

# DA TAX ALERT INDIRECT TAX

AN E-TAX ALERT FROM  
**Darda Advisors LLP**

April 2023  
Issue: 35

**GST COMPLIANCE  
CALENDER**

**GOODS AND  
SERVICE TAX**

**CUSTOMS AND  
OTHER**

**DA NEWS**



# PREFACE

We are pleased to present to you the thirty fifth 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 March 2023.

During the month of March 2023, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as Service rendered by the Indian branch office to overseas entities in terms of the service agreement does not constitutes as an 'intermediary' services, new Foreign Trade Policy issued and also amnesty schemes under GST and FTP also issued..

In the thirty fifth 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 March 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**

**Vineet Suman Darda**  
**Co-founder and Managing Partner**

**Darda Advisors LLP**  
**Tax and Regulatory Services**

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# GST COMPLIANCE CALENDAR

April  
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





- Service rendered by the Indian branch office to overseas entities in terms of the service agreement does not constitute as an 'intermediary' services - HC
- Rule 89(4) (C) of CGST Rules, 2017 restricting export formula is ultra vires
- Attachment of assets or bank accounts is limited to taxable persons – HC
- Long term lease of land is liable to GST – AAR
- Commodity packed based on instruction of buyer is not a pre-packed commodity: GST
- Officer does not have power under GST law to instruct customers of the assessee to stop making further payments – HC
- Other Notifications/Circulars/Guidelines/instructions/Portal changes



# Service rendered by the Indian branch office to overseas entities in terms of the service agreement does not constitute as an 'intermediary' services - HC

## **Issue:**

The petitioner had appealed against the impugned OIO passed by the Adjudicating Authority being aggrieved by the rejection of its refund applications for ITC in respect of export of services on the premise that the petitioner is an 'intermediary' and thus, the place of services is located in India, where the petitioner's place of business is located and not where recipient of services is located.

## **Legal Provisions:**

Section 2(6) and Section 2(13) of the IGST Act, 2017

## **Observation and Comments:**

The Honorable High Court observed and held that:

- It is apparent that the Adjudicating Authority has interpreted the last limb of the definition of 'intermediary' under Section 2(13) of the IGST Act as controlling the definition of the term. We are unable to agree with this interpretation.

- Thus, even if it is accepted that the petitioner has rendered services on behalf of a third party, the same would not result in the petitioner falling within the definition of 'intermediary' under Section 2(13) of the IGST Act as it is the actual supplier of the professional services and has not arranged or facilitated the supply from any third party.
- The Services rendered by the petitioner are not as an intermediary and therefore, the place of supply of the Services rendered by the petitioner to overseas entities is required to be determined on basis of the location of the recipient of the Services. Since the recipient of the Services is outside India, the professional services rendered by the petitioner would fall within the scope of definition of 'export of services' as defined under Section 2(6) of the IGST Act.

## **DA Insights:**

It is well settled that the professional services provided as branch or through other mode are not considered as 'intermediary' services which is rightly held by Honorable High Court.

# Rule 89(4) (c) of CGST Rules, 2017 restricting export formula is ultra vires

## Issue:

In the writ petition filed, apart from other issues, the validity of Rule 89(4C) of the CGST Rules, 2017 as amended vide Para 8 of the Notification No.16/2020-CT dated 23.03.2020 is the subject matter.

## Legal Provisions:

Rule 89(4C) of the CGST Rules, 2017

## Observation and Comments:

The Honorable High Court observed and held that:

➤ In my considered opinion, the impugned amendment to Rule 89(4)(C) of the CGST Rules is illegal, arbitrary, unreasonable, irrational, unfair, unjust and ultra vires Section 16 of the IGST Act and Section 54 of the CGST Act for the following reasons: -

- ❖ Rule 89(4)(C) of the CGST Rules is ultra vires Section 54 of the CGST Act read with Section 16 of the IGST Act. The rule in whittling down such refund is ultra vires in view of the well settled principle of law that Rules cannot override the parent legislation.
- ❖ Rule 89(4)(C) of the CGST Rules is violative of Article 14 and 19(1)(g) of the Constitution of India; the quantum of refund of unutilized input tax credit is restricted only in cases falling under Section 16(3)(a) of the IGST Act
- ❖ The impugned Rule 89(4)(C) of the CGST Rules is arbitrary and unreasonable in as much as it bears no rational nexus with the objective sought to be achieved by

Section 16 of the IGST Act in that while Section 16 of the IGST Act seeks to make exports tax-free by "zero-rating" them, the impugned Rule 89(4)(C) of the CGST Rules aims to do just exactly the opposite by restricting the quantum of refund of tax available to the expended in making such exports; consequently, including domestic turnover in the definition of zero rated supply which is meant to cover only exports is clearly arbitrary and unreasonable.

- ❖ Rule 89(4)(C) of the CGST Rules also suffers from the vice of vagueness for the reason that the words "like goods" and "similarly placed supplier" in the impugned Rule 89(4)(C) are completely open-ended and are not defined anywhere in the CGST Act/Rules or the IGST Act/Rules;
- ❖ The impugned amendment is also unreasonable and arbitrary as adequate reasoning is not present; this would make such amendment unreasonable for the reason that it bears no rational nexus with the objective sought to be achieved by Section 16 of the IGST Act (supra).

## **DA Insights:**

It's a welcome decision from the Honorable High Court as the said Rule was impacting negatively to exporters.



# Attachment of assets or bank accounts is limited to taxable persons – HC

## **Issue:**

The petitioners have filed the present petition, inter alia, impugning an order, whereby the respondent had ordered provisional attachment of the savings bank accounts of the petitioners.

