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DA TAX ALERT

INDIRECT TAX

AN E-TAX ALERT FROM

Darda Advisors LLP

February 2023
Issue: 33

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 January 2023.

During the month of January 2023, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as Revision of GSTR 3B allowed for bonafide and inadvertent error.

In the thirty third 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 January 2023.

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

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GST COMPLIANCE CALENDAR

February 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

- Exporter is eligible for Rule 96 refund with interest when export is allowed even when issue raised on e-way bill or other aspects – HC
- Order for quashing SCN issued under section 130 of CGST Act, 2017 by HC set aside by SC
- Revision of GSTR 3B allowed for bona fide and inadvertent error – HC
- Budgetary support under Scheme of Budgetary Support is allowed – HC
- Remedy of attachment itself very extra ordinary needs to be resorted to with at most circumspection and maximum care and caution – HC
- Summary of the show cause notice is not a substitute of the proper show cause notice
- Refund cannot be denied for the inadvertent error which is further rectified – HC
- Function entrusted to Panchayat exempt from GST – AAAR
- Renting of immovable property services provided by SEZ Developer to SEZ Unit is 'Zero rated supply' – AAAR

Exporter is eligible for Rule 96 refund with interest when export is allowed even when issue raised on e-way bill or other aspects – HC

Issue:

The principal grievance on the part of the petitioner is that the proceedings for scrutiny of refund of IGST for the export already made by the petitioner is initiated by the CGST Department even though the proper officer for grant of refund of IGST is the Custom Authorities and therefore, initiation of the actions on the part of the respondent is bad in law. Rule 96 since provides for the shipping bill of the export to be treated as the refund application and the custom authorities treated the process of refund claim of the exporter. It is urged that this continuous scrutiny on the part of the respondent is wholly without jurisdiction and not sustainable under the law.

Legal Provisions:

Rule 96 and Rule 138 of CGST Rules, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- At no stage, the authority was precluded from initiating the proceedings of show cause notice. However, till date, it is not so done, therefore, to strike a balance this Court is of the firm opinion that when the export has been permitted by all concerned on the part of the respondents, the petitioner would become entitled to the refund and the same shall be paid with interest to the petitioner.
- At the same time, as this Court had protected him and the investigation has not been concluded, let the same be finalized in eight weeks' period from the date of receipt of a copy of this order. If at the end of the investigation nothing is found, without any further requirement of the petitioner moving any authority, the same shall be remitted to the petitioner in his account through RTGS with interest.

DA Insights:

There is issue of different authority issuing summon and instructing other authority to block the refund and deny permission for export is bad in law.

Mobile Shoppe Vs UOI [2023-VIL-80-GUJ]

Order for quashing SCN issued under section 130 of CGST Act, 2017 by HC set aside by SC

Issue:

The Revenue appealed against the judgment and order by the High Court of Punjab and Haryana at Chandigarh which has set aside the order of detention of the goods/vehicle and also the notice issued under Section 130 of the CGST Act, 2017.

Legal Provisions:

Section 130 of CGST Act, 2017

Observation and Comments:

The Honorable Supreme Court observed and held that:

- Apart from the fact that the aforesaid is factually incorrect, even otherwise, it was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceeding for which the notice under Section 130 of the Act was issued.
- Therefore, we are of the opinion that the High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same. However, at the same time, the order passed by the High Court releasing the goods in question is not to be interfered with as it is reported that the goods have been released by the appropriate authority.

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DA Insights:

There is immediate need to clarify and provide instructions to officers related to check post issues so that such issues does not settle or unsettle at Court levels.

The State Of Punjab Vs M/S Shiv Enterprises & Ors. [2023-VIL-04-SC]

Revision of GSTR 3B allowed for bonafide and inadvertent error – HC

Issue:

The petitioner while reviewing the returns that it had filed, noticed during the course of department audit that certain inadvertent errors and mistakes were made while filing its returns for the FY 2017-18 in relation to ITC on imports under IGST due to oversight and inadvertence in Column No. 4A(5) instead of claiming it under Column No. 4A(1). The SCN was issued by DCCT to disallow ITC due to such error against which writ petition is filed.

Legal Provisions:

Section 39 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- A perusal of the same makes it apparent that ITC, which is admittedly available to the petitioner has been entered under the wrong column; the material on record also discloses that the said errors are entirely bona fide and inadvertent and that a lenient view is required to be taken, particularly since the tax periods involved relate to the very first year of the GST regime.
- It is relevant to state that the judgment of the Apex Court in Bharti Airtel's case (supra) cannot be made applicable to the facts of the case. However, the facts of the present case are entirely different; in fact, there cannot be said to be any cascading effect since the petitioner only seeks to shift the ITC already claimed from one head to another, which is not disputed by the respondents.
- As rightly contended by the learned Senior Counsel for the petitioner, the authorities must avoid a blinkered view while adjudicating/assessing the tax liability of a dealer under the Act.
- In view of the aforesaid facts and circumstances, I am of the considered opinion that the petitioner is entitled for the limited relief of being permitted to make the necessary changes to its GSTR 3-B returns for the months of July 2017and March 2018, particularly, since doing so would not cause any prejudice to the respondents-Revenue nor would it upset the chain of credit under the GST scheme and liberty is to be reserved in favour of the revenue to proceed with the impugned show cause notice dated 17.01.2022 after permitting the petitioner to make the necessary amendments to its GSTR 3-B Returns for the above tax periods.

