

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

Fortnightly update – December 2022

Issue -44

Goods and Service Tax

Customs and Others

Goods and Service Tax

National Co-operative Consumer Federation Of India Limited Versus The State Of Bihar [2022 (12) TMI 956 - Patna High Court]

High Court quashed the ex-parte order passed by the department stating that it violates the principal of natural justice, and that the matter needs to be heard afresh.

In Re: M/S. Capfront Technologies Pvt. Ltd. [2022 (12) TMI 950 - AAR, Karnataka]

The statement of facts conveys that the transfer of business pertains to "LoanFront" app sought to be sold is a fully functional part of the business and the transaction contemplates the transfer of the entire aforesaid business to a new person (WPL), who would not only

enjoy a right over the assets but shall also take over the liabilities. It thus postulates that there will be a continuity of business, as the said part of business is said to be functional and is decided to be transferred as a whole to a new owner, and thus amounts to transfer of a going concern, of the said independent part of the business. Further vide Sl.No 2 of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, the said activity amounting to 'Services by way of transfer of a going concern, as a whole or an independent part thereof attracts 'Nil' rate of tax without any conditions.

Goods and Service Tax

Simhadri Shipping And Logistics Private Limited Versus Goods Service Tax Officer [2022 (12) TMI 814 - Andhra Pradesh High Court]

The learned Division Bench of the High Court for the State of Telangana having considered the fact that GST Tribunal has not been constituted under Section 109 of the CGST Act and thereby, the petitioner could not be left without any remedy, held that it would be just and proper if the entire matter was remitted back to the 2nd respondent therein to reconsider the case of the petitioner and pass appropriate order in accordance with law.

In Re: M/S. Sri Avantika Contracts (I) Limited [2022 (12) TMI 807 - AAAR, Telangana]

The location of immovable

property is outside India, therefore the Place of supply of services is location of the recipient i.e., Delhi as per the provisions of Section 12(3) of the IGST Act, 2017 - the transaction becomes an inter-state supply and is taxable under the provisions of Sec 7, sub-section (1) of the IGST Act, 2017.

In Re: Shri Satya Dev Bommireddy [2022 (12) TMI 806 - AAAR, Telangana]

A contract for construction of complex with transfer of property in goods (explicit or implicit) falling under the ambit of entry 5(b) of Schedule-II of CGST Act, 2017 does not cease to be works contract, as long as said the supply satisfies the conditions laid down in the definition of a works contract under Section (2) sub-section (119) of CGST Act, 2017.

Goods and Service Tax

Notification No 25/2022 – Central Tax dated 13th December 2022

Time limit for furnishing GSTR 1 return for the month of November 2022 has been extended to 13 December 2022 for taxpayers in some regions of Tamil Nadu.

48th GST Council Meeting dated 17 December 2022

Multiple recommendations were made by GST Council Meeting including some clarifications like: No GST is payable on residential dwelling let out for personal use, Incentives paid to Banks by Govt for UPI/BHIM is not leviable to GST and also recommended decriminalization of certain offences along with other compliance friendly measures.

Customs & Others

Rex Instruments Private Ltd., Bonny Gomes Versus Union Of India [2022 (12) TMI 624 - Bombay High Court]

The liability of the Petitioner to pay interest in this case originated from the bond furnished by it and it was rightly held by the Settlement Commission as being contractual. The Commission has rendered the finding that liability of the Petitioner to pay interest was under the bond; therefore, Settlement Commission has no jurisdiction to waive interest liability.

Syschem India Limited Versus Union Of India [2022 (12) TMI 487 - Delhi High Court]

Interest will be paid on the shipping bills, the details with regard to which are given, at the rate of 6 percent p.a., commencing from 24.05.2021, till the date of

remittance - The contesting respondents will ensure, that the interest is paid in respect of 16 shipping bills referred to above, as expeditiously as possible, though not later than six (6) weeks from today.

Notification No. 112/2022 – Customs (N.T.) dated 22 December 2022

The Government of India has signed Free Trade Agreement agreement with Australia facilitating exports and imports between the two countries.

Import and Export data

Imports of November 2022 at \$ 69.33 B

Exports of November 2022 at \$ 58.22 B

		November 2022 (USD Billion)	November 2021 (USD Billion)
Merchandise	Exports	31.99	31.80
	Imports	55.88	53.03
Services*	Exports	26.23	20.67
	Imports	13.44	12.63
Overall Trade (Merchandise+Services) *	Exports	58.22	52.46
	Imports	69.33	65.65
	Trade Balance	-11.11	-13.19

Source : PIB

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www.dardaadvisors.com



da@dardaadvisors.com

Our Locations

Hyderabad

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

Chennai

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

Delhi-NCR

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

Bhilwara

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

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