

DA TAX ALERT INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

March 2023

Issue: 34

**GST COMPLIANCE
CALENDER**

**GOODS AND
SERVICE TAX**

**CUSTOMS AND
OTHER**

DA NEWS

PREFACE

We are pleased to present to you the thirty fourth 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 February 2023.

During the month of February 2023, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as Opportunity of personal hearing cannot be denied merely assessee tick marked the option 'No' against the option for personal hearing, Dispensation under RCM extended to Courts & Tribunals and others.

In the thirty fourth 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 February 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

March
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

ITC and Refund cannot be denied as the goods had not been received since the vehicle numbers were not reflected at the e-vahan portal

Issue:

The petitioner had filed an refund application which was allowed by the adjudicating authority. However, the appeal filed by Revisional authority against the said order for the sole reason that the refund is inadmissible on the assumption that since the vehicles mentioned in two invoices were not found registered on e-vahan portal, the details given in the other invoices were also unreliable. The first appellate authority allowed the appeal and accordingly the writ petition is filed.

Legal Provisions:

Section 16 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

It is clear from the explanation to Section 16(2)(b) of the Act that the person would be deemed to have received the goods if the conditions, as stated therein, are satisfied.

Having established that the foundation of the Revenue's appeal is flawed, the

petitioner was not required to do anything more. The Appellate Authority did not find any flaw in the details as furnished by the petitioner. There is neither any tangible reason to doubt the particulars, as stated in the invoices, nor any finding that the same are untrue.

DA Insights:

The Honorable High Court rightly held ITC cannot be denied on such inapplicable ground.

Opportunity of personal hearing cannot be denied merely assessee tick marked the option 'No' against the option for personal hearing – HC

Issue:

The present petition is, the only notice in the proceedings seeking his reply within 30 days. Referring to item no. 3 of the table appended to that notice, it has been pointed out, the Assessing Authority had at that stage itself chosen to not give any opportunity of hearing to the petitioner by mentioning "NA" against column description "Date of personal hearing". Similar endorsements were made against the columns for "Time of personal hearing" and "Venue where personal hearing will be held". Thus, it is the objection of learned counsel for the petitioner, the petitioner was completely denied opportunity of oral hearing before the Assessing Authority.

Legal Provisions:

Section 75(4) of the CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- We find ourselves in complete agreement with the view taken by the coordinate bench in *Bharat Mint & Allied Chemicals* (supra). Once it has been laid down by way of a principle of law that a

person/assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order, the fact that the petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence.

- Even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. Principle of natural justice would commend to this Court to bind the authorities to always ensure to provide such opportunity of hearing. It has to be ensured that such opportunity is granted in real terms. Accordingly, the present writ petition is allowed.

DA Insights:

The Honorable High Court rightly held that the opportunity of personal hearing cannot be denied merely assessee tick marked the option 'No' against the option for personal hearing.

Denial of opportunity to file reply in respect of intimation in Form GST DRC-01A is unsustainable – HC

Issue:

within two weeks from today.

The petitioner challenged the order under Section 73(9) of CGST Act, 2017 on the contention that the petitioner was denied opportunity to file reply in respect of intimation under Section 73 given in Form GST DRC-01A, inasmuch as, the intimation in Form GST DRC-01A was uploaded simultaneously with the show cause notice issued under Section 73(1) of the CGST Act, 2017.

Legal Provisions:

Sub-rule 1A and sub rule 2A of Rule 142 of CGST Rules, 2017

Observation and Comments:

The Honorable High Court observed and held that:

From scheme of the aforesaid Rules, it is apparent that before issuing notice under Section 73, the person chargeable with tax is entitled to an intimation in Form GST DRC-01A so that he may respond to the intimation by filing his reply in part-B of the said form.

For the aforesaid reasons, the impugned order dated 28.06.2022 is quashed. The writ petition is allowed and the matter is remanded back to the Competent Authority. Petitioner may file his reply to the intimation in Form GST DRC-01A,

DA Insights:

The Rules need to be implemented in spirit by the adjudicating authorities so that such issue does not come as litigations at various courts.

[M/s Ravi Enterprises Vs The Commissioner Of State Tax & Another \[2023-VIL-142-UTR\]](#)

GSTR-1 rectification allowed since no loss caused to the Revenue – HC

Issue:

The petitioner seeks a direction from the Court to the opposite parties to permit the Petitioner to rectify the GST Return filed for the periods 2017-18 and 2018-19 in Form-B2B instead of B2C as was wrongly filed under GSTR-1 in order to get the ITC benefit by the principal contractor.

Legal Provisions:

Section 37 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- The fact remains that by permitting the Petitioner to rectify the above error, there will be no loss whatsoever caused to the Opposite Parties. It is not as if that there will be any escapement of tax. This is only about the ITC benefit which in any event has to be given to the Petitioner. On the contrary, if it is not permitted, then the Petitioner will unnecessarily be prejudiced.
- For the aforementioned reasons, this Court permits the Petitioner to resubmit the corrected GSTR-1 for the aforementioned periods and to enable the Petitioner to do so, a direction is issued to the Opposite Parties to receive it manually. Once the corrected Forms are received manually, the Department will facilitate the uploading of those details in the web portal. The directions be carried out within a period of four weeks.