DA Insights:

The Honorable High Court considered the facts and accordingly given relief in this case.

M/s Orient Traders Vs DCCT and others [2023-VIL-46-KAR]

Budgetary support under Scheme of Budgetary Support is allowed – HC

Issue:

The petitioner has filed the present petition being aggrieved by denial of budgetary support under the "Scheme of Budgetary Support under Goods and Services Tax (GST) Regime to units located in State of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North-Eastern States including Sikkim" (hereafter 'the Scheme') notified in terms of the Notification dated 05.10.2017 issued by the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**.**

Legal Provisions:

Scheme of Budgetary Support under GST Regime

Observation and Comments:

The Honorable High observed and held that:

In the present case, there is no dispute that the petitioner was eligible to avail the benefits of the Notification (Notification No.50/2003-CE dated 10.06.2003), which was one of the Notifications as mentioned in paragraph 2 of the Scheme.

However, insofar as the sanction of refund of excise duty is concerned, there is no controversy that the goods cleared by the petitioner from its unit at Rudrapur were exempt from excise duty ab initio by virtue of the Notification. Since the petitioner has also secured an order sanctioning refund of the said duty, there can be no doubt that the petitioner has availed of the benefit under the Notification.

In view of the above, we direct the respondents to release the budgetary support amount as assessed to the petitioner in terms of the Scheme as expeditiously as possible but in any event within a period of six weeks from today. Respondent no.3 is also directed to grant registration to the petitioner to enable it to file online claims as prayed for by the petitioner.

DA Insights:

It is material to note that it is not disputed that but for the controversy whether the petitioner was availing the benefit of the Notification, as noted above, there is no other reason for denying the petitioner's claim for budgetary support under the Scheme.

M/s Special Cables Pvt Ltd Vs CBIC [2023-VIL-70-DEL]

Remedy of attachment itself very extra ordinary needs to be resorted to with at most circumspection and maximum care and caution – HC

Issue:

The petitioner challenges the order of provisional attachment of the Bank under section 83 of the CGST Act, 2017 attaching the Bank account of the petitioner on the ground of the violation of provisions of law, whereby his entire business came to a grinding halt by attaching the Bank account without any pending proceedings.

Legal Provisions:

Section 83 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- Of course, the summons had been issued against the petitioner after getting the inquiry made against M/s. Arsh Enterprise, the procedure that had been required to be followed as per the Circular and also on issuance of FORM DRC 01A had not been done before the provisional attachment of the Bank account had been made. There is no explanation as to why the FORM DRC-01A has been issued on 18.01.2023 could not have been done if, it was for ascertaining the preliminary details and for protecting the revenue.
- Noticing, however, the gravity of the matter, when there is a direction for attachment of the Bank account, the Court needs to interfere following the decision of Arya Metacast Pvt. Ltd. (supra) and also various decisions which have been referred to in that decision itself. The guidelines issued by the Circular of CBEC on 23.02.2021 also make it amply clear that the remedy of attachment being by itself very extra ordinary needs to be resorted to with at most circumspection and maximum care and caution, which in the instant case appear to have been missing and hence, that order needs to be quashed and set aside.
- The request on the part of the learned AGP of calculating the interest and the penalty presently is not being considered as the procedure which has been followed is not what has been prescribed under the law and the Circular both. Nothing prevents the respondent to follow the procedure in accordance with law.

DA Insights:

Such issues arises when instructions and circular itself are not being implemented by the officer.

Smita And Sons Coal Private Limited Vs State Of Gujarat [2023-VIL-83-GUJ]

Summary of the show cause notice is not a substitute of the proper show cause notice

Issue:

The petitioners have assailed the summary of the show cause notice and the summary of the order on the ground that they are in teeth of the provisions of Section 74 of the JGST Act. Summary of the show cause notice in Form GST DRC-01 is not a substitute of the proper show cause notice. Participation in the proceedings will not cure the material irregularity in the foundation of the proceedings. Petitioners contend that principles of natural justice have been violated.

Legal Provisions:

Section 74 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- As observed herein above, the impugned notice completely lacks in fulfilling the ingredients of a proper show-cause notice under Section 74 of the Act. Proceedings under Section 74 of the Act have to be preceded by a proper show-cause notice. A summary of show-cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the JGST Rules, 2017 (Annexure-2 impugned herein) cannot substitute the requirement of a proper show-cause notice.
- In view of the aforesaid facts and the settled preposition of law, the foundation of the proceeding in both the cases suffers from material irregularity and hence not sustainable being contrary to Section 74(1) of the JGST Act; thus, the subsequent proceedings/impugned Orders cannot sanctify the same. Though, the petitioner submitted their concise reply vide letter dated 03-10-2018; the respondent State cannot take benefit of the said action as summary of show cause notice cannot be considered as a show cause notice as mandated under Section 74(1) of the Act.

DA Insights:

When the provision itself does not allow proceeding without proper SCN, the said proceedings are rightly set aside by the Honorable High Court.

