

DA TAX ALERT INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

January 2023
Issue: 32

**GST COMPLIANCE
CALENDER**

**GOODS AND
SERVICE TAX**

**CUSTOMS AND
OTHER**

DA NEWS

PREFACE

We are pleased to present to you the thirty second 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 December 2022.

During the month of December 2022, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as ITC on canteen services not available when provided to contract labour, provisional attachment cannot be for indefinite period and multiple others

In the thirty second 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 December 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

www.dardaadvisors.com

Follow us- <https://lnkd.in/dc4fRzn>

GST COMPLIANCE CALENDAR

JANUARY
2023

10

GSTR-7
TDS Deductor

10

GSTR-8
TCS
Deductor

11

GSTR-1
Normal Taxpayer

13

GSTR-1/6
QRMP Taxpayer & Input
Service Distributor

20

GSTR-5A
OIDAR Service Provider

20

GSTR-3B
Normal & QRMP Taxpayer

20

GSTR-5
Non-Resident Taxable
Person



- Option of claiming refund of transition credit once opted cannot be denied
- ITC on canteen service not available when provided to contract labour and others
- Provisional attachment cannot be for an indefinite period
- Uploading of SCN/Notice on common portal is an accepted mode of service of notice
- Other Notifications/Circulars/Guidelines/Instructions

Option of claiming refund of transition credit once opted cannot be denied – HC

Issue:

At the time of GST came into effect i.e. 1 July 2017, the dealers who had ITC had the option of either seeking refund or carrying forward the ITC to GST regime. The writ petitioner opted for the former i.e., refund and the respondent has made an provisional refund order and pending the refund, the impugned order has been issued by the adjudicating authority to opt for latter of aforementioned two options i.e., carrying forward the ITC to GST regime. Accordingly, the writ petition is filed.

Legal Provisions:

Transition Provisions under GST and erstwhile law

Observation and Comments:

The Honorable High Court observed and held that:

- It is clear from the narrative thus far that the dealer has two options i.e., refund or carrying forward the ITC to GST regime, the dealer in the case on hand, has opted for the former not the latter. The common portal giving dealer the option

for choosing former or latter also is now active till 2024. In such circumstances, the dealer cannot be compelled to opt for one of the two i.e., refund or carrying forward the ITC to GST regime.

- Therefore, this Court has no difficulty in coming to the conclusion that the impugned notice has been erroneously issued and the same deserves to be interfered with / set aside.

DA Insights:

When option is already considered, the issuance of order to opt for other option is not sustainable and rightly set aside by the Honorable High Court.

ITC on canteen service not available when provided to contract labour and others

Issue:

The present appeal has been filed against the Advance Ruling No. GUJ/GAAR/R/39/2021 dated 30 July 2021 on the following question:

Whether ITC is available to the appellant on GST charged by the service provider on the canteen facility provided to employees working in the factory and also whether it will be restricted to the extent of cost borne by the appellant.

Legal Provisions:

Section 17(5) of CGST Act, 2017 and Circular No. 172/04/2022-GST dated 06 July 2022

Observation and Comments:

The AAAR observed and held that:

- In view of above legal position clarified by CBIC, as second proviso to Section 17(5)(b) inserted vide CGST Amendment Act, 2018 effective from 1.2.2019, is applicable to the whole of clause (b) of sub-section(5) of Section 17 of the CGST Act, Input Tax Credit will be available to the appellant in respect of food & beverages as canteen facility, is obligatorily to be provided under the Factories Act, 1948, to its employees

working in the factory.

- Input Tax Credit will be available in respect of such services provided by canteen facility to its direct employees but not in respect of other type of employees including contract employees/workers, visitors etc.
- In this regard we rely upon the judgment of Hon'ble High Court of Bombay in the case of Commissioner of Central Excise, Nagpur Versus Ultratech Cement Ltd., [2010 (260) E.L.T. 369 (Bom.)] wherein it was held that "Once the service tax is borne by the ultimate consumer of the service, namely the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer." The ratio laid down in the said case is also applicable to the present case where part of cost for providing canteen services is recovered by the appellant from its employees.
- We find that the ITC on GST charged by the canteen service provider will be available only to the extent of cost borne by the appellant, for providing the canteen services only to its direct employees.

