of Rs.3,37,076/- in the electronic credit ledger of the petitioner with interest at the rate of 9% p.a. from the date of order of rejection of the claim, i.e., 19.11.2019 till realisation.

- The exercise shall be completed within two weeks from the date of receipt of this order.

Amount to be re-credited to electronic credit ledger along with interest when refund is rejected irrespective of period of limitation

DA Comments:

By other refund circulars, for a certain period, manual applications filing was allowed and accordingly, limitation period to be considered. In this case, the Honorable High Court did not consider the same.

M/S. Chromotolab And Biotech Solutions vs UOI [2022 (10) TMI 1000 - Gujarat High Court]

'Relevant date' under refund provisions is not provided when supplies made to SEZ

Issue:

The writ petition filed seeking relief to:

- declare that the concept of "relevant date" in the Explanation to Section 54 of CGST Act, 2017 has no application to refund claims of Cess under the Goods and Services Tax(Compensation to States) Act, 2017;
- or in the alternative, quash the Circular No.157/13/2021-GST dated 20.07.2021 in so far as the quasi-judicial proceedings like refund application is concerned as contrary to the order of the Hon'bleSupreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020 dated 27.4.2021 read with final order dated 23.09.2021 , as illegal, arbitrary and without authority of law;
- to set-aside the order of the 1st Respondent dated 5.10.2021 in rejecting the application of refund as barred by time as being in violation of principles of natural justice, illegal, contrary to law, unsustainable and contrary to the orders of the Hon'ble Supreme Court in Suo Moto Writ Petition(Civil) No.3 of 2020, dated 23.9.2021 in so far as disposal of the refund applications are concerned;
- declare that the Petitioner's application for refund filed on 15.9.2021 as filed within time under Section 54 of the Central and State Goods and Services Tax Acts, 2017; and
- consequently direct Respondents to process the refund application dated 15.9.2021 for the tax periods 2017-18 & 2018-19 and sanction the refund and pass.

Legal Provisions:

Section 54 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- A perusal of the material on record would show that the refund application came to be filed by the petitioner on 15.09.2021 for the tax period from July, 2017 to March, 2018 and April, 2018 to March, 2019. Though learned Government Pleader would contend that the said application came to be made beyond the period of limitation, but the learned counsel for the petitioner would submit that a reading of Clause 2 to the Explanation to Section Section 54 of the CGST Act would show that the 'relevant date' is prescribed only for goods exported out of India, but there is no provision determining the 'relevant date' in respect of the supplies to SEZ units, which are considered as zero-rated sales under Section 16 of IGST Act, 2017.

'Relevant date' under refund provisions is not provided when supplies made to SEZ

- It would be relevant to note that the recent Notification issued by Government of India, clearly postulates that in respect of period 1st March, 2020 to 28th February, 2022, the computation of period of limitation, for filing refund application under Section 54 or Section 55 of the said Act shall stand excluded.

- In view of the above, it cannot be said that the application for refund was made beyond the period of limitation. Accordingly, the Writ Petition is allowed and the order, dated 05.10.2021, passed by respondentNo.1 is set aside and the matter is remanded back to respondent No.1 for consideration afresh in accordance with law. There shall be no order as to costs.

DA Comments:

There are multiple refund scenarios where relevant date under section 54 of CGST Act, 2017 is not provided.

M/S. TGV SRAAC Limited vs AC (ST) [2022 (10) TMI 1126 - Andhra Pradesh High Court]. In similar case of M/S. WALTAIR TRADERS vs AC (ST) [2022 (10) TMI 1127 - Andhra Pradesh High Court]

Advisory on Filing TRAN-1/2 Forms to claim Transitional Credit

The Hon'ble Supreme Court of India has provided a one-time opportunity to all the aggrieved taxpayers to file Form TRAN-I/TRAN-2 and claim their transitional input tax credit in GST system. In compliance of the Hon'ble court's directive, the facility for filing TRAN-I/ TRAN-2 or revising the earlier filed TRAN-I/TRAN-2 on the GST common portal by aggrieved taxpayers have been made available by GSTN from 01,10.2022, and as per the court's instruction shall be available to all aggrieved taxpayers till 30.11.2022.