## **Legal Provisions:**

Section 83 of the CGST Act, 2017

## **Observation and Comments:**

The Honorable High Court observed and held that:

- However, it is clear that the petitioners are not taxable persons. The power under Section 83 of the Act, to provisionally attach assets or bank accounts is limited to attaching the bank accounts and assets of taxable persons and persons specified under Section 122(1A) of the Act.
- In view of the above, the impugned order cannot be sustained. It is not open for the respondent to attach the bank accounts of other persons on a mere assumption that the funds therein are owned by any taxable person.

## **DA Insights:**

The provision of law needs to be followed in true spirit to avoid undue hardship to the assessee and its family members which the Honorable High Court also indicated indirectly in the judgment.

# Long term lease of land is liable to GST – AAR

## Issue:

The applicant has undertaken development of the project as per the approved plans and has developed commercial unit. The applicant wishes to allot developed units to prospective buyers on a long-term lease basis for a period of 90 years. The applicant in fact has received booking for the certain units before getting BU permission and he has charged the GST at the applicable rate on the entire amount of the consideration received for the booking done before BU permission. The applicant filed the AAR on whether the one time lease premium liable to GST and if yes, what is the applicable rate.

## Legal Provisions:

Section 7 and Schedule II of CGST Act, 2017

## Observation and Comments:

The AAR observed and held that:

- In terms of Schedule II of the CGST Act, 2017, [reproduced supra] any lease, tenancy, easement, license to occupy land is a supply of service. Further, any lease or letting out of building including a commercial, industrial or residential

complex for business or commerce, either wholly or partially is a supply of service. We find that the term 'Lease' is not defined under the GST Act. However, reference could be drawn from the Transfer of Property Act, 1882.

- As is already mentioned supra, the applicant has stated in the submissions that a lease of 90 years is as akin to sale but the above definition of lease clearly shows lease could be of perpetuity. Therefore, quantum of time has no relation in determination of lease or sale.
- In view of the foregoing, we are of the view that lease of plot for 90 years by the applicant is not "sale of land" but is a lease and therefore, does not fall within the ambit of clause 5 of Schedule III of CGST Act, 2017.

## **DA Insights:**

The CBIC need to issue clarification on all such transactions to avoid ambiguity.



# Commodity packed based on instruction of buyer is not a pre-packed commodity: GST

## Issue:

The applicant won the tender of 'The Andhra Pradesh State Civil Supplies Corporation Limited', Vijayawada, a state government undertaking to supply the red gram dall to the corporation adhering to the guidelines issued by the corporation regarding packing and printing of label on the packing. The applicant raised the question before AAR on whether the supply of 1 kg packing red gram dall secondary packing in 50 kg bag to the corporation as per the design and label given by the corporation with a prior agreement attracts GST.

## Legal Provisions:

Notification No. 6 and 7 of 2022-CTR dated 13.7.2022

## Observation and Comments:

The AAR observed and held that:

- It is clearly evident from the package that the AP State civil have made very clear instruction as to the color, theme, transparency and the details to be printed on the package. Thus the commodity is packed for retail sale for any buyer who may purchase at a later point, but it is packaged to a specific buyer. Thus the first and foremost condition of taxability is not satisfied.
- Hence there is no question of taxability of the commodity in the instant case. In view of this the discussion as primary

/secondary packaging or Institutional supply is nothing but infructuous.

## **DA Insights:**

The AAR rightly analysed the basic condition of 'pre-packed' to rule that the same is outside the purview of taxability under GST.

[M/s Seetharamnjaneya Dal And Fried Gram Mill \[2023-VII-66-AAR\]](#)

# Officer does not have power under GST law to instruct customers of the assessee to stop making further payments – HC

## Issue:

The challenge in this writ petition is to the notice under Section 70 (1) of GST Act, 2017 issued by the 3rd respondent to M/s. Sterlight technologies limited, Vishakapatnam who are the customers of the petitioner. The grievance of the petitioner is that though the officer in terms of Section 70 (1) of G.S.T Act, has power to summon any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in any inquiry in the same manner, however that power is not extended to direct the summoning of a party to stop all further payments, which he ought to receive from the customers.

## Legal Provisions:

Section 70 of CGST Act, 2017

## Observation and Comments:

The Honorable High Court observed and held that:

- As can be seen, the impugned notice was issued under Section 70(1) of GST Act but not under Section 83 of GST Act. Therefore, it is obvious that under Section 70 (1) of GST Act the proper officer cannot exercise powers to direct the summoning party to stop payment to the assessee which is beyond the scope of 70 (1) of GST Act.

if the Commissioner is of the opinion that for the purpose of protecting the government revenue, he may by order provisional attachment of any property including bank account belonging to the taxed person or any person specified in Sub Section 1 (A) of Section 122 in such manner as prescribed. The impugned notice was issued under Section 70 (1) of GST Act but not in exercise of powers conferred under Section 83 of GST Act.

- Thus at the outset, it is clear that the 3rd respondent has exceeded his power in directing M/s. Sterlight Technologies Limited to stop further payments to the petitioner herein. Therefore, such a direction is beyond the jurisdiction of the 3rd respondent. The same is liable to be set aside to that extent.

## **DA Insights:**

Any officer going beyond legislation authority is impacting the business operations of the assessee and also undue hardship and lead to legal proceedings at various courts.