Refund cannot be denied for the inadvertent error which is further rectified – HC

Issue:

The petitioner has filed the present petition to challenge the order of adjudicating authority and first appellate authority rejecting the refund application without considering the documents and facts provided.

Legal Provisions:

Section 54 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- It is apparent from the above that the rectified information as submitted by the petitioner was not taken into account by either of the concerned authorities while considering the petitioner's grievance regarding non-payment of its refund, as claimed.
- We are of the view that it was essential for the concerned authorities to examine the information as submitted by the petitioner and process its claim for refund in accordance with law. Clearly, the petitioner cannot be penalised for the inadvertent error in submitting an erroneous information against Column No. 7 of its form, which has since been rectified.
- The petitioner's application for refund shall be processed within a period of four weeks. If the Adjudicating Authority contemplates rejecting the petitioner's application for refund for any reason, it shall afford the petitioner, an opportunity to be heard.

DA Insights:

The rejection of refund application at both stages without looking into submission is unnecessary hardship and legal hurdles for tax payers..

M/s Shri Shyam Footwear vs CCGST & Others [2023-VIL-88-DEL]

Function entrusted to Panchayat exempt from GST – AAAR

Issue:

APMSIDC had preferred an appeal against an Advance ruling on the following questions before AAAR.

- Whether the procurement and distribution of drugs, medicines and other surgical equipment by APMSIDC on behalf of government without any value addition, and without any profit or loss, without even the intent to do any business amounts to supply under section 7 of CGST/SGST Act.
- Whether the establishment charges received from State Government asper G.O.RT 672 dated 20-05-1998 and G.O RT 1357 dated 19-10-2009 by APMSIDC is eligible for exemption as per Entry 3 or3A of Notification12/2017 Central Tax (rate)?

Legal Provisions:

Notification12/2017 Central Tax (rate)

Observation and Comments:

The AAAR observed and held that:

- The APMSIDC renders the service of distribution of medicines to hospitals and PHCs which is a 'pure service' to Andhra Pradesh State Government.
- Further, the service rendered by the APMSIDC is in relation to a function entrusted to a Panchayat under Article 243G of the Constitution of India, (the appellant is providing Pure Service (supply / distribution of drugs, consumables and equipment for Hospitals) to State Government by way of an activity in relation to a function entrusted to a Panchayat under Article 243G(Sl.No.23 of Eleventh Schedule of Article 243G of Constitution is - Health and sanitation, including hospitals, primary health centres and dispensaries).
- The applicant contends that the establishment charges received from the State Government of Andhra Pradesh are out of the budgetary grants provided in the State Budget. The above receipts are provided to the Corporation only for the services rendered by the entity, but are not in relation to any goods provided.

DA Insights:

The CBIC needs to provide clarification on such aspect to remove anomaly pan India.

M/s Andhra Pradesh Medical service And Infrastructure Development Corporation [2023-VIL-02-AAAR]

Renting of immovable property services provided by SEZ Developer to SEZ Unit is 'Zero rated supply' – AAAR

Issue:

The appeal against the ruling of AAR is filed on the issue that the renting of immovable property services provided by SEZ Developer liable to GST in the hands of SEZ Unit under RCM.

Legal Provisions:

Section 16 of IGST Act, 2017

Observation and Comments:

The AAAR observed and held that:

- Thus, on perusal of the aforesaid provisions of the zero-rated supply, it is clear that any supply of goods or services or both made to a SEZ developer or SEZ unit for carrying out the authorised operation in SEZ will be considered as zero-rated supply.
- As long as the supply is being made to SEZ developer or SEZ unit for carrying out the authorised operation in SEZ, the same will be treated as zero-rated supply, and will not be subject to GST.
- That is, all the supply of services procured by SEZ unit from the suppliers located in DTA for carrying out the authorised operation in SEZ will not attract any GST in accordance with the provision of section 16(1) of the IGST Act, 2017, and the Appellant will not be required to pay any GST under RCM on the services received from DTA supplier for carrying out the authorized operation in SEZ, subject to LUT.

DA Insights:

There is immediate need to issue clarifications from CBIC to remove diverse rulings by AAR and AAAR on such matter.

M/s Portescap India Private Limited [2023-VIL-09-AAAR]]

Assignment of Power of Superintendent to Additional Assistant Director

Additional Assistant Director, Goods and Services Tax Intelligence or Additional Assistant Director, Goods and Services Tax or Additional Assistant Director, Audit can exercise the power of Superintendent.