Advisory on sequential filing of GSTR-1

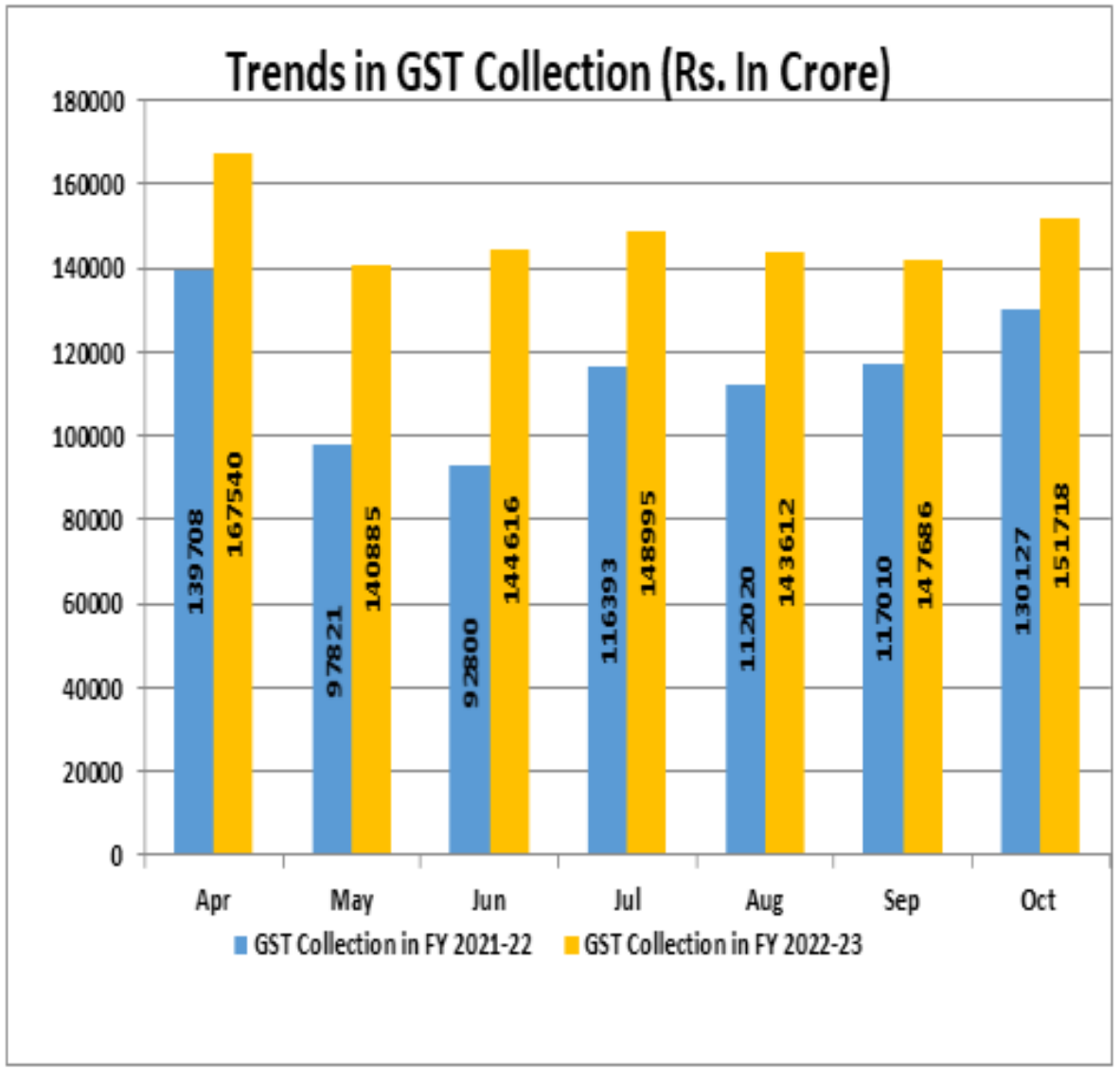
Changes in line with amended section 37 and section 39 are being implemented prospectively and will be operational on GST Portal from 01st November, 2022. Accordingly, from October-2022 tax period onwards, the filing of previous period GSTR-I will be mandatory before filing current period GSTR-I.