## **GST Notification / Circulars / Guidelines / Instructions**

### **Late fees of FORM GSTR-4 waived for Return of July 2017 to March 2022**

Late fees in case of FORM GSTR-4 for the periods from July-2017 till F.Y 2021-22 has been waived completely in case of NIL GST returns and reduced to Rs 500/- in other cases provided the said returns are filed between 01.04.2023 to 30.06.2023

*Notification No. 02/2023–Central Tax, dated 31 March, 2023*

### **GST registrations cancelled for non-filing of Return**

Amnesty scheme has been notified for the registered persons whose GST registrations have been cancelled on or before 31.12.2022 due to non-filing of GST returns

The registered person, whose registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act on or before the 31st day of December, 2022, and who has failed to apply for revocation of cancellation of such registration within the time period specified in section 30 of the said Act as the class of registered persons shall follow the following special procedure in respect of revocation of cancellation of such registration, namely: –

- A. The registered person may apply for revocation of cancellation of such registration up to the 30th day of June, 2023;
- B. The application for revocation shall be filed only after furnishing the returns due up to the effective date of cancellation of registration and after payment of any amount due as tax, in terms of such returns, along with any amount payable towards interest, penalty and late fee in respect of the such returns;
- C. No further extension of time period for filing application for revocation of cancellation of registration shall be available in such

*Notification No. 03/2023–Central Tax, dated 31 March, 2023*

### **Aadhar authentication & biometric verification rules under GST amended**

CBIC notifies substitutes Rule 8(4A) & amended Rule 8(4B) pertaining to Aadhar authentication and biometric verification of those registered under GST with retrospective effect force from 26.12.2022

*Notification No. 04/2023–Central Tax, dated 31 March, 2023*

## **GST Amnesty scheme for registered persons who failed to furnish valid return**

CBIC notifies Amnesty scheme registered persons in whose cases assessment u/s 62 of CGST Act has been done on or before 28.02.2023 and who have failed to furnish a valid GST return within a period of 30 days from date of service of assessment order

Notification No. 06/2023–Central Tax Dated: 31st March, 2023

### **Amnesty cum Late Fees Reduction for Annual GST Return**

<b>Sl.no</b>	<b>Class of registered persons</b>	<b>Amount</b>
1.	Registered persons having an aggregate turnover of up to five crore rupees in the relevant financial year.	Twenty-five rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.
2.	Registered persons having an aggregate turnover of more than five crores' rupees and up to twenty crore rupees in the relevant financial year.	Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.

Provided that for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees.

Notification No. 07/2023–Central Tax, dated 31 March, 2023

### **Final Return GSTR-10 Amnesty/Late Fee Reduction**

Final Return GSTR-10 Amnesty/Late Fee Reduction – Maximum late fees restricted to Rs. 1000 for Final Return in FORM GSTR-10 if GSTR-10 is furnished between 01.04.2023 to 30.06.2023.

Notification No. 08/2023–Central Tax Dated: 31st March, 2023



## **GST: Time limit under section 73(10) for issuing order increased by 3 months**

CBIC extends time limit under section 73(10) of CGST Act, 2017 for issuance of order under section 73(9), for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised for financial 2017-18, 2018-19 and 2019-20 as follows: –

- i. For the financial year 2017-18, up to the 31st day of December, 2023 (From existing 30th September 2023)
- ii. For the financial year 2018-19, up to the 31st day of March, 2024 (From existing 31st December 2023)
- iii. For the financial year 2019-20, up to the 30th day of June, 2024 (From existing 31st March 2023)

*Notification No. 09/2023–Central Tax, dated 31 March, 2023*

## **GST Compensation Cess applicable w.e.f 01.04.2023**

Central Government appoints 1st day of April, 2023, as the date on which provisions of section 163 of Finance Act, 2023 shall come into force.

*Notification No. 01/2023-Compensation Cess, dated 31 March, 2023*

## **Maharashtra Amnesty Scheme, 2023 for Goods and Services Tax Department**

- a) This Amnesty Scheme will be called as 'Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2023'.
- b) The Scheme is applicable on various taxes levied by GST Department before introduction of GST Act and duration of this Amnesty Scheme will be from May 1, 2023 to October 31, 2023.
- c) Complete waiver of the arrears in cases where arrears are Rs. 2,00,000/- or less per year. As a result, small dealers will be benefited in around one lakh cases.
- d) Dealers having arrears up to Rs. 50 lakhs or less per statutory order will pay only 20% amount and balance 80% will be waived. As a result, medium dealers will be benefited in around eighty thousand cases.
- e) Female employees drawing monthly salary up to 25000/- will be exempted from Profession Tax.
- f) The definition of 'Person with Disability' in the Profession Tax Act is proposed to be amended as per definition given in the Rights of the Persons with Disabilities Act, 2016 and hence more persons with disabilities will become eligible for exemption from payment of Profession Tax. (D)
- g) Reduction of VAT rate on ATF from 25% to 18% in Mumbai, Pune and Raigad districts.

*" Maharashtra Government Gazette ", on the 6th April 2023*

## **GSTN Portal Changes**

### **Advisory for the taxpayer wishing to register as “One Person Company” in GST**

As per provision of section 2(62) of The Companies Act, 2013 “One Person Company” is defined as a company which has only one person as member.

Some issues have been raised by the persons registering as ‘One Person Company’ while they take GST registration. Upon analysis, it has been noticed that the option of choosing One Person Company is not there in form notified by CGST/SGST Acts and hence not available on the GSTN portal also.

- a. The ‘Part B’ of GST Registration Form ‘REG-01’, applicant may select (Constitution of Business under ‘Business Details’ tab using dropdown list) option “Others”, if the taxpayer wants to register for GST as “One Person Company”.
- b. After selecting option as “Others”, the applicant shall also mention “One Person Company” in the text field and follow the steps for a normal registration application to complete the process.

### **HSN Code Reporting in e-Invoice on IRPs Portal**

- a. Notification no. 78/2020 – Central Tax dated 15th October 2020. As per the above-said notification, it is now mandatory for taxpayers to report a minimum of six-digit valid HSN code for their outward supplies having AATO of more than 5 crores in any previous financial year
- b. This requirement has already been implemented in the GST system, and we are now in the process of implementing the same at IRPs portal in collaboration with our IRP partners including NIC.
- c. It is further suggested that in case wherever valid six-digit HSN code is not available, a corresponding valid eight-digit HSN code be reported instead of artificially creating six-digit HSN code.
- d. We understand that this requirement may require changes to your systems as well. We would like to assure you that we intend to provide sufficient time for taxpayers and IRP partners to make the necessary changes to comply with this requirement.
- e. We will communicate the exact date of implementation to you shortly.