DA Insights:

The CBIC needs to provide such facility in all the cases specially for initial years to avoid undue hardship and loss of ITC.

[M/s. Y. B. CONSTRUCTIONS PVT. LTD vs UOI and others \[2023-VIL-138-ORI\]](#)

Proceedings initiated solely on the basis of presumption not sustainable – HC

Issue:

The petitioner who is the consignee of the goods was bringing the goods through the transporter from Karnataka to the State of U.P. The goods were carried by the transporter from Karnataka after the required documents were handed over and e-way bill which was generated. The goods were carried through Truck. The goods reached Amrawati and shifted to another truck. Thereafter, the goods were brought to Nagpur where the goods were transferred to other Truck. The goods which were in movement from Nagpur to the place of destination were intercepted at Kanpur. The truck was detained. Thereafter, detention order was passed by the authorities. Subsequently, the proceedings were initiated for imposing penalty after issuance of notice which was replied by the owner of the goods. A penalty order was passed, against which a first appeal was filed which was rejected. This writ petition has been filed challenging the penalty order under Section 129(3) of the UPGST Act, 2017 and the order passed by the Additional Commissioner (Appeal).

Legal Provisions:

Section 129 of UPGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- There is no material on record to demonstrate that goods were brought twice by the petitioner. The petitioner had brought on record the e-way bill through annexure no. 2 to writ petition which demonstrates that consigner has sent the goods through the transporter and e-way bill was generated.
- Further, I find that the argument raised by learned Standing Counsel cannot be accepted which is based on presumption and without any valid material on record. From perusal of the order impugned, I find that the proceedings has been initiated solely on the basis of presumption that goods having been brought into the State using two different vehicles by same e-way bill. Once, it was found that the vehicle was carrying the required documents along with the e-way bill, no question arose for taking some other view.
- This Court finds that the orders passed on 02.11.2018 and 10.12.2018 are unsustainable in the eyes of the law and the same are hereby set aside.

DA Insights:

The check post authority in general put allegation on transporter and assessee without considering all facts and submissions which is leading to inordinate delay of movement of goods and litigations at all levels and also disrupting and impacting ease of doing business.

ITC to be reversed in relation to sale of alcoholic liquor – AAR

Issue:

The applicant is engaged in the business of providing restaurant services from its lounge bar and is also providing catering services as well as banquet renting services. Along with such supplies or on a standalone basis, at times, the applicant is also engaged in selling/serving of alcoholic liquor for human consumption to its customers. The applicant filed AAR to sought clarification on:

- Whether the definition of exempt supply as provided under section 2(47) of the CGST Act, read with definition of the term 'non-taxable supply' under section 2(78) can therefore include sale of alcoholic liquor for human consumption by the applicant?
- Whether in order to qualify as non-taxable supply under section 2(78), a transaction must first qualify as supply as defined in section 7 of the CGST Act read with Article 246A and Article 366(12A) of the Constitution and as such therefore, sale of alcoholic liquor for human consumption cannot be said to qualify as a 'supply' for the above purposes under the ambit of the CGST Act.
- Consequently, whether the applicant is obliged to reverse input tax credit (ITC) under section 17(2) of the CGST Act read with rule 42 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) in view of the sale of alcoholic liquor for human consumption effected by it at its premises under the facts & circumstances of the present case?

Legal Provisions:

Section 17(2) of the CGST Act, 2017 read with rule 42 of the CGST Rules, 2017

Observation and Comments:

The AAR observed and held that:

- A supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act is defined as 'Non-taxable supply' in clause (78) of section 2 of the GST Act. Thus, sale of alcoholic liquor for human consumption shall be treated as non-taxable supply, as discussed. Further, 'exempt supply' as defined in clause (47) of section 2 of the GST Act includes non-taxable supply. A conjoint reading of section 2(47) and 2(78) thus denotes clearly that the aforesaid supply would also be treated as 'exempt supply' under the GST Act.
- We find that placing reliance on the maxim *Quando aliquid prohibetur fieri, prohibetur ex directo et per obliquum*, the applicant contends that reversal of input tax credit would other way mean discharging of GST liability on output supply of alcoholic liquor for human consumption. We do not incline to accept the argument. Sub-section (2) of section 17 of the GST Act restricts the amount of input tax credit as is attributable to the taxable supplies including zero-rated supplies. On a plain reading of the above provisions, it clearly emerges that the statutory scheme, as envisaged under the Act requires reversal of tax which is charged on inward supply of goods or services or both.

ITC to be reversed in relation to sale of alcoholic liquor – AAR

- Under the facts & circumstances of the present case, the applicant is required to reverse input tax credit ('ITC') in terms of sub-section (2) of section 17 of the GST Act read with Rule 42 of the GST Rules for sale of alcoholic liquor for human consumption.