ITC on canteen service not available when provided to contract labour and others

DA Insights:

The restriction of ITC on canteen services was only for employees which is now allowed subject to the said conditions. When providing to others including visitors should have been allowed. CBIC need to issue clarification on the same too.

Provisional attachment cannot be for an indefinite period – HC

Issue:

The appellant challenged the provisional attachment of bank account order under Section 83 of the Central Goods and Services Tax Act, 2017 as both already lapsed and are no longer valid as on today.

Legal Provisions:

Section 83 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

Section 83 of the CGST Act provides for provisional attachment to protect revenue in certain cases. However, being a coercive provision legislature has ensured that duration of provisional attachment does not exceed a period of one year.

By its very nature, provisional attachment cannot be for an indefinite period. Dictionary meaning of provisional is 'arranged or existing for the present, possible to be changed later'; Black's Law Dictionary, eighth edition, has defined it as 'temporary' or 'conditional'. The two words 'provisional' and 'attachment' read in

conjunction can only mean a 'temporary attachment'.

Consequently, provisional attachment orders passed by respondent No.2 are hereby set aside and quashed. Since we have quashed the provisional attachment orders, respondent No.2 shall communicate the same to all the bankers of the petitioner.

DA Insights:

In our view, the statutory provisions and validity of one year should also be mentioned in order itself so to avoid undue hardship and litigations to assessee.

Uploading of SCN/Notice on common portal is an accepted mode of service of notice

Issue:

The petitioner has challenged the legality and validity of the order passed by the adjudicating authority whereunder excess claim of ITC has been confirmed.

Legal Provisions:

Section 169 of the CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- The show cause notice as well as notice of personal hearing were uploaded in the common portal which is an accepted mode of service of notice under Section 169 of the CGST Act, 2017. However, learned counsel for the petitioner submits that on 19.01.2021 the GST registration of the petitioner was cancelled. Therefore, petitioner could not access the common portal.

- On due consideration, we are of the view that it would only be in the interest of justice if the petitioner is granted an opportunity of hearing by the Assistant Commissioner before passing a fresh order in accordance with law.

DA Insights:

The uploading mode of SCN is an acceptable mode for serving the notice but not tenable when common portal itself is not accessible.

M/S. Suvarna Traders vs AC [2022 (12) TMI 1101 - TELANGANA HIGH COURT]

TNGST Act, 2017-conduct of test purchase -Revised guidelines

Explains Provisions under the TNGST Act, 2017 related to Test Purchase, Purpose, Standard Operating Procedure, Criteria for Selection of Cases, Officers to be Assigned, Procedure to be followed for conducting the test purchase, Reporting Procedure, Test Purchase Monitoring Procedure, IT Requirements in relation to Test Purchase, Format for Test Purchase Report and Syntax for assigning serial number in authorisation for Test purchase.

Circular No.16/2022, dated 22 December 2022

Treatment of statutory dues under GST law for taxpayers under IBC

The Circular clarifies that the National Company Law Tribunal (NCLT) and its Appellate body are the authorities responsible for deciding IBC proceedings, including for any pending Government dues and that any reduction in these dues as a result of IBC proceedings is considered valid and will be covered under the term other proceedings in section 84 of CGST Act,2017.

If the amount of Government debts owed to a taxpayer is reduced as a result of IBC proceedings, the Commissioner must notify both, the Taxpayer and the Authority responsible for recovery proceedings of this reduction.

After receiving this notification ,recovery proceedings can continue for the reduced amount of Government debts.Commissioner shall issue intimation in FORM GST DRC-25 for such reduction of demand specified under section 84 of CGST Act.