## Advisory: GSTN launches e-invoice registration services with private IRPs

- GSTN has launched the e-invoice registration services through multiple private IRPs at the recommendation of the GST Council.
- Four private companies viz. Clear Tax, Cygnet, E&Y and IRIS Business Ltd were empanelled by GSTN for providing these e-invoice registration services to all GST taxpayers of the country.
- The details of the existing and new IRPs are available at <https://einvoice.gst.gov.in/einvoice/dashboard> (given below is the screenshot).
- The taxpayers now have a choice of more than one IRP (earlier being the only single portal of NIC), which they can use to register their e-invoices. This adds significant capacity and redundancy to the single e-invoice registration portal which existed earlier.
- The end-to-end flow of a digitally signed e-invoice between sellers and buyers by integration with the GST system will lead to ease of compliance for the taxpayers. It will also lead to facilitation of auto-drafting and auto-populating of invoice details in the GST returns which would lead to increased accuracy, correctness of reporting of supplies and availing of ITC by the recipients of the supply.

**e - Invoice System**

Home About Resources Search/Enable Help/Grievance Portal Updates

To view Advisory on e-Invoice Portal please [Click Here](#). As per the notification No. 1/2022 Dated :24-02-2022, e-Invoicing is mandatory

Taxpayers may note that the portal [einvoice.gst.gov.in](https://einvoice.gst.gov.in) is a 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 [einvoice.gst.gov.in](https://einvoice.gst.gov.in) sites.

The urls of IRPs sites authorised to generate IRNs as on date are:

URL	Activation Status
<a href="https://einvoice1.gst.gov.in">einvoice1.gst.gov.in</a>	Active
<a href="https://einvoice3.gst.gov.in">einvoice3.gst.gov.in</a>	
<a href="https://einvoice4.gst.gov.in">einvoice4.gst.gov.in</a>	
<a href="https://einvoice5.gst.gov.in">einvoice5.gst.gov.in</a>	
<a href="https://einvoice6.gst.gov.in">einvoice6.gst.gov.in</a>	

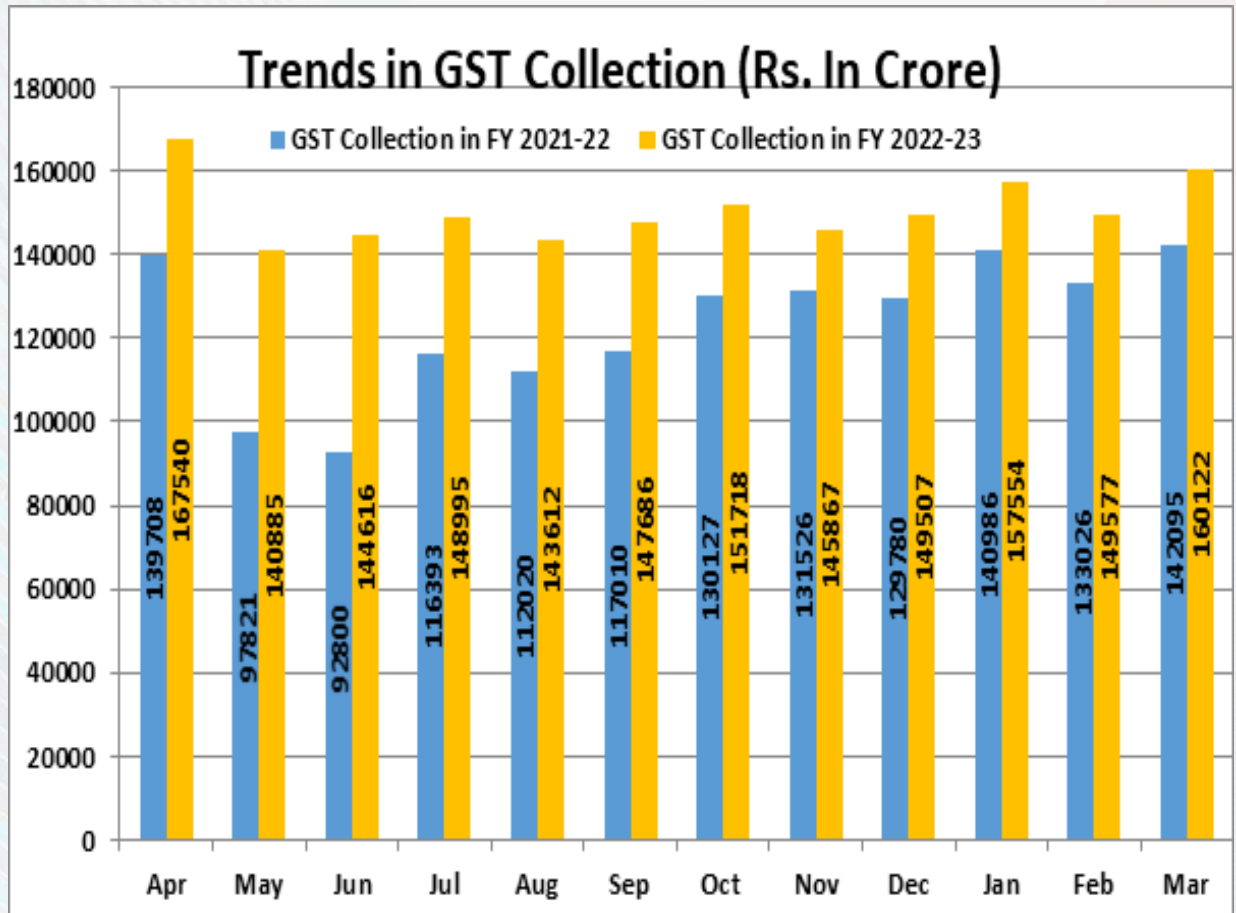
Search IRNs Check Enablement Status Enable Me for e-Invoice Download e-Invoice JSONs Grievance IRP Portal E-Commerce