Implementation of mandatory mentioning of HSN codes in GSTR-1

It is mandatory for the taxpayers to report minimum 4 digit or 6 digit of HSN Code in table-12 of GSTR-I on the basis of their Aggregate Annual Turnover (AATO) in the preceding Financial Year. To facilitate the taxpayers, these changes are being implemented in a phase-wise manner on GST Portal.

Part I & Part II of Phase I has already been implemented from 01st April 2022 & 01st August 2022 respectively and is currently live on GST Portal. From 01st November, 2022, Phase-2 would be implemented on GST Portal and the taxpayers with up to Rs 5 crore turnover would would be required to report 4-digit HSN codes in their GSTR-I.

GST Revenue Collection in October 2022- Rs. 1,51,718 Cr.



Source: PIB

- Interest cannot be denied on delayed sanction of refund claim
- Failure of the importer to endorse on the sales invoices under condition 2(b) of Notification cannot be a ground to deny the SAD refund
- Other Notifications/Circulars/Instructions

Interest cannot be denied on delayed sanction of refund claim

Issue:

The assessee claimed the refund of the differential 'additional duty' discharged by them on assessment of eighteen bills of entry arising from resort of 'retail sale price' by assessing officer instead of 'transaction value' as claimed by them and confirmed by the first appellate authority but found to be contrary to law by the Tribunal and entitled to consequential relief arising thereof, which were finally allowed by two orders. Their claim thereafter for appropriate interest, as provided for in section 27A of Customs Act, 1962, rejected initially by the original authority, was, on appeal, allowed in the order impugned by Revenue herein.

According to Learned Authorised Representative, the refund could be sanctioned only after re-assessment as ordered by the Tribunal and the time taken thereafter did not exceed the limit of three months prescribed therein.

Legal Provisions:

Section 27 of Customs Act, 1962

Observation and Comments:

The Hon'ble CESTAT observed and held that:

- The representative of the respondent herein, drew attention to the records and pointed out the refund was not released suo motu but only on application of theirs preferred immediately after the Tribunal had approved the legality of assessment of additional duties of customs on 'transaction value' and the elapse of time brings the claim within the ambit of section 27A of Customs Act, 1962; it is his contention that the internal procedure for assessment/re-assessment are not envisaged in the statute as permissible for waiver of obligation to pay interest. On behalf of respondent, the decisions of the Hon'ble

Interest cannot be denied on delayed sanction of refund claim

DA Comments:

The provision in Customs law is providing payment of interest for delayed refund and denial by adjudicating authority is leading to unnecessary litigations.

CC vs Pidilite Industries Ltd. [2022 (10) TMI 814 - CESTAT MUMBAI]

Failure of the importer to endorse on the sales invoices under condition 2(b) of Notification cannot be a ground to deny the SAD refund

Issue:

The appellant filed refund claim for refund of 4% additional duty paid by them on goods imported. The original authority sanctioned the refund vide order dated 27.7.2010. Thereafter, department filed appeal against the sanction of refund alleging that in two sales invoices, the stamp required as per Para2(b) of Notification No. 102/2007 is not endorsed. The appeal filed by the department was allowed by way of remand with a direction to the adjudicating authority to verify and reprocess the refund claim. Aggrieved by such order, the appellant filed the appeal before the Tribunal.