Notification no. 1/2023-Central Tax dated 4 January 2023

Clarification regarding certain GST rates and classification of certain services

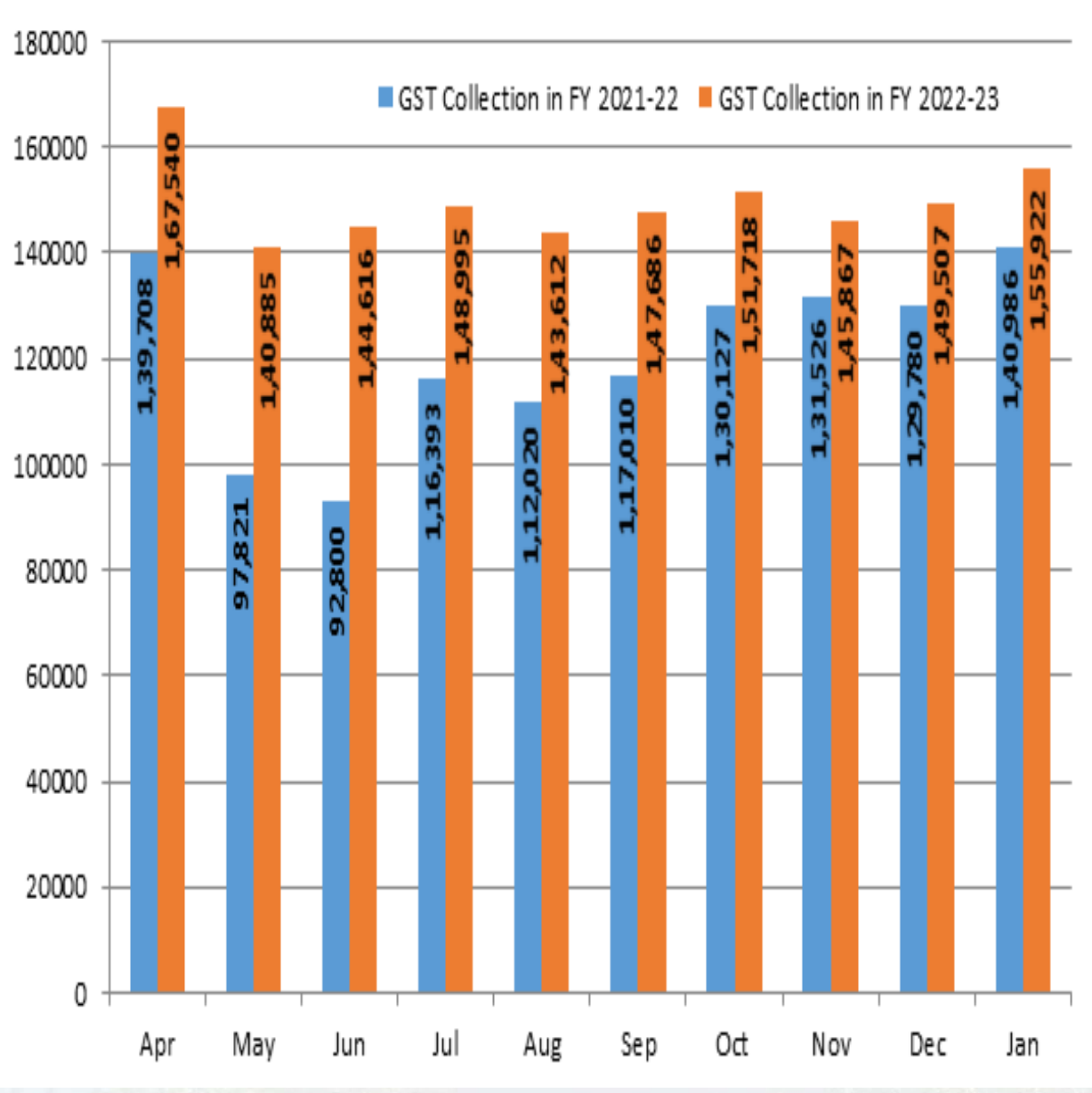
Aspect	Clarification
Applicability of GST on accommodation services supplied by Air Force Mess to its personnel	It is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.
Applicability of GST on incentive paid by Ministry of Electronics and Information Technology (MeitY) to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.	The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the central government in the form of incentive. However, it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017.
Rab -classifiable under Tariff heading 1702:	The Hon'ble Supreme Court in its order in Krishi Utpadan Mandi Samiti vs. M/s Shankar Industries and others [1993 SCR (1)1037] has distinguished Rab from Molasses. Thus, Rab being distinguishable from molasses is not classifiable under heading 1703. Accordingly, it is hereby clarified that Rab is appropriately classifiable under heading 1702 attracting GST rate of 18% (S. No. 11 in Schedule III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017).

Clarification regarding certain GST rates and classification of certain services

Aspect	Clarification
Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni	The GST council in its 48th meeting has recommended to fully exempt the supply of subject goods, irrespective of its end use. Hence, with effect from the 1st January, 2023, the said goods shall be exempt under GST vide S. No. 102C of schedule of notification No. 2/2017- Central Tax (Rate), dated 28.06.2017.
Clarification regarding 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'	It is hereby clarified that the applicable six-digit HS code for the aforesaid goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice' is HS 2202 99. The said goods attract GST at the rate of 28% and Compensation Cess at the rate of 12%. The S. Nos. 12B and 4B mentioned in Para 4.2 cover all such carbonated beverages that contain carbon dioxide, irrespective of whether the carbon dioxide is added as a preservative, additive, etc.
Applicability of GST on Snack pellets manufactured through extrusion process (such as 'fryums')	It is hereby clarified that the snack pellets (such as 'fryums'), which are manufactured through the process of extrusion, are appropriately classifiable under tariff item 1905 90 30, which covers goods with description 'Extruded or expanded products, savoury or salted', and thereby attract GST at the rate of 18% vide S. No. 16 of Schedule-III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017.
Applicability of Compensation cess on Sports Utility Vehicles (SUVs)	In this regard, it is clarified that Compensation Cess at the rate of 22% is applicable on Motor vehicles, falling under heading 8703, which satisfy all four specifications, namely: -these are popularly known as SUVs; the engine capacity exceeds 1,500 cc; the length exceeds 4,000 mm; and the ground clearance is 170 mm and above.
Applicability of IGST rate on goods specified under notification No. 3/2017-Integrated Tax (Rate)	Accordingly, it is hereby clarified that on goods specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, which are eligible for IGST rate of 12% under the said notification and are also eligible for the benefit of lower rate under Schedule I of the notification No. 1/2017-Integrated Tax (Rate), dated the 28th June, 2017 or any other IGST rate notification, the importer can claim the benefit of the lower rate.