Earlier , the CBIC clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

Circular No. 187/19/2022-GST dated 27 December, 2022

Manner of filing application for GST refund by unregistered person

The unregistered person can file claim for refund by obtaining a temporary registration on GST portal and filing refund claim in RFD-01

Circular No. 188/20/2022-GST dated 27 December, 2022

Central Goods and Services Tax (Fifth Amendment) Rules, 2022

- a. Verification through one-time passwords sent to the mobile number and e-mail address linked to the Permanent Account Number.
- b. Biometric based Aadhar Authentication mandatory for applicants who has opted for authentication of Aadhar number while applying for registration and is also identified on the common portal, based on data analysis and risk parameters.
- c. A person no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, may himself apply for cancellation of registration.
- d. Rule 37(1) of the CGST Rules has been amended retrospectively w.e.f. 01-10-2022 to provide for the reversal of input tax credit only proportionate to the amount not paid to the supplier vis-a-vis the value of the supply, including tax payable.
- e. Mechanism of reversal of ITC by the recipient by 30th day of November following the end of such financial year where tax is not paid by the supplier in Form GSTR-3B to the Government till the 30th day of September following the end of financial year. The recipient shall be entitled to re-avail the ITC once the supplier pays the tax to the Government.
- f. An invoice cum bill of supply shall contains the particulars of Tax Invoice, Bill of Supply and Invoice issued in other cases like by ISD, Banking Co, etc.
- g. Invoice in case of supply made through e-commerce operator and incase of OIDAR Services supplied to unregistered person shall contain the complete details of the recipient i.e. name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient.
- h. A registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C.
- i. Rule 87(6) has been amended to provide that in case where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.
- j. Rule 88C has been inserted in CGST Rules, 2017 to provide a detailed manner of dealing with difference in liability reported in statement of outward supplies (GSTR-1) and that reported in return (GSTR-3B).

Central Goods and Services Tax (Fifth Amendment) Rules, 2022

- k. Rule 89(2) has been amended to provide the documents for filing refund in case of refund by unregistered persons.
- l. Rule 108(3) has been amended to provide that where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- m. Rule 109 which provides the procedure to file an appeal with the Appellate Authority has been amended consequent to amendment in Rule 108(3) of CGST Rules, 2017.
- n. Rule 109C has been inserted in CGST Rules to provide a manner for Withdrawal of Appeal in FORM GST APL-01/03W by an appellant.
- o. Rule 138(14) has been amended to provide that e-way bill shall not be required in case of transportation of Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) excepting Imitation Jewellery (7117).
- p. Certain changes have been made in GST REG-01, GST REG-17, GST REG-19, FORM GSTR-1, FORM GST RFD-01, FORM GST DRC- 03 and certain new forms have been prescribed viz., FORM GST APL-01/03W, FORM GST DRC-01B.

Notification No. 26/2022 – Central Tax ,dated 26 December, 2022

Rule 8 of the Central Goods and Services Tax Rules, 2017.

In pursuance of the powers conferred by sub-rule (4B) of rule 8 of the Central Goods and Services Tax Rules, 2017, the Central Government, on the recommendations of the Council, hereby specifies that the provisions of sub-rule (4A) of rule 8 of the said rules shall not apply in all the States and Union territories except the State of Gujarat.

Notification No. 27/2022- Central Tax ,dated 26 December, 2022

Seeks to amend notification No. 12/2017- Central Tax (Rate)

Explanation has been inserted in Not No. 12 /2017 dated 28 June 2017 as:

Explanation. – For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where,

- (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and
- (ii) such renting is on his own account and not that of the proprietorship concern.

Notification No. 15/2022 -Central Tax (Rate) ,dated 30 December, 2022

Taxability of No Claim Bonus & applicability of GST e-invoicing

S.no	Issue	Clarification
1.	Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)?	As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus. It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.
2.	Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?	As per clause (a) of sub-section (3) of section 15 of the CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of section 15 of the CGST Act. It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.