## **Advisory: Time limit for Reporting Invoices on the IRP Portal**

- a. It is to inform you that it has been decided by the Government to impose a time limit on reporting old invoices on the e-invoice IRP portals for taxpayers with AATO greater than or equal to 100 crores.
- b. To ensure timely compliance, taxpayers in this category will not be allowed to report invoices older than 7 days on the date of reporting.
- c. Please note that this restriction will apply to the all document types for which IRN is to be generated. Thus, once issued, the credit / Debit note will also have to be reported within 7 days of issue.
- d. For example, if an invoice has a date of April 1, 2023, it cannot be reported after April 8, 2023. The validation system built into the invoice registration portal will disallow the user from reporting the invoice after the 7-day window. Hence, it is essential for taxpayers to ensure that they report the invoice within the 7-day window provided by the new time limit.
- e. It is further to clarify that there will be no such reporting restriction on taxpayers with AATO less than 100 crores, as of now.
- f. In order to provide sufficient time for taxpayers to comply with this requirement, which may require changes to your systems, we propose to implement it from 01.05.2023 onwards.



# GST Revenue Collection in March 2023 - Rs. 1,60,122 Cr.



Source: PIB



- ST not applicable on corporate guarantee – SC
- Assessment order under Section 17(5) cannot be issued when the goods cleared for home consumption
- Central Excise exemption is also applicable for imported goods
- Recovery of amount in the absence of any adjudication order liable for refund with interest – HC
- Search proceedings without sufficient material evidence is not in compliance with law – SC
- Other Notifications/Circulars/Instructions



# ST not applicable on corporate guarantee – SC

## **Issue:**

The case relates applicability of service tax to the issuance of corporate guarantee to a group company without consideration which would not fall within banking and other financial services and is therefore not taxable service. The section 65B (44) of the Chapter V of the Finance Act 1994 to point out that the definition of service would indicate that it relates to only such service which is rendered for valuable consideration.

## **Legal Provisions:**

Section 65B (44) of the Chapter V of the Finance Act 1994

## **Observation and Comments:**

The Honorable Supreme Court observed and held that:

- The above would suggest that this was a case where the assessee had not received any consideration while providing corporate guarantee to its group companies. No effort was made on behalf of the Revenue to assail the above finding or to demonstrate that issuance of corporate guarantee to group companies without consideration would be a taxable service.
- In these circumstances, in view of such conclusive finding of both forums, we see no reason to admit this case basing upon the pending Civil Appeal No. 428 @ Diary No.42703/2019, particularly when it has not been demonstrated that

the factual matrix of the pending case is identical to the present one. In consequence, the Civil Appeal stands dismissed.

## **DA Insights:**

The GST regime regarding related party transactions is totally different. Schedule I of CGST act states that Supply of goods or services or both between related persons or between distinct persons when made in the course or furtherance of business shall be treated as supply even if made without consideration.

*[Commissioner of CGST and Central Excise Vs Edelweiss Financial Services Ltd. \(Supreme Court of India\) \[Civil Appeal No. /2023 @ Diary No\(s\). 5258/2023\]](#)*

# Assessment order under Section 17(5) cannot be issued when the goods cleared for home consumption

## Issue:

The question came before the CESTAT whether adjudicating authority has power to reassess the goods under Section 17(5) of the Act after the goods have been cleared for home consumption.

## Legal Provisions:

Section 17(5) of Customs Act, 1962

## Observation and Comments:

The Honorable CESTAT observed and held that:

- The question which arises is when does this process of assessment or re-assessment end. This ends when the goods cease to be imported goods under Section 2(25) of the Act
- In other words, when an order is issued clearing the goods for home consumption, the goods cease to be imported goods, the importer ceases to be the importer under Section 2(26) and the imported goods cease to be dutiable goods under Section 2(14). After an order permitting clearance of goods for home consumption is issued, there can be no more assessment.
- As the self-assessment order by the Deputy Commissioner has been issued without any authority of law and has

correctly been set aside by the Commissioner (Appeals), there is no need for us to go into the merits of the classification of the imported goods.

## DA Insights:

The CESTAT rightly held that once goods are cleared for home consumption by filing Bill of Entry of home consumption, the further assessment or re-assessment cannot be possible..

*[M/s Holy Land Marketing Private Limited Vs CC \[2023-VIL-279-CESTAT-DEL-CU\]](#)*



# Central Excise exemption is also applicable for imported goods

## Issue:

The respondent imports and sells mobile phones in India and claimed notification No.12/2012-CE which exempts mobile sets from excise duty in excess of 1% ad valorem. However, the appellant denied it and accordingly duty paid under protest. The Supreme Court held that exemption notification will apply to imported goods also. The respondent filed the refund claim of duty paid under protest which was rejected by the adjudicating authority; against which writ petition filed to High Court which allowed the claim. When the claim processed by the adjudicating authority, the appeal by the revenue was filed before the Commissioner (Appeals) who upheld the order in original. Accordingly, the revenue filed appeal before CESTAT on two grounds against the refund order, viz., refund was time-barred and it was hit by unjust enrichment.

## Legal Provisions:

Notification no. 12/2012-CE dated 17.03.2012

## Observation and Comments:

The Honorable CESTAT observed and held that:

- The first issue was already decided by the High Court and the Assistant Commissioner and Commissioner (Appeals) were bound to have followed the order of the High Court as they did. We are surprised as to how Revenue has

filed this appeal faulting Commissioner (Appeals) and Assistant Commissioner for following judicial discipline and obeying the orders of the Delhi High Court and asserting that they should have defied the Delhi High Court's order.