Circular No. 189/01/2023-GST and Circular No. 190/02/2023- GST dated 13 January 2023

GST Revenue Collection in January 2023 - Rs. 1,55,922 Cr.



Source: PIB

- Refund of education cess, SHEC allowed under erstwhile regime – CESTAT
- TPuS method is consistent with Customs Valuation Rules – AAR
- EPCG – Extension of 2 years period to be counted from date of desealing for fulfilment of export obligation – CESTAT
- Classification - 'portable' should have been interpreted in the context of ADPs instead of relying on dictionary meaning – SC
- Other Notifications/Circulars/Instructions

Refund of education cess, SHEC allowed under erstwhile regime – CESTAT

Issue:

The appellant filed the appeal to CESTAT against the denial of refund by the Revenue on two counts, first, the Cenvat credit of Education Cess and Secondary and Higher Education Cess is not admissible and second, the refund is time-barred.

Legal Provisions:

Rule 5 of CENVAT Rules, 2004

Observation and Comments:

The Honorable CESTAT observed and held that:

- As regards the admissibility of Cenvat credit of Education Cess and Secondary and Higher Education Cess, Rule 3 clearly provides the Cenvat credit to be allowed in respect of Education Cess and Secondary and Higher Education Cess. From the above Rule, under clause (vi) and (via), the credit of Education Cess and Secondary and Higher Education Cess is clearly allowed. Therefore, the appellant is legally entitled for Cenvat of Education Cess and Secondary and Higher Education Cess. Hence, on this count refund cannot be denied.
- As regards limitation, in the judgments cited by the learned Counsel, the Hon'ble High Court also considered limitation and held that in case of refund of accumulated unutilized credit, limitation shall not apply.
- In view of the above judgments, it is observed that the issue is no longer res-integra. Accordingly, the appellant is entitled for cash refund of accumulated and unutilized Cenvat credit of Education Cess and Secondary and Higher Education Cess. The impugned order is set-aside and the appeal is allowed with consequential relief.

DA Insights:

The relief is rightly provided as ITC available under erstwhile regime either to be allowed as refund or transitioned to new regime.

USV PRIVATE LIMITED Vs CCE&ST [2023-VIL-110-CESTAT-AHM-CE]

TPuS method is consistent with Customs Valuation Rules – AAR

Issue:

The Overseas Company i.e. Sick AG, Germany, is undertaking to standardize and harmonize its transfer pricing across the globe within the ambit of its existing application of the Resale minus method / Resale Price Method. This system of arriving at the transfer price is referred to as Transfer Pricing System and Steering Concept (hereinafter referred to as TPuS, and also known as Resale Price method or Resale Minus method) within the Overseas Company and it will be applied to all entities of the Overseas Company across the globe.

In view of above, the applicant, in order to obtain certainty on treatment of declared value under the Indian Customs Act, 1962 and related rules, seeks a advance ruling.

Legal Provisions:

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

Observation and Comments:

The AAR observed and held that:

- TPuS method clearly shows that the proposed transaction value is sum total of manufacturing cost (direct cost &indirect cost) and administrative expenses, other expenses and profit represented by CAR indicating absence of any financial flows which can fall under the scope of Rule 10(1)(c), Rule 10(1)(d) and Rule 10 (1)(e).
- To summarise, a factual matrix submitted by applicant states that they propose to follow Transfer Pricing System and Steering Concept (TPuS) method also known as Resale Price method/Resale Minus method only from 1st May2023 onwards for related party imports for determination of transaction value under section 14 of the Customs Act, 1962.
- Under Rule 7 as well as under TPuS method the benchmark price adopted for backward calculations is a price charged to unrelated buyer on aggregate basis for each product which is in line with Interpretative Note which interprets such price as 'the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place'. Deductions worked out under TPuS method from benchmark price are similar to those prescribed in Interpretative note to Rule 7 of the CVR, 2007.

DA Insights:

The AAR rightly considered TPuS method as Deductive Value method for transaction value purpose.

M/s Sick India Pvt Ltd [2023-VIL-04-AAR-CU]

EPCG – Extension of 2 years period to be counted from date of desealing for fulfilment of export obligation – CESTAT

Issue:

The appellant/assessee is in appeal against confiscation of the imported machinery under the EPCG scheme with option to pay redemption fine and further, penalties have been imposed.

Legal Provisions:

Chapter 5 of Foreign Trade Policy

Observation and Comments:

The Honorable CESTAT observed and held that:

I find that there was a disruption in business both due to fire and due to shifting of the machinery to the new address, for a period of more than 2 years. Further, I find that the DGFT, by granting extension for fulfilment of export obligation, have condoned the delay in achieving the export obligations and have also regularised the shifting of the machinery to the new address.