DA Insights:

The CBIC need to issue a clarification on the said issue as the same is going to severely impact hospitality industry.

GST Notification / Circulars / Guidelines / Instructions

Verification of Status of GSTIN of contractor & authenticity of GSTR-3B return

By this circular, all the Administrative Departments are advised to direct their subordinate officers that before allotting any contract/releasing payment to the contractor, the status of GSTIN of the contractor and authenticity of GST-3B return submitted by the contractor should be verified through the Peridot App (available in the Playstore) or from the State Taxes Department.

Circular no. No. FD-Code/371/2021-02 dated 24 February 2023

Advisory on opting for GST payment under forward charge mechanism by GTA

An option is being provided on the portal to all the existing taxpayers providing Goods Transport Agencies Services, desirous of opting to pay tax under the forward charge mechanism to exercise their option. Annexure V has been made available on the portal for GTA's to exercise their option for the Financial Year 2023-24, which would be available till 15 March, 2023.

Press Release No. 572 dated 25 February 2023

GST: National Testing Agency to be treated as educational institution for conduct of entrance examination

Notification No. 01/2023-Central Tax (Rate) [G.S.R. 141(E)] dated 28 February 2023

Dispensation under RCM extended to Courts & Tribunals

CBIC extend the dispensation available to Central Government, State Governments, Parliament and State Legislatures with regard to payment of GST under reverse charge mechanism (RCM) to the Courts and Tribunals also in respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers etc.

Notification No. 02/2023-Central Tax (Rate) [G.S.R. 142(E)] dated 28 February 2023

GST rates revised on Jaggery, Khandsari Sugar Rab & Pencil sharpeners

CBIC notified revised CGST Rates on Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery, pre-packaged and labelled; Khandsari Sugar, pre-packaged and labelled; Rab, pre-packaged and labelled and Pencil sharpeners.

Notification No. 03/2023- Central Tax (Rate) dated 28 February 2023

IGST exempt on Rab which is not pre-packaged and labelled

CBIC exempts IGST on Rab, other than pre-packaged and labelled.

Notification No. 04/2023- Integrated Tax (Rate) dated 28 February 2023

GST compensation cess rate on Coal rejects supplied to or by a coal washery

This notification shall come into force on the 1 March 2023.

Notification No. 1/2023-Compensation Cess (Rate) dated 28 February 2023

SOP for Cancellation of GST Registration & Repository of Non-genuine Taxpayers

In order to ensure uniformity of procedure for cancellation of registration, SOP is issued covering following aspects:

- Cases where cancellation is initiated by the Proper Officer on his own motion
- When application for cancellation is submitted by the registered taxpayer
- Evidences collected during Investigation/ Inspections/ Verification
- Preparation of Evidence folders and sharing of folders: Actions to be taken after visits
- Repository of Non-genuine taxpayers

Circular No.F.3(479)GST/Policy/2023/346 Dated: 01.03.2023

GSTN Portal Changes

Introduction of Negative Values in Table 4 of GSTR-3B

The government has issued Notification No. 14/2022 - Central Tax dated 05th July, 2022, announcing changes to Table 4 of Form GSTR-3B. These changes are intended to enable taxpayers to accurately report information regarding the input tax credit (ITC) availed, ITC reversal, and ineligible ITC in Table 4 of GSTR-3B. Under the revised format, net ITC is to be reported in Table 4(A) and ITC reversal, if any, is to be reported in Table 4(B) of GSTR-3B.

Currently, credit notes (CN) are being auto-populated in Table 4B(2) as ITC reversal in GSTR-3B. However, in light of the changes, the impact of credit notes will be accounted for on a net off basis in Table 4(A) of GSTR-3B only. Accordingly, the GST Portal will be updated from January 2023 onwards, and these changes will be applicable for the tax period of January 2023 onwards.

Under the new format, the impact of credit notes and their amendments will be auto-populated in Table 4(A) instead of Table 4(B) of GSTR-3B. If the value of credit notes exceeds the sum of invoices and debit notes, the net ITC will become negative, and taxpayers will be allowed to report negative values in Table 4A. Additionally, taxpayers can now enter negative values in Table 4D(2) of GSTR-3B.