- As far as the unjust enrichment is concerned, from the Chartered Accountant's certificate it is evident that the duty was not passed on and it was treated by the respondent as a receivable. Revenue has not produced even a shred of evidence either to establish that the Chartered Accountant's certificate was wrong or to establish that the duty was indeed passed on to the buyers. Even otherwise, there is no requirement in law that a certificate must be issued only by the statutory auditors. So long as the certificate is issued by a Chartered Accountant and it is consistent with the accounts such as Balance Sheet and Profit and Loss statement, the certificate deserves to be accepted.
- In view of the above, we find that the appeal filed by the Revenue deserves to be dismissed.

## **DA Insights:**

When the Honorable Supreme Court itself upheld that Central Excise exemption is also applicable to imported goods, there is no need from the revenue side to reject the refund or file appeal covering other irrelevant matters leading to delay in justice.

*[PCC vs M/s Telecare Network \(India\) Pvt. Ltd. \[2023-VIL-284-CESTAT-DEL-CU\]](#)*

# Recovery of amount in the absence of any adjudication order liable for refund with interest – HC

## **Issue:**

The Company is an EOU and lost its goods partially due to fire accident and also received the insurance claim excluding taxes. The officers came to the factory to search the premises and due to several threats of imprisonment and filing of cases under the provisions of the Customs Act, 1962, and Central Excise Act, 1944 r/w Foreign Trade Policy, various documents were seized and after conclusion of search collected INR 1.5 crores under coercion and under protest. The petitioner asked the refund of the said amount against which SCN was issued. The Writ petition is accordingly filed.

## **Legal Provisions:**

Section 27 of Customs Act, 1962

## **Observation and judgment:**

The Honorable High Court observed and held that:

- At any rate, a perusal of Section 27 of the Customs Act, will also indicate that the same would apply only pursuant to an order in respect of customs duty paid by the petitioner and not when the order of tax/ duty has to be collected / recovered from the petitioner, which is in the nature of pre-deposit. Under these circumstances, even this contention urged by the respondents cannot be accepted.

- To reiterate, the facts of the instant case clearly establishes that the respondents have recovered INR1.5 crores during the course of search proceedings, is without jurisdiction or authority of law and without being any order of adjudication and consequently, in the facts of the instant case, the respondents would be liable to pay refund with applicable interest.

## **DA Insights:**

The contention of collecting amount without any adjudication order is rightly liable for refund which has also been clarified by the circulars under GST law and also been relied in this judgement.

*Suretex Prophylactics (India) Private Limited vs UOI and Others [2023-VII-171-KAR-CU]*



# Search proceedings without sufficient material evidence is not in compliance with law – SC

## **Issue:**

The revenue is aggrieved by the impugned judgment of the Madhya Pradesh High Court which had quashed the initiation of search and seizure proceedings and all consequential proceedings, launched against the respondent/assessee. The assessee had impugned the action contending that there were "no reasons to believe" in terms of Section 110 of the Central Excise Act, 1944 read with Section 123 of the Customs Act, 1962".

## **Legal Provisions:**

Section 110 of the Central Excise Act, 1944 read with Section 105 and 123 of the Customs Act, 1962

## **Observation and judgment:**

The Honorable Supreme Court observed and held that:

- The basic premise of Section 105, and indeed search proceedings is the reasonable belief that some objective material exists on the official record to trigger searches. The person authorizing the search must express his satisfaction that the material is sufficient for him to conclude that search is necessary; further there should exist something to show what is such material.
- The mere recording that the person concerned is satisfied, without the supportive materials, therefore, is

insufficient to trigger a lawful search. Having regard to these facts this Court is satisfied that there is no merit in the appeals which are accordingly dismissed.

## **DA Insights:**

The search and seizure proceedings need to be based on basic requirement under the law and if the same is also not satisfied, then such proceedings are liable to be set aside.

[UOI & ORS. Vs M/s Magnum Steel Ltd. \[2023-VIL-16-SC-CU\]](#)

## **Customs Notification / Circulars / Guidelines / Instructions**

### **Phased Implementation of Electronic Cash Ledger in Customs w.e.f 01.04.2023**

- (a) The Electronic Cash Ledger (ECL) functionality is envisaged in Section 51A of the Customs Act, 1962. It provides enabling provision whereby the importer, exporter or any person liable to pay duty, fees etc., under the Customs Act, has to make a non-interest-bearing deposit with the Government for the purpose of payment.
- (b) The Customs (Electronic Cash Ledger) Regulations, 2022 (ECLR) notified vide No. 20/2022-Customs (N.T) dt. 30.03.2022 govern the manner of operationalization of ECL and related aspects. The statutory provision came into force on 01.06.2022.
- (c) In the first phase from 01.04.2023 till 30.04.2023, the exemption to deposit from the provisions of section 51A shall be restricted to the following;
  - (i) Deposits with respect to Goods imported or exported in Customs stations where Customs Automated System is not in place;
  - (ii) Deposits with respect to Accompanied baggage;
  - (iii) Deposits with respect to Goods imported or exported at International Courier Terminals; Deposits, other than those used for making electronic payment of: a. any duty of customs, including cesses and surcharges levied as duties of customs; b. integrated tax; c. Goods and Service Tax Compensation Cess; d. interest, penalty, fees or any other amount payable under the Act, or Customs Tariff Act, 1975
- (d) Payments relating to Courier shipments would be required to be done through ECL from 01.05.2023 onwards.
- (e) After the introduction of second phase, subsequently the following functionalities shall be developed in ECL2.
  - 1.Registration for availing ECL
  - 2.Deposit to ECL
  - 3.Payment of liabilities using ECL
  - 4.Modes enabled for deposit into ECL
  - 5.Refund of balance in ECL