However, such extension remained mere formality or an eye wash, as the appellant did not have any opportunity to manufacture and export pursuant to granting of extension in March, 2018, as the machines were admittedly lying sealed by the Customs Department since2016. In these circumstances, I allow these appeals and set aside the impugned orders. I further order that the machines shall be de-sealed with the immediate effect within a period of 30 days from the date of receipt of this order, if the machines so far are not de-sealed.

DA Insights:

The Honorable CESTAT rightly held that mere extension without releasing of machineries is a mere eye wash.

M/s K.Y. Continental Interiors Pvt Ltd Vs CC [2023-VIL-62-CESTAT-DEL-CU]

Classification - 'portable' should have been interpreted in the context of ADPs instead of relying on dictionary meaning – SC

Issue:

The Appellants imported certain units of the Concerned Goods [i.e. Automatic data processing (ADP) machines and units thereof] and classified them under 'Tariff Item 8471 50 00' as per the prevalent self-assessment procedure. During subsequent examination by the Custom Authorities, the Concerned Goods were classified under 'Tariff Item 8471 30 10', which was later confirmed by the first and second appellate authority.

While the rate of duty is same under both the Tariff Items, the method of computing them is different. Goods under 'Tariff Item 8471 30 10' attract the application of Section 4A of Central Excise Act, 1944, which valued the excisable goods on the basis of percentage of retail sale price. In contrast, a classification under 'Tariff Item 8471 50 00' invites valuation based on price mechanism under Section 4 of Central Excise Act, 1944 which would have effectively reduced the overall liability to pay the requisite duty. This difference in liability is the precise reason behind the present dispute regarding classification under the correct Tariff Item which calls for adjudication.

Legal Provisions:

Customs Tariff Act, 1985

Observation and judgment:

The Honorable Supreme Court observed and held that:

1. To decide whether the ADP is portable or not, following aspects were analysed:

Classification - 'portable' should have been interpreted in the context of ADPs instead of relying on dictionary meaning – SC

Aspect	Judgment
The first aspect which we will address is with respect to the issue of constant source of power and whether the same is a necessary characteristic to treat goods as 'portable'.	We are thus unable to agree with the Appellants that only ADPs with a built-in power source is necessarily required to be classified under 'Tariff Item 8471 30 10'. In other words, no element of 'functionality' is contemplated for the purpose of classifying the Concerned Goods as 'portable'.
The second aspect deals with the question as to whether mere factum of weighing less than 10 kilograms would be sufficient to classify the Concerned Goods as 'portable' or not.	While we expressly acknowledge the utility of these platforms which provide free access to knowledge across the globe, but we must also sound a note of caution against using such sources for legal dispute resolution. We say so for the reason that these sources, despite being a treasure trove of knowledge, are based on a crowd-sourced and user-generated editing model that is not completely dependable in terms of academic veracity and can promote misleading information as has been noted by this court on previous occasions also. In other words, 'portable' should have been defined in reference to the ADPs instead of relying on dictionary meaning which contains all kinds of hues of associated meanings as held by this Court in CCE v Krishna Carbon Paper Co. [CCE v Krishna Carbon Paper Co. (1989) 1 SCC 150, para 6 - 1988-VIL-21-SC-CE]. On a conjoint reading of the relevant material and inputs, it is explicitly clear that weight cannot be the sole factor to determine the factum of portability.

In light of the abovementioned discussion, we allow the appeals and set aside the impugned orders which classified the Concerned Goods under 'Tariff Item 8471 30 10'. It is directed that valuation of the Concerned Goods for levy of the duty be determined under the initially declared 'Tariff Item 8471 50 00'. All necessary consequences shall follow.

Classification - 'portable' should have been interpreted in the context of ADPs instead of relying on dictionary meaning – SC

DA Insights:

The Honorable Supreme Court have considered each and every aspects to determine whether ADP is portable or not for classification purpose.

Hewlett Packard India Sales Pvt Ltd vs Vs CC [2023-VIL-03-SC-CU]]

Performance Audit Report No. 14 of 2022 "Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS) 2019" of C&AG of India (Indirect Taxes- GST, Central Excise & Service Tax)-reg.

The jurisdictional authorities are directed to take necessary action in specific cases pointed out by the C&AG in its report. In addition, Audit has also made certain recommendations: -

- Protect the interest of the revenue in cases where declarations were filed under 'Voluntary Disclosure' category of SVLDRS, but liability was not discharged.
- Create a watch list of non-SVLDRS challans linked to ARN's to prevent them from being reused in future.
- Remove the cases which are settled under the scheme from the pendency list of legal forums
- Rectify the error in cases where discharge certificate has not been issued due to technical reasons, despite the applicant having fulfilled all requisites and made payments in time.

CBIC-6/1/2021-CX-VI Section-CBEC I/60776/2023 dated 6 February 2023

Alignment of RODTEP Schedule for chapter 28, 29, 30 & 73 with first schedule of Customs Tariff Act, 1975

Consequent to inclusion of export items from chapter 28, 29, 30 & 73 vide notification no. 47 dated 7 December 2022 under RODTEP, Appendix 4R is aligned with First schedule of the Customs Tariff Act, 1975 for implementation with effect from 15 February 2023..