Advisory on New e-Invoice Portal

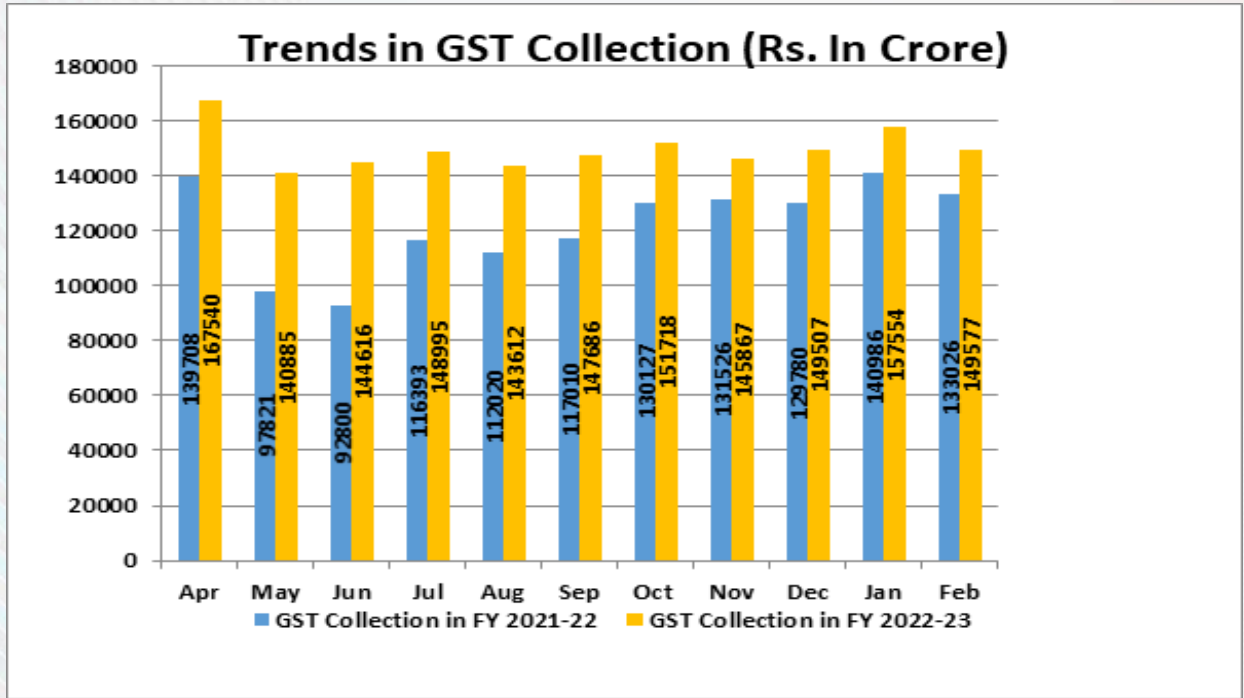
- GSTN has on boarded four new IRPs (Invoice Reporting Portals) for reporting e-invoices in addition to NIC-IRP. As a result, the beta launch of a new e-Invoice portal (www.einvoice.gst.gov.in), has been done where taxpayers can find comprehensive information on e-invoice compliance in a user-friendly format, such as check your enablement status, self-enable themselves for invoicing, search for IRNs, web links to all IRP portals – all the relevant links/information in one convenient location. Taxpayers can log in to the new e-invoice portal using their GSTN credentials for select services pertaining to their GSTIN profiles.
- Taxpayers may note that the portal einvoice.gst.gov.in is reference site for all masters (data), news and updates, latest releases etc. For registering e-invoices and to access APIs, you still need to go to einvoiceX.gst.gov.in sites. The urls of IRPs sites authorised to generate IRNs as on date.

Advisory on opting for payment of tax under the forward charge mechanism by a Goods Transport Agency (GTA)

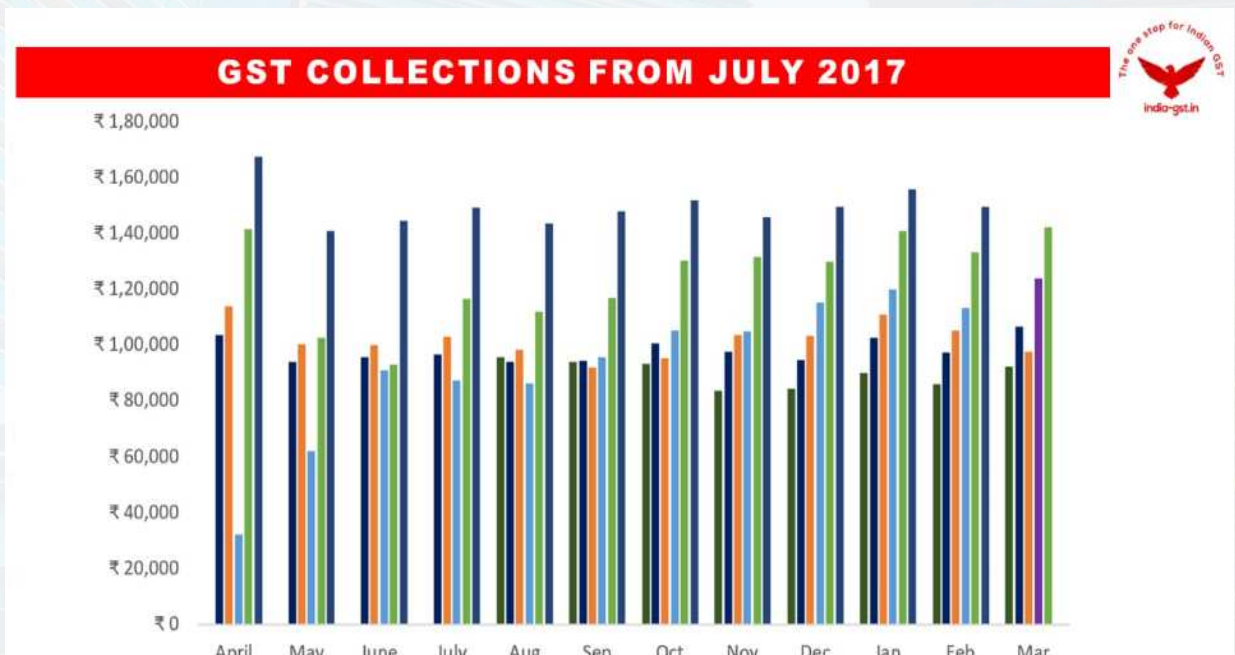
- Option in Annexure V FORM is required to be submitted on the portal by the Goods Transport Agencies every year before the commencement of the Financial Year. The Option once filed cannot be withdrawn during the year and the cut-off date for filing the Annexure V FORM is 15th March of the preceding financial year.
- Annexure V has been made available on the portal for GTA's to exercise their option for the Financial Year 2023-24, which would be available till 15TH March, 2023.