Taxability of No Claim Bonus & applicability of GST e-invoicing

S.no	Issue	Clarification
Clarification on applicability of e-invoicing		
3.	Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	In terms of Notification No. 13/2020-Central Tax dated 21st March, 2020, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of rule 48 of Central Goods and Services Tax Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity. Illustration: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020-Central Tax, dated 21st March, March, 2020, as amended, for all supplies of goods and services and thus, will not be required to issue e-with respect to any supply made by it.

Circular No. 186/18/2022-GST dated 27 December, 2022

Applicability of section 75(2) of CGST Act, 2017 & its effect on limitation

S.no	Issue	Clarification
1.	In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction. – Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e. within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.
2.	How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?	in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) of section 75 of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10) of section 73 of CGST Act.

Circular No. 185/17/2022-GST dated 27 December, 2022

ITC Entitlement where place of supply is determined under proviso to section 12(8) of IGST Act

S.no	Issue	Clarification
1.	In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services?	The place of supply of services by way of transportation of goods, including by mail or courier, where both the supplier and the recipient are located in India, is determined in terms of sub-section (8) of section 12 of the IGST Act. Hence, in case of supply of services by way of transportation of goods, including mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of is the concerned foreign destination where the goods are being transported, in accordance with the proviso to the sub-section (8) of section 12 of IGST Act.
2.	In the case given in Sl. No. 1, whether the supply of services will be treated as inter-State supply or intra-State supply?	The aforesaid supply of services would be considered as inter-State supply in terms of sub-section (5) of section 7 of the IGST Act since the location of the supplier is in India and the place of supply is outside India.
3.	In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, section 17 of the CGST Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier.
4.	In the case mentioned at Sl. No. 1, what state code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the supply in FORM GSTR-1?	The supplier of service shall report place of supply of such service by selecting State code as '96-Foreign Country' from the list of codes the drop-down menu available on the portal in FORM GSTR-1.

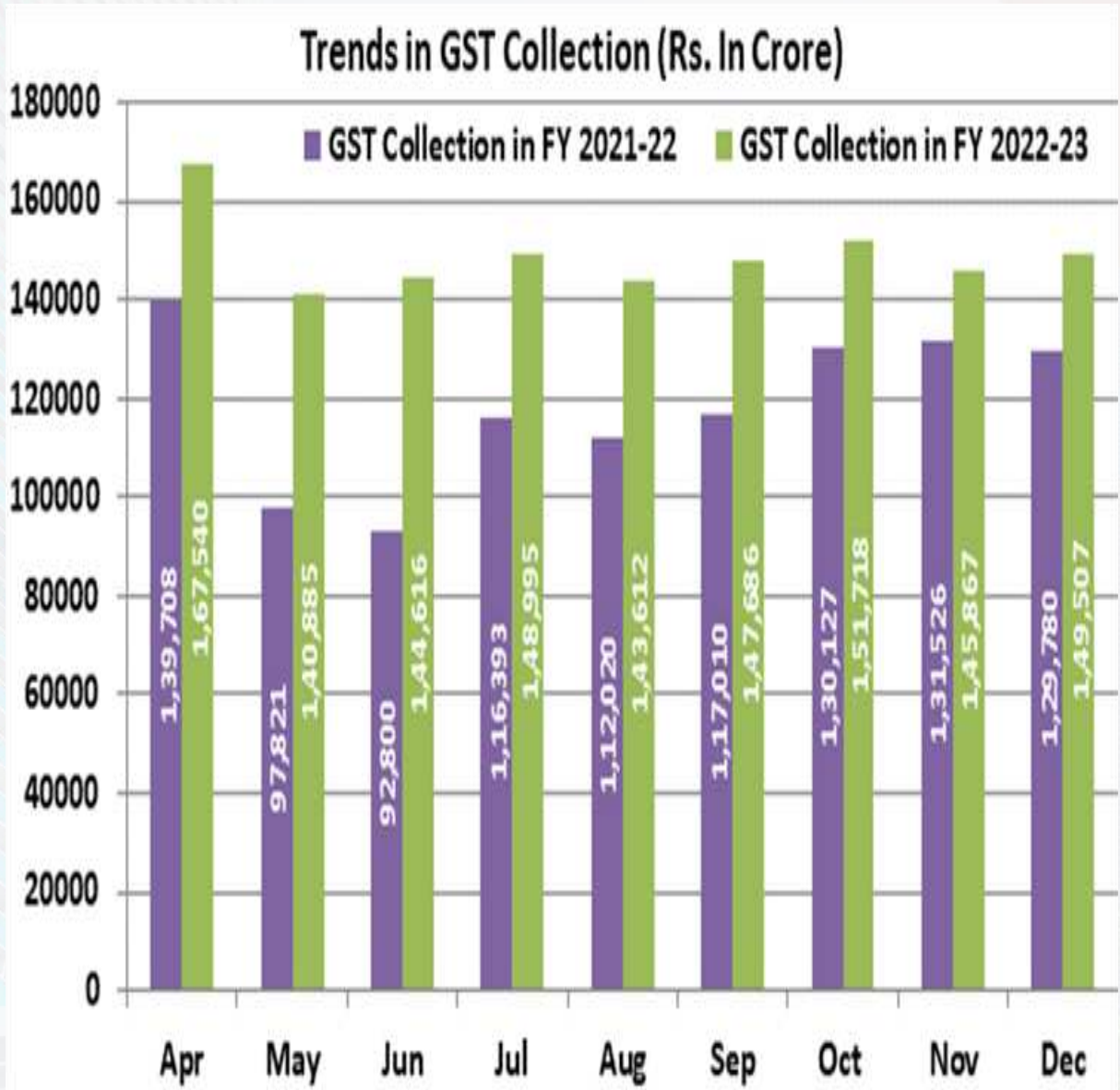
Circular No. 184/16/2022-GST dated 27 December, 2022