Legal Provisions:

Notification 102/2007- Customs dated 14 September 2007

Observation and Comments:

The Hon'ble CESTAT observed and held that:

- The issue is whether the direction for remand by the Commissioner (Appeals) to verify and reprocess the refund claim is legal and proper. It is the case of the department that when two invoices were called for by the review cell, such invoices did not bear the endorsement as required under para 2(b) of Notification. It is pointed out by the learned counsel for the appellant that the original authority after examining the invoices has made a finding that there are endorsements on the sales invoices which indicated 'not eligible for CENVAT credit'. It is also noted by the original authority that the condition in para 2(b) has been fulfilled. The Larger Bench of the Tribunal in the case of Chowgule and Company has held that failure of the importer to endorse on the sales invoices that no credit of such additional customs duty would be admissible to buyers as stipulated under condition 2(b) of Notification cannot be a ground to deny the refund. Even though it is alleged by the department that two sales invoices did not bear the required endorsement, it is not established whether these invoices verified by Review Cell are the original invoices issued to the buyer by the appellant. So also there is no evidence to establish that the buyer had availed credit on these alleged invoices. I do not find any merits in the grounds alleged for remand of the matter.

Failure of the importer to endorse on the sales invoices under condition 2(b) of Notification cannot be a ground to deny the SAD refund

- From the discussions above as well as following the decision of the Larger Bench of the Tribunal, I am of the view that the order passed by Commissioner (Appeals) requires to be set aside which I hereby do. The order passed by the original authority sanctioning the refund is restored. The appeal is allowed with consequential relief, if any.

DA Comments:

The issue is well settled at various levels and could have been considered by the first appellate authority.

M/S. Shree Mahaveer Impex vs CC [2022 (10) TMI 965 - CESTAT CHENNAI]

Acceptance of Electronic Certificate of Origin (e-CoO) issued under India-UAE CEPA

The importers are facing difficulties in availing preferential tariff benefit on the basis of e-CoO issued by the Issuing Authority of UAE. So the CBIC clarified that an e-CoO, issued electronically by the Issuing Authority of UAE, is a valid document for the purpose of claiming preferential benefit under India-UAE CEPA.

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

Issue:
whether the cases when the tax dues have been paid in full, are eligible under SVLDRS, 2019 for waiver of interest or not, was brought before the Hon'ble High Court of Madhya Pradesh at Jabalpur in the case of Ws Sigma Construction Co. Vs. UOI & Ors (W.P. No. 16411/2021).

Clarification:
clarified that in cases where the assesse has filed ST-3 return on or before 30.6.2019 and has paid the tax dues in full before filing the application, the declarant is eligible to avail the benefit of the scheme for waiver of interest This shall also include the cases where the interest has been demanded by an SCN/O-i-O.

CBIC-110267/75/2022-CX-VIII SECTION-CBEC, dated 6th October 2022

Pre-deposit payment method for cases pertaining to Central Excise and Service Tax

It is clarified that payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposits. under section 35F of the Central Excise Act, 1944 and Section 83 of Finance Act, 1994 read with section 35F of the CEA There exists a dedicated CBIC-GST Integrated portal, https://cbic-gstgovin, which should only be utilized for making pre- deposits under the Central Excise Act, 1944 and the Finance Act, 1994.

CBIC-240137/14/2022-Service Tax Section-CBEC, dated 28th October 2022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Goods and Services Tax

- GST: CBIC Extends Due Date for Filing GSTR 3B Return; Check Latest Deadline
- Exporters call on FM Sitharaman to extend GST exemption on export freight
- After uncertainty, GST finally begins to pay dividends
- ₹824cr GST fraud by 16 insurance companies detected

Customs and other

- Govt now mulls single-window clearance system for exports
- India needs to remove certain taxes impacting exporters, says Finance Minister Nirmala Sitharaman
- Food ministry extends concessional import duties on edible oils till March 2023
- Bilateral trade between India, China crosses $100 bn in Jan-Sep 2022
- Centre denies project import benefit for solar projects

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www.dardaadvisors.com

da@dardaadvisors.com

Our Locations

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

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

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

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