*Circular No. 09/2023-Customs, dated 30 March, 2023*

### **Manner of issue of duty credit for goods exported under RoSCTL Scheme**

CBIC notifies manner of issue of duty credit for goods exported under the RoSCTL Scheme under Foreign Trade Policy, 2023

*Notification No. 25/2023-Customs (N.T.), dated 1 April, 2023*



## **Manner of issue of duty credit for goods exported under RoDTEP Scheme**

CBIC notifies manner of issue of duty credit for goods exported under the RoDTEP Scheme under Foreign Trade Policy, 2023

*Notification No. 24/2023-Customs (N.T.), dated 1 April, 2023*

## **Exemption for import of fabrics under Special Advance Authorization Scheme**

Regarding Exemption for import of fabrics under Special Advance Authorization Scheme under para 4.04A of Foreign Trade Policy, 2023 for manufacture and export of garments

*Notification No. 27/2023- Customs, dated 1 April, 2023*

## **Notification to exempt deposits into ECL till 30th April 2023**

The Central Board of Indirect Taxes and Customs on being satisfied that it is necessary and expedient so to do, hereby exempts the deposits, -

- a. with respect to goods imported or exported in customs stations where customs automated system is not in place;
- b. with respect to goods imported or exported in International Courier Terminals;
- c. with respect to accompanied baggage;
- d. other than those used for making electronic payment of, – a. any duty of customs, including cesses and surcharges levied as duties of customs; b. integrated tax; c. Goods and Service Tax Compensation Cess; d. interest, penalty, fees or any other amount payable under the Act, or Customs Tariff Act, 1975 (51 of 1975), from all of the provisions of section 51A of the said Act.

This notification shall come into effect from the 1st April, 2023 and shall be effective till the 30th April, 2023.

*Notifications No.18/2023-Customs (N.T.), dated 30 March, 2023*

## **EPCG Scheme implementation under Foreign Trade Policy, 2023**

The Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table 1 annexed hereto, from, –

- i. the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act); and
- ii. the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3 of the Customs Tariff Act, when specifically claimed by the importer;
- iii. the whole of integrated tax and the goods and services tax compensation cess leviable thereon under subsections (7) and (9) of section 3 of the Customs Tariff Act.

The exemption under this notification shall be subject to the following conditions specified in the notification

*Notification No. 26/2023 – Customs, dated 1 April, 2023*



## **Duty Free Import Authorisation Scheme implementation under FTP, 2023**

Exempts materials imported into India against a valid Duty-Free Import Authorisation issued by the Regional Authority in terms of paragraphs 4.24 and 4.26 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), subject to the following conditions mentioned in the notification.

*Notification No. 25/2023 – Customs, dated 1 April, 2023*

## **Advance Authorisation Scheme implementation for annual requirement under FTP 2023**

Hereby exempts materials imported into India, against a valid Advance Authorisation for Annual Requirement (hereinafter referred to as the said Authorisation) with actual user condition issued by the Regional Authority in terms of Paragraph 4.07 of the Foreign Trade Policy from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as Customs Tariff Act) and [from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, the goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act, subject to the following conditions mentioned in notification.

*Notification No. 23/2023 – Customs, dated 1 April, 2023*

## **Advance Authorisation Scheme implementation for deemed export under FTP, 2023**

The Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials required for the manufacture of the final goods when imported into India, from whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as Customs Tariff Act) and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act, except specified in para 2 to this notification, subject to the following conditions specified in the notification.

*Notification No. 22/2023 – Customs, dated 1 April, 2023*



## **Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2023**

The Central Board of Indirect Taxes and Customs hereby makes the following regulations to further amend the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010, namely: –These regulations may be called the Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2023 and shall come into force on the 1st April, 2023.

Notification No. 23/2023-Customs (N.T.) Dated: 31st March, 2023

## **Courier Imports and Exports (Clearance) Amendment Regulations, 2023**

The Central Board of Indirect Taxes and Customs hereby makes the following regulations to further amend the Courier Imports and Exports (Clearance) Regulations, 1998, namely: - These regulations may be called the Courier Imports and Exports (Clearance) Amendment Regulations, 2023 and shall come into force on the 1st April, 2023.

Notification No. 22/2023-Customs (N.T.) Dated: 31st March, 2023

## **Online filing of AEO-LO application – Version 3.0 of web-application Launched**

The AEO application processing for AEO-T2 and T3 on the web-based portal has been functional since July,2021.With the government’s Digital India initiative, the Board has decided to launch a new version (V 3.0) for on-boarding of AEO-LO applicants by way of online filing, real-time monitoring, and digital certification. 2.

The updated version of the existing web application will be made accessible for both applicants and the Customs officials from 11.04.2023.

Circular No. 10/2023-Customs,dated 11 April, 2023

## **Customs Waiver of Interest from 11th April, 2023 to 13th April, 2023**

- a. In exercise of the powers conferred by the third proviso below subsection (2) of section 47 of the Customs Act, 1962, the Central Board of Indirect Taxes and Customs, being satisfied that it is necessary in the public interest so to do, hereby makes the following Order, namely, This Order may be called the Customs (Waiver of Interest) Second Order, 2023.
- b. Hereby waives the whole of interest payable under sub-section (2) of section 47 of the said Act, for the period from 11th April, 2023 Upto and including the 13th April, 2023, in respect of such goods, where the payment of import duty is to be made from the amount available in electronic cash ledger.
- c. The Order is in continuation of the Customs (Waiver of Interest) Order, 2023 dated the 06.04.2023 and extends the same and would be applied in the same manner.

Order No. 2/2023-Customs (N.T.) , dated 11 April 2023



## **Export benefits under RoDTEP extended**

18 tariff lines falling under HS Code 5208 are being added in Appendix 4R under RoDTEP for exports made from 28.03.2023.

Notification No: 63 /2015-2020-DGFT, dated 25 March, 2023

## **Amnesty scheme for default by Advance & EPCG authorization holders**

Government has notified amnesty scheme for one time settlement to close cases of default in export obligation under advance authorization and EPCG scheme.

The amnesty scheme available for the authorisation holder of: –

- a. Advance or EPCG authorisation issued under FTP 2009-14 (i.e., issue date of authorisations between 27th August 2009 to till 31st March, 2015)
- b. Advance Authorisation and EPCG issued under FTP 2004-09 or before, {Authorisations whose EOP (Original or extended) was valid beyond 12.08.2013.}
- c. Those who wants to take benefits of the scheme have to get registered by 30th June, 2023 and pay dues by 30th September, 2023.
- d. ending cases of default regularised by payment of all custom duties that were exempted in proportion to unfulfilled and interest at the rate of 100%) of such duty exempted.
- e. No interest is payable on Additional Custom Duty and Special Additional Custom Duty.
- f. Entire authorization is under default or partial default in meeting Export Obligation both are covered under the scheme. Even the cases which have already been adjudicated (or pending for adjudication) either original or in appeal, can also be regularised under this public notice.
- g. Cases under investigation or cases adjudicated for involving fraud, misdeclaration or unauthorised diversion of material and/ or Capital goods will be excluded from the coverage.
- h. Duty along with applicable interest has already been deposited in full would not be eligible for coverage.
- i. Based on the evidence of such payment and other relevant documents as prescribed under the Handbook Procedures, concerned RA may examine the request and issue a letter granting Export Obligation Discharge Certificate (EODC).
- j. Neither CENVAT Credit nor refund, under any provision of law, of any amount shall be allowed on duties paid under this scheme. The applicant shall also give an undertaking that they will not file any application for CENVAT credit or refund of any duty paid under this scheme before any authority and/ or before any court of Law.

Public Notice number 2/2023 dated 1 April 2023



## **New Foreign Trade Policy, 2023 announced**

Powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992), as amended from time to time, the Central Government hereby notifies the Foreign Trade Policy, 2023. This Foreign Trade Policy shall come into force with effect from 1st April, 2023.

*Notification No. 1/2023-DGFT, dated 31 March, 2023*

## **DGFT notifies Handbook of Procedures, 2023**

In exercise of powers conferred under paragraph 1.03 and 2.04 of the Foreign Trade Policy, 2023, the Director General of Foreign Trade hereby notifies the Handbook of Procedures, 2023. This shall come into force with effect from 1st April, 2023.

*Public Notice No. 1/2023-DGFT, dated 1 April, 2023*

## **Mandatory electronic filing date of Non-Preferential CoO extended to 31.12.2023**

Transition period for mandatory filing of applications for Non-Preferential Certificate of Origin through the e-CoO Platform has been further extended till 31st December 2023

*Trade Notice No. 27/2022-2023-DGFT, dated 28 March 2023.*

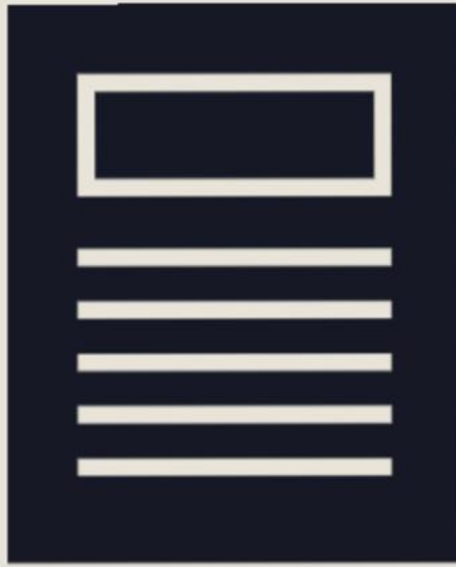
## Issuance of EODC for AA and EPCG process from DGFT portal

The procedure has been mentioned below

- a. Online application for redemption/closure of licence may be submitted by navigating to DGFT website → Services → AA / EPCG → Closure of Advance Authorisation / Closure of EPCG. I
- b. AA closure application may be submitted with or without data validation
- c. With Validation Route– Given that the complete dataset such as shipping bills / Bills of Entry / eBRC / GST invoices / Bills of Exports / Tax Receipts etc. is available in online system.
- d. Without Validation Route– Application may be submitted even with data (such as shipping bills / Bills of Entry / eBRC etc.) exceptions. iii. EPCG closure applications may also be submitted online without validation. 3.
- e. For cases wherein physical files are submitted for redemption to the RA, the Authorisation holders may submit EODC status update applications to RA for processing. Following steps may please be taken note of-
- f. RA may suo-moto update the licence status by navigating to License Room, select relevant License number → Click on “EODC Status Update” button and generate the EODC letter online.
- g. Authorisation Holder may submit EODC status update application by navigating to DGFT website → Services → AA / EPCG → EODC Status update.
- h. If certain documents require physical submission, the Authorization holder would still apply for redemption on DGFT portal (without validation). Regional Authorities will examine the case accordingly and correspondence with the applicant shall be undertaken online using the DGFT portal.
- i. Any such EODC issued online is electronically transmitted to Customs ICEGATE System in near real-time, to facilitate discharge of Customs bond and other related activities at the Customs port.
- j. The above-mentioned online options cover online applications with validation as well as online application without validation involving physical submission. It is accordingly directed that no Export Obligation Discharge Certificates (EODC) are to be issued manually or through any legacy IT system (LEMIS System) with immediate effect.
- k. All MIS reports are to be generated by the RA based on the data updated online

Trade Notice 01/2023-24 ,dated 6 April 2023





# DA NEWS

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# Goods and Services Tax

- Govt caps maximum GST cess rate on pan masala, tobacco; links rate to retail sale price