Clarification to deal with difference in ITC availed in FORM GSTR-3B

S.no	Issue	Clarification
1.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 of the circular.
2.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 of the circular
3.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	The difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 of the circular.
4.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

Circular No. 183/15/2022-GST dated 27 December, 2022

GST Revenue Collection in December 2022- Rs. 1,49,507 Cr.



Source: PIB



- Revised rate of duty applies to bills of entry presented after uploading of Notification in e-Gazette form
- Recovery of demand not allowed when appeal has been restored and pending
- Social Welfare Surcharge (SWS) not applicable where BCD is Nil
- Refund allowed on IGST paid on goods imported under EPCG scheme
- Other Notifications/Circulars/Instructions

HoP is the only procedural guide and would not impact the substantive benefits of MEIS

Issue:

The petitioner has been denied the benefits of the MEIS as it had submitted an online declaration indicating that it would not avail the benefits of MEIS due to an inadvertent error. Based on request, the shipping bills were corrected manually and could not be corrected online. Under clause 3.01 of the Foreign Trade Policy (FTP), the manual entries are not permissible. Paragraph 3.14(a) of the Handbook of Procedure (HoP) also states that it is mandatory to make the entries online. It is the petitioner's case that the HoP is the only procedural guide and would not disentitle the petitioner from availing the substantive benefits of MEIS in terms of the FTP.

Legal Provisions:

Clause 3.01 of the FTP and paragraph 3.14(a) of the HoP

Observation and Comments:

The Honorable High Court observed and held that:

- Prima facie, we are of the view that the grievance of the petitioner can be addressed, if a meeting is convened between DGFT; Policy Relaxation Committee; Directorate General of Systems and Data Management and Deputy Commissioner of Customs

(CRU), who, as indicated, has issued the aforementioned amendment certificate.

- In view of the aforesaid decision, respondent no.4 shall transmit the corrected bills as decided in terms of paragraph no. 5 of the minutes, as stated above, within a period of two weeks from today. The petitioner's claim for benefits under MEIS shall be decided within a period of six weeks thereafter.