Notification no. 55/2015-2020 dated 7 February 2023

Implementation of RODTEP committee report in relation to anomalies

The revised appendix 4R, after incorporating changes recommended by the RODTEP committee in relation to apparent errors and anomalies in 432 HS codes in the earlier notified RODTEP rates/caps is being notified and will be applicable for exports made from 16 January 2023 to 30 September 2023.

Notification no. 53/2015-2020 dated 9 January 2023

DGFT gives One-time relaxation from maintaining Average Export Obligation

One-time relaxation from maintaining Average Export Obligation and option to avail extension in Export Obligation Period for specified EPCG authorizations is provided on account of COVID-19 pandemic, subject to fulfillment of conditions. This is in addition to EO extensions facility (upon payment of the composition fees) already provided in FTP/HBP.

Public Notice No. 53/2015-2020-DGFT | Dated 20th January, 2023

DGFT simplifies Composition Fee for Export Obligation Extension under Advance Authorization Scheme

Para 4.42 of the Handbook of Procedures 2015-2020 has been amended to simplify the process of levying Composition Fee in case of extension of Export Obligation Period (EOP) under Advance Authorization Scheme and for higher IT enablement of DGFT.

Public Notice No. 52/2015-2020 | Dated: 18th January, 2023

DGFT revises existing 'Stock and Sale' policy of Foreign Trade Policy (FTP) 2015-20

The existing "Stock and Sale" policy under Paragraph 2.79A of the Handbook of Procedures (HBP) of the Foreign Trade Policy (FTP) 2015-20 has been amended to revise the applicability of the policy for export from the Indian subsidiary of foreign company (applicant exporter) to its foreign parent/another subsidiary of foreign parent company and allow repeat order authorization under the Stock and Sale policy.

Public Notice No. 51/2015-2020-DGFT Dated 17th January 2023

Assistance in filing of applications for fixation of SION

It is informed that there is an existing permanent platform wherein daily video conference facility for interaction between DGFT Regional Authorities officials and members of trade & industry in lieu of physical interactions at DGFT Regional Authorities is convened.

Trade Notice No. 26/2022-23 | Dated: 08.02.2022

DA NEWS

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Goods and Services Tax

- GST council may consider setting up tribunal for indirect tax litigation
- View: Budget 2023 to allow consent based use of GST data, to unleash benefits for taxpayers
- Small industry body seeks review of GST levy on land lease transactions