Registration	Ledgers	Returns	Payments	User Services	Refunds	e-Way Bill System
My Saved Applications				My Applications		
View/Download Certificates				View Notices and Orders		
View My Submissions				Search HSN Code		
Holiday List				Feedback		
Furnish Letter of Undertaking (LUT)				View My Submitted LUTs		
Locate GST Practitioner (GSTP)				Engage / Disengage GST Practitioner (GSTP)		
ITC02-Pending for action				View Additional Notices/Orders		
Cause List				Communication Between Taxpayers		
My Masters				Search BoE		
Search Advance Ruling				View PMT-03A		
Opting Forward Charge Payment by GTA (Annexure V)						

GST Revenue Collection in February 2023 - Rs. 1,49,577 Cr.



Source: PIB



Public notice by DGFT to amend FTP is not sustainable – HC

Issue:

The petition is filed that the impugned 'condition x' in the Public notice dated 14.06.2022 issued by the DGFT is illegal, arbitrary and without jurisdiction or authority of law, inasmuch as the same is contrary to Clause 2.13 of the FTP and has the effect of altering and amending the FTP which is impermissible in law, since the same lies within the exclusive domain of the Central Government and not the DGFT.

Legal Provisions:

Public Notice No.15/2015-20 dated 14.06.2022 and Foreign Trade Policy

Observation and Comments:

The Honorable High Court observed and held that:

- It is significant to note that as per Para 1.02 of the FTP, only the Central Government can amend the FTP by means of Notification, in public interest; further, as per Para 1.03 and Para 2.04 of the FTP, the DGFT by means of Public Notice can notify and amend only the Hand Book of Procedure, amongst others, for laying down the procedure to be followed by an exporter or importer for the purpose of implementation of the FTP.
- Consequently, the DGFT does not have jurisdiction or authority of law to stipulate any condition contrary to the FTP and which has the effect of amending, modifying or altering the FTP, thereby establishing that 'condition

x' in the Public Notice dated 14.06.22 being contrary to Para 2.13 of FTP, the same clearly tantamount to amending the provisions of the FTP, which power cannot be exercised by the DGFT, especially when the power to amend the FTP is within the sole domain of the Central Government and not by the DGFT and on this ground also, the impugned 'condition x' and consequential condition in the TRQ issued in favour of the petitioner deserve to be quashed. In the result, I pass the following:-

- (i) Petition is hereby allowed.
- (ii) The impugned 'condition x' mentioned in Para 2 of the Public Notice No.15/2015-20 dated 14.06.2022 issued by the 2nd respondent is hereby quashed insofar as the petitioner is concerned.
- (iii) The impugned condition No.3 in the Condition sheet of the Tariff Rate Quota vide Annexure-M dated 05.07.2022 issued / allotted to the petitioner is also hereby quashed;
- (iv) Respondents are hereby directed to refund the entire excess duty paid by the petitioner as expeditiously as possible back to the petitioner and at any rate, within a period of one month from the date of receipt of a copy of this order.
- (v) Respondents are also directed to return the Bank Guarantee dated 05.08.2022 furnished by the petitioner pursuant to the interim order dated 01.08.2022 passed by this Court in the present petition.

Demand of Interest cannot sustain when SCN is time barred – CESTAT

Issue:

The appellant had applied for De-Bonding of the unit into DTA and paid appropriate duties on the capital goods, imported raw materials, finished stock, indigenous capital goods lying as stock. It was noticed that certain raw materials were lying in stock beyond the warehousing period of three years as prescribed under Section 61 of the Customs Act, 1962 on which the appellant paid duty on raw materials lying in stock. However, the adjudicating authority issued SCN which was later confirmed for imposition of interest under Section 61 (2) (i) of Customs Act, 1962 at the rate of 15% per annum as per Notification No. 28/2002- Cus. (NT) dated 13 May 2002 and also proposing to impose penalty under Section 117 of the Act *ibid*. Accordingly, the appeal filed before CESTAT.

Legal Provisions:

Section 61 of Customs Act, 1962

Observation and Comments:

The Honorable CESTAT observed and held that:

- It has to be noted that the said circular intends to give some solace to a 100% EOU by waiving the liability of interest. The Chief Commissioner has however rejected this request of the appellant.

- Be that as it may, the SCN has been issued under Section 28 of the Customs Act, 1962. It is clear from the above provision that the SCN has to be issued within a period of six months.
- The section does not speak of any extension of time based on a request for waiver. Further the request for waiver is filed as per the Board Circular. Circulars, though binding on the Department, is not so on the Tribunal. We have no hesitation to hold that the SCN is time barred.
- After appreciating the facts, evidence and the decisions as above, we are of the view that the demand of interest cannot sustain as the SCN is time barred.

DA Insights:

The tribunal rightly held that circulars, though binding on the Department, is not so on the Tribunal.

SCN issued after implementation of the Resolution Plan under IBC liable to be quashed – HC

Issue:

The short issue which arises for consideration in the writ petition concerns the sustainability of the show-cause notice issued by ADG, DRI for the reason, that it has been issued after the Resolution Plan framed under the aegis of the.

Legal Provisions:

Customs Act, 1962 and Insolvency and Bankruptcy Code, 2016

Observation and Comments:

The Honorable High Court observed and held that:

- In the instant case, the DRI/DGFT neither submitted a proof of claim nor responded to a specific communication via e-mail dated 17.05.2017, addressed to respondent no.3.
- In a given case, the assessee could state, that nothing was due to the concerned creditor. In our view, once a Public Announcement was made, it was incumbent upon all creditors, which included the statutory creditors, to submit the proof of claim.
- Thus, for the foregoing reasons, we are of the view, that the impugned show-cause notice seeks to do, what is, in fact, an exercise in futility, given the law laid down by the Supreme Court in Ghanashyam Mishra.

- The Supreme Court has enunciated, in no uncertain terms, the clean slate principle [See Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta &Ors. (2020) 8SCC 531, Para 107; also see Jaypee Kensington Boulevard Apartments Welfare Association &Ors. vs NBCC (India) Limited &Ors. (2022) 1 SCC 401, para 165] ;it cannot be set at naught by entertaining claims that concern the period obtaining before the approval of the Resolution Plan.
- Accordingly, the impugned show-cause notice is quashed.

DA Insights:

The Honorable High Court rightly held that any SCN after resolution plan is liable to be quashed.

[Sree Metaliks Limited vs ADG \[2023-VIL-116-DEL-CU\]](#)

Cryptic and a non-speaking order are liable to be quashed

Issue:

The writ petitions have been filed challenging the impugned orders passed by the first respondent under Rule 7A of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, rejecting the petitioner's request for claiming duty drawback as per the provisions of Section 74 of the Customs Act, 1962 on the ground that the petitioner has not satisfactorily established the reasons for delay in filing the duty drawback claim.

Legal Provisions:

Section 74 of the Customs Act, 1962

Observation and judgment:

The Honorable High Court observed and held that:

It is also not in dispute that the petitioner has satisfied all the statutory requirements for claiming duty drawback as per the provisions under Section 74 of the Customs Act, 1962. When the petitioner has given detailed reasons as to why they were unable to file the duty drawback claim within the prescribed time, the first respondent ought to have considered the said reasons objectively, but as seen from the impugned orders, no reasons have been given for rejecting the petitioner's reasons for non-filing of the duty drawback claim on time. Being a cryptic and a non-speaking order, the impugned orders will have to be necessarily quashed

and the matter has to be remanded back to the first respondent for fresh consideration on merits and in accordance with law.

DA Insights:

It is well settled issue where non-speaking order are not considered for adjudication and liable to be quashed.

[M/s Flextronics India Pvt Ltd vs JS and Others \[2023-VIL-140-MAD-CU\]](#)

Demand is not time barred due to the course of action arose only after the appellant completed its export and the value of such exports was known – CESTAT

Issue:

The appellant is a 100% Export Oriented Unit [EOU] and holds customs bonded warehouse licence and manufactures and exports granite slabs. It appeared to the revenue that the appellant used or consumed steel grits/gangs saw blades at a rate higher than the SION, and liable for confiscation under section 111 (O) and penalty under section 112 and 117 of Customs Act, 1962. The adjudicating authority confirmed the demand along with interest and penalty. However, the first appellate authority set aside the penalty under section 117 and reduced the penalty under section 112(a). Therefore, the appeal filed before CESTAT for following aspects:

- (a) Is the appellant liable to pay customs duty on the steel grits imported by it in excess of SION notified by the DGFT?
- (b) Is the appellant liable to pay interest under section 28 AB?
- (c) Is the appellant liable for penalty under section 112(a)?

Legal Provisions:

Section 111 (O), Section 112 and section 117 of Customs Act, 1962.

Observation and judgment:

The Honorable CESTAT observed and held that:

- The gang saw blades and steel grits are neither capital goods nor rare spare parts. These are used with the capital goods in the process of manufacture. However, they do not enter the final product but do get consumed in the process of manufacture either in one or a few cycles. Therefore, on the facts of the case, we find that the steel grits and gang of blades in dispute are consumables in this case and are neither capital goods nor inputs. We find that the appellant claimed the benefit of the exemption Notification No. 52/2003 which must be strictly interpreted because it is available subject to some conditions which will be applicable to all those who claim its benefit.
- When issuing the show cause notice the Department calculated the FOB value of the export, the value of the steel grits imported, and the value of sawblades

Demand is not time barred due to the course of action arose only after the appellant completed its export and the value of such exports was known – CESTAT

imported and calculated the excess value of imports. Duty has been demanded only on that amount. We, therefore, find no force in the submissions made by learned counsel for the appellant that the demand is time barred because the course of action arose only after the appellant completed its export and the value of such exports was known.

- In other words, the confiscation or liability of confiscation of the goods under section 111 is a necessary precondition for imposition of penalty under section 112 (a). Since there was no order of confiscation of the goods in the order, no penalty could have been imposed under section 112. The penalty under section 112 needs to be set aside and we do so.

DA Insights:

The major issue to consider consumables as capital goods was discussed in the judgment and further on time bar of the SCN issued.

Customs Notification / Circulars / Guidelines / Instructions

Compliance of BIS standards for toys or parts of toys during import

For strengthening compliance with the prescribed BIS standards and attention is drawn to Toys (Quality Control) Order, 2020 dated 25.02.2020 effective from 01.01.2021 which, inter-alia, mandates conformity with the corresponding Indian Standard(s) for toys (including import), and further stipulates that it shall bear the Standard Mark under a license from BIS).

Instruction No. 06/2023 dated February 13th, 2023

JNCH Special Drive for finalization of pending Provisional Assessment

JNCH Custom House is launching a Special Drive for the finalization of pending provisional assessments which are pending due to various reasons, including Test Reports, SVB Investigations or any other reason. The Special Drive shall be for the period starting from 21.02.2023 to 07.03.2023.

Public Notices No :17/2023-JNCH date 20 February 2023

Antecedent verification for private/public warehouse to be completed within 45 days

Circular No. 05/2023-Customs Dated: 21st February, 2023

Amendments in Para 4.42 of the Handbook of Procedures 2015-2020.

DGFT further Simplifies the process of levying Composition Fee for Export Obligation Extension to include more cases under Advance Authorization Scheme

Public Notice No. 59/2015-2020-DGFT Dated : 28th February, 2023

Relaxation from additional fee to cover excess imports affected under EPCG Scheme

Public Notice No. 58/2015-2020-DGFT dated 24 February 2023

CBIC amends details of ex-bond Bill of Entry / Shipping Bill in Form A

Form A of the aforesaid Circular No. 25/2016-Customs do not explicitly capture details of ex-bond bill of entry or shipping bill for the cases where the goods are removed from the warehouse for home consumption or export respectively. Now the same is amended by inserting, after Column No. 25. a new column i.e. Column No. 25A titled "Ex. Bond Bill of Entry No. and date/ Shipping Bill No. and date".

Circular No. 04/2023-Customs dated 21 February 2023

Processing of MEIS/SEIS applications pending at RAs under Para-3.06 of HBP

It has been decided by the Competent Authority, that all such MEIS/SEIS applications, which have been kept pending and are deficient at the RAs under provisions of Para 3.06 of the HBP 2015-20 may be re-opened by the RAs and examined again on merits/ additional documents submitted by the firm as per extant policy and procedural conditions. RAs are advised to provide an opportunity of personal hearing to the applicants, before rejecting a case.

Policy Circular No. 46/2015-20-DGFT | Dated: 20th February, 2023

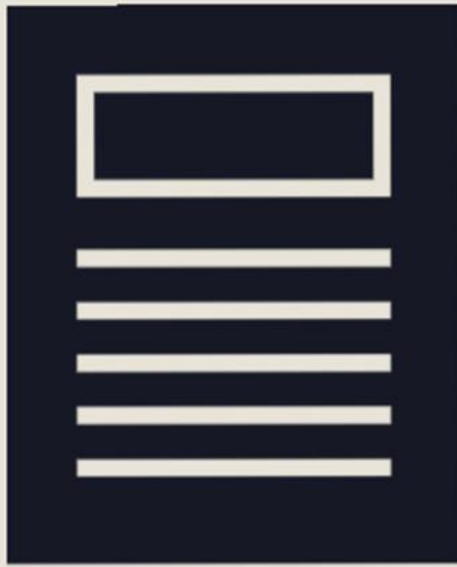
Aircraft Leasing Activity at another unit in IFSC is allowed, subject to approval – new SEZ Rules-

New SEZ Rule 21B is inserted vide Special Economic Zones (Amendment) Rules, 2023 - A Unit in an International Financial Services Centre, authorised to undertake aircraft leasing activity, if allowed by the International Financial Services Centre Authority not to maintain separate office, may utilise office space or manpower or both, of another unit set up in International Financial Services Centre authorised to undertake aircraft leasing activity, as may be approved by the Authority.

Notification - F. No. K-43013(12)/1/2022-SEZ dated 23 February 2023

Challenges faced by trade w.r.t monitoring of BLUT and requirement of additional BLUT

It is clarified that the need for additional BLUT is required in cases where the scale of operations have been increased from the initial levels for which the BLUT was submitted and additional BLUT should not be sought in a routine manner as long as the unit/developer operates at the same level of activities as initially envisaged.



DA NEWS

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Goods and Services Tax

- India will not merge GST tax rates in 2023/24, government official says
- GST evasion: Megasoftware coughs up 5cr in dues
- GST on digital services: Budget 2023-24 broadens scope of OIDAR
- CBIC's move on e-filing to bring respite for taxpayers, expedite Setting up GST Appellate Tribunal
- View: Budget 2023 to allow consent based use of GST data, data, to unleash benefits for taxpayers

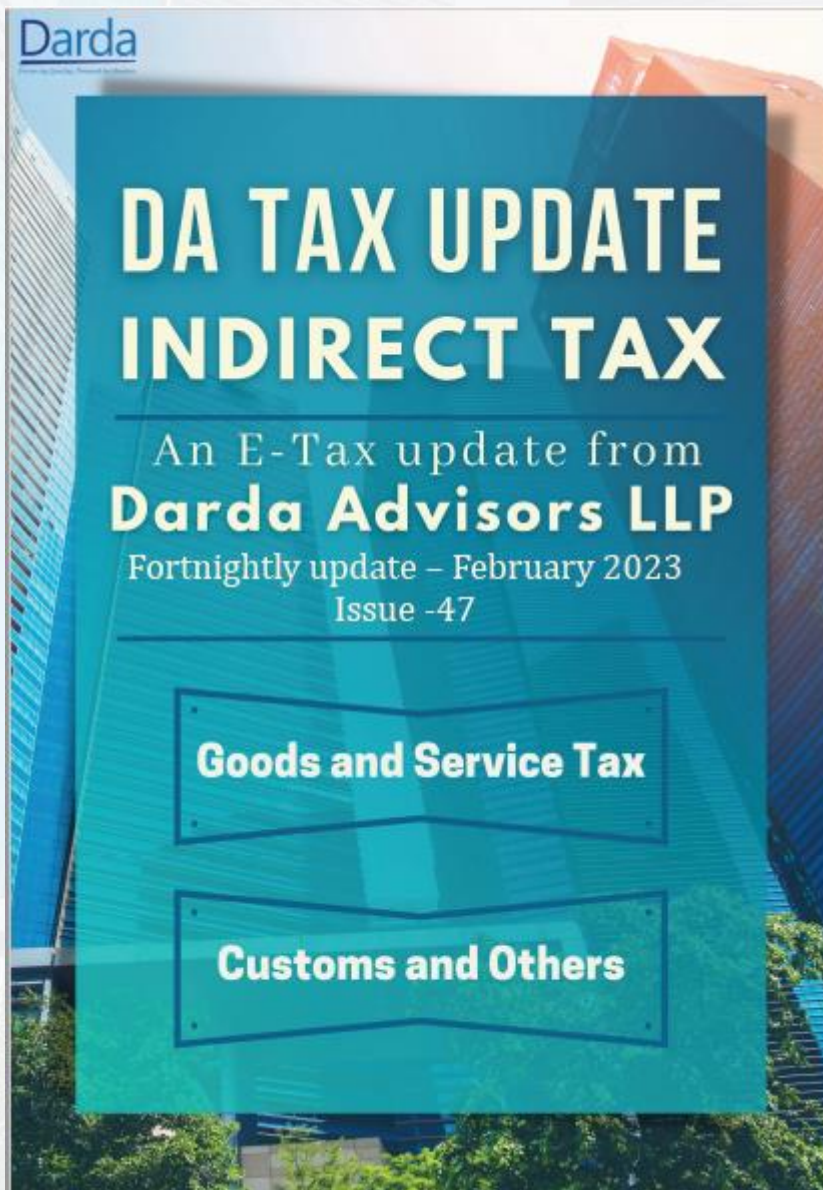
Customs and other

- Planning for future: Empowering India through customs rationalisation
- Budget 2023: Gold, Diamond and Silver to Cost More As Customs Duty Hiked
- Customs detect cases of money laundering through under-invoicing

DA Updates and Articles for the month of February 2023

Indirect Tax Fortnightly Update for the month of February 2023

https://dardaadvisors.com/wp-content/uploads/2023/02/DA-Indirect-Tax-Fortnightly-Update_February-2023.pdf



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