DA Insights:

In the said case, the Honorable High Court instructed for amiable solution and also ensured its implementation to resolve the petitioner's grievance.

Denial of conversion of shipping bill basis board circular is utter violation of statutory provisions

Issue:

The appellant is an exporter and filed an application requesting for Scheme Code change from "00-Free Shipping Bill" to "03-Advance Authorization Shipping Bill". After various level litigation with DGFT and Customs, and further writ petition filed and withdrawn, the appellant put an request again for conversion of shipping bills which was declined by the commissioner of Customs basis that the exporter had violated the conditions / procedures for conversion of shipping bills provided under paragraph 3 of the Board Circular No. 36/2010 dated 23 September 2010 and that the request for Scheme Code conversion was made after five years; that the fact of use of imported inputs under Advance Authorization was not proved in the export of the final products and therefore, the request of the appellant was not permissible even under Section 149 of the Customs Act, 1962. Accordingly, the appeal to CESTAT was filed.

Legal Provisions:

Section 149 of Customs Act, 1962 and Board Circular No. 36/2010 dated 23 September 2010

Observation and Comments:

The Honorable CESTAT observed and held that:

- The appellant has established its bona fides; but for the inaction by the DGFT, perhaps there would not have been any delay in seeking conversion/amendment under Section 149 *ibid*.
- The Hon^{ble} jurisdictional High Court (M/s. Global Calcium Pvt. Ltd. v. Commissioner of Customs, Chennai vide judgement dated 29.06.2017 in C.M.A. No. 875 of 2017) as well as the Hon^{ble} High Court of Kerala (M/s. Parayil Food Products Pvt. Ltd. v. Union of India – 2020 (10) TMI 1141 – Kerala High Court) have considered the issue of the above time-limit stipulated in the Board Circular and held that the stipulation of the period of limitation was in utter violation of the statutory provision of Section 149 *ibid*. and that the request for conversion could not be denied as time-barred by resorting to the Board Circular.
- In view of the above discussions, the denial of conversion from free shipping bills to Advance Authorization shipping bills by the lower authority and the impugned order, being bad in law, are set aside.

Denial of conversion of shipping bill basis board circular is utter violation of statutory provisions

DA Insights:

The issue is well settled and still the assessee faces at lower-level leads to delay in justice. CBIC should bring instructions to officers on all such issues which are well settled at various Tribunals/Courts.

M/S. Fuso Glass India Private Limited vs CC [2022 (12) TMI 1112 - CESTAT Chennai]

Bill of Entry got purged before payment of duty through IGST – No late fee is levied and also compensation awarded for unnecessary litigation – CESTAT

Issue:

During filing of Bill of Entry, no challan generated in the system and observed that Bill of Entry got purged before payment of duty through IGST. Accordingly, the appellant requested to the adjudicating authority to retrieve the same but they informed them in writing that such retrieval is not possible from the system and need to file a fresh Bill of Entry and accordingly it did the same but the same resulted in imposition of late fee under Section 46(3) of the Customs Act, 1962. As no relief provided even at first appellate level, the appeal was filed to CESTAT.

Legal Provisions:

Section 46(3) of the Customs Act, 1962

Observation and Comments:

The Honorable CESTAT observed and held that:

- This is something impossible and beyond the reach of the Appellant to get evidence from the computer system that is under the control of the Respondent-Department and operated by their Officials.
- Therefore, imposition of late fee itself and its confirmation by the Commissioner (Appeals) by erroneously holding that there was no dispute of the fact that Bill of Entry was filed beyond the time limit prescribed under Section 46(3) of the Customs Act, 1962, was irregular and unsupported by any legal provision.
- It has also caused considerable hardship to the Appellant by burdening the Appellant with further unnecessary litigation and by burdening the Tribunal in showing scanty respect to the law of the land for which, in view of the decision reported in 2015 (318) ELT 150 (Tri.-Del.), the Respondent is also liable to compensate the Appellant by way of cost.
- Both orders have not cited any reason as to why the Bill of Entry is not to be accepted under Section 46(3) of the Customs Act, 1962 except noting the submissions of Appellant that it got purged/erased in the system.