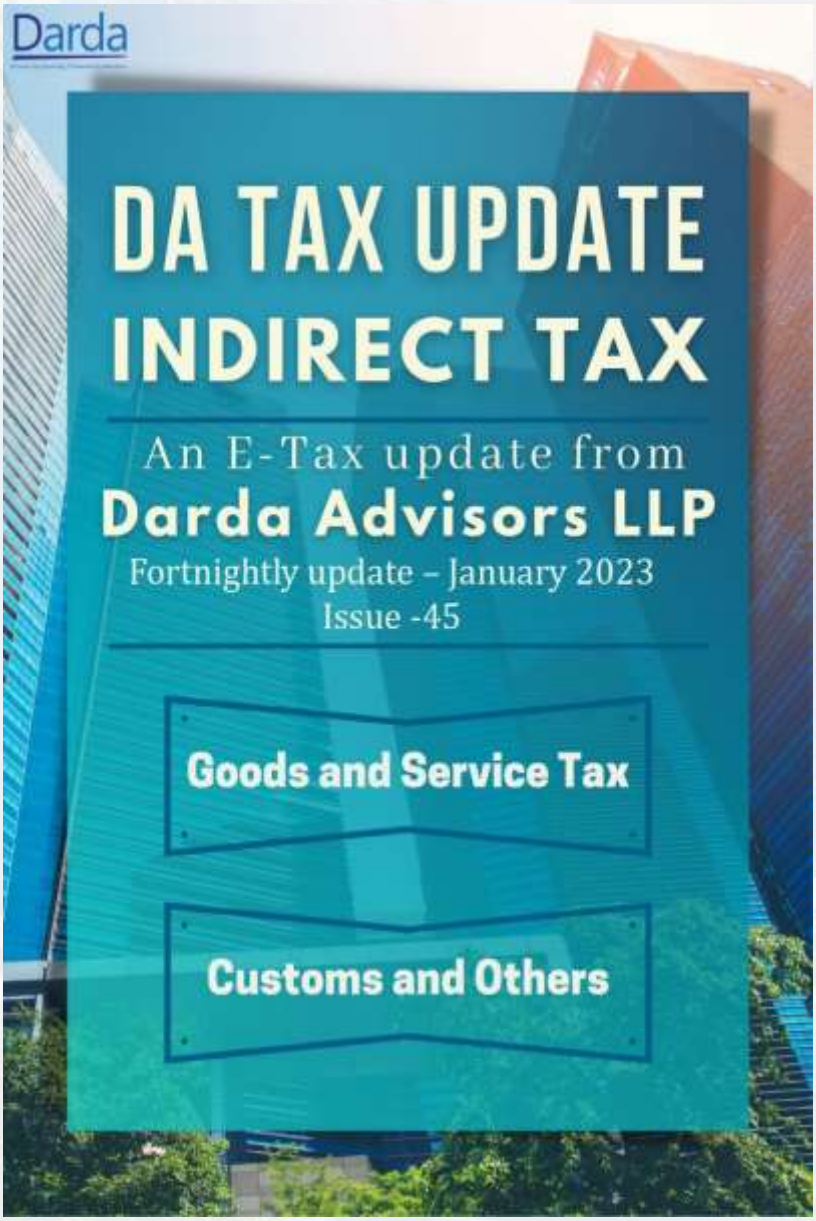
Customs and other

- New rules to scan items with a history of customs evasion
- Customs duty changes in Budget will promote Make in India initiative: GTRI]
- Budget 2023: Slashing customs duty on certain phone, TV components to drive manufacturing in India, says MAIT

DA Updates and Articles for the month of January 2023

Indirect Tax Fortnightly Update for the month of January 2023

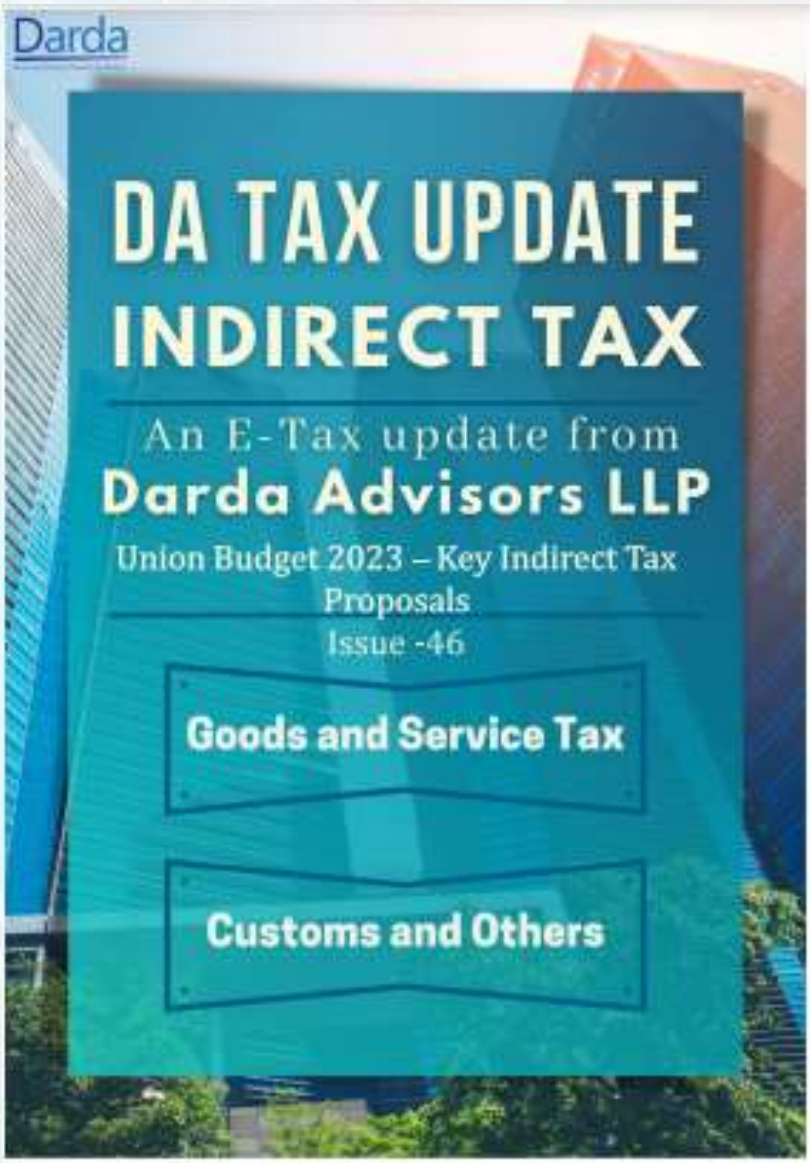
https://dardaadvisors.com/wp-content/uploads/2023/01/DA-Indirect-Tax-Fortnightly-Update_January-2023.pdf



DA Updates and Articles for the month of January 2023

Union Budget — Key Indirect Tax Proposals

https://dardaadvisors.com/wp-content/uploads/2023/02/Union_Budget_Key_Indirect_Tax_Proposal_PDF__1_-1.pdf



DA Updates and Articles for the month of January 2023

IGCRS, 2022 - Widened Scope And Impact On Various Sectors

https://dardaadvisors.com/tax-articles/indirect-tax-articles/igcrs-2022-widened-scope-and-impact-on-various-sectors/

DA Updates and Articles for the month of January 2023

Customs Valuation - New Mechanism To Check Undervaluation

https://dardaadvisors.com/tax-articles/indirect-tax-articles/customs-valuation-new-mechanism-to-check-undervaluation/

Customs Valuation – New Mechanism To Check Undervaluation

January 27, 2023 12:04 pm

DA Updates and Articles for the month of January 2023

DA Webinar – Union Budget 2023

https://www.youtube.com/live/nGyyt6gaFyI?feature=share

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