Bill of Entry got purged before payment of duty through IGST – No late fee is levied and also compensation awarded for unnecessary litigation – CESTAT

DA Insights:

The Honorable CESTAT rightly set aside the late waiver fee and also imposed litigation cost to exchequer.

[M/S MIRC Electronics Ltd. vs CC \[2022 \(12\) TMI 829 - CESTAT MUMBAI\]](#)

Rejection of Declared value without redetermination is not sustainable – CESTAT

Issue:

The company filed shipping bills for export and also to claim DDB (Duty Drawback) which was seized due to misdeclaration and being overvalued. The adjudicating authority passed an order and reassessed the value along with penalty. The Commissioner (A) set aside the order against which the appeal is filed before CESTAT.

Legal Provisions:

Customs Valuation (Determination of Price of Imported Goods) Rules, 2007

Observation and Comments:

The Honorable CESTAT observed and held that:

- The Adjudicating Authority has recorded no reasons for rejecting the declared value and has directly proceeded to re-determine the value of export goods. The impugned order repeatedly refers to acceptance of the Appellant for reducing the value based on market enquiry.
- It is thus evident that no cogent reasons existed when doubts about correctness of the declared value of the export goods were raised.

- Thus redetermination of declared value solely on ground of market enquiry is not proper and legal and declared value need to be accepted as correct.

DA Insights:

It cannot be doubted that under rule 12 of the 2007 Valuation Rules, the adjudicating authority has to first give cogent reasons to reject the declared value and thereafter re-determine it.

CBIC constitutes Customs, Central Excise & Service Tax Settlement Commission

The Competent Authority has constituted Settlement Commission Benches at Delhi, Mumbai, Chennai & Kolkata

Public Notice 01/2022 dated 13 December 2022

Postal Export (Electronic Declaration and Processing) Regulations, 2022 and implementation of PBE Automated System

In order to leverage the vast network of post offices across the country and enable MSME's (Micro, Small and Medium Enterprises) to export to global markets using e-commerce or other regular channels, the CBIC in collaboration with the Department of Posts (DoP) has developed a dedicated Postal Bill of Exports (PBE) Automated System for postal exports.

Circular No. 25/2022-Customs, dated 09 December 2022



DA NEWS

Driven by Quality, Powered by Ideation

Goods and Services Tax

- CBIC asks tax officers to verify invoice details in ITC mismatch cases
- Rice unfit for humans and used for other purposes to attract 5% GST: AAR
- GST Council meeting: Panel for raising threshold for offences to Rs 2 cr

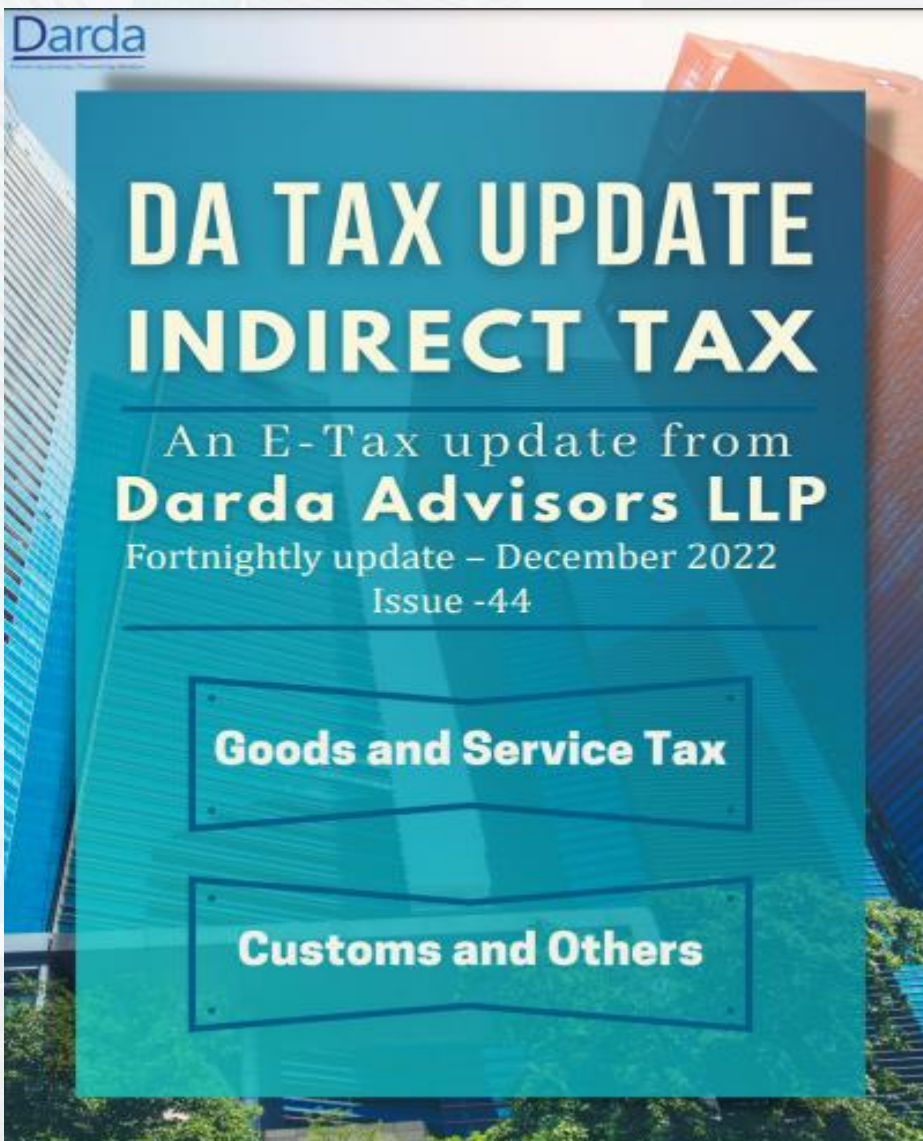
Customs and other

- Budget 2023: Assocham seeks reduction in basic customs duty on critical raw materials for aluminium sector
- India-Australia FTA to help increase apparel exports: AEPC
- Parliamentary committee recommends a GST Council-like body for RoDTEP

DA Updates and Articles for the month of December 2022

Indirect Tax Fortnightly Update for the month of December 2022

<https://dardaadvisors.com/indirect-tax-alert/da-indirect-tax-fortnightly-update-december-2022/>



Darda

Driven by Quality, Powered by Ideation

Darda Advisors LLP offers a wide range of services in the tax and regulatory space to clients in India with professionals having extensive consulting experience. Our approach is to provide customized and client-specific services. We provide well-thought-out strategies and solutions to complex problems in tax and regulatory matters. Our service offerings are:

Invest India Services

- Invest India Study
- Inception And Incorporation Relate
- Incentives, Subsidies and Grant Service
- Start-Up India and MSME Services



Indirect Tax Services

- GST Services
- Representation and Litigation Support
- Corporate Training
- SEZ/EOU/STP Services
- Customs and International Trade
- GCC VAT

Other Services

- Corporate Secretarial Services
- Corporate & International Tax Services
- Certification & Attestation Services
- Financial Advisory Services
- Accounting Advisory Services
- RBI Services



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

Disclaimer:

For private circulation and internal use only. The information contained herein is of general nature and not intended to address the circumstances of the particular individual or entity. The information in this document has been obtained or derived from sources believed by Darda Advisors LLP (DA) to be reliable but DA does not represent that this information is accurate or complete. Readers of this publication are advised to seek their own professional advice before taking any course of action or decision, for which they are entirely responsible, based on the contents of this publication. DA neither accepts nor assumes any responsibility or liability to any reader of this publication in respect of the information contained within it or for any decision's readers may take or decide not to or fail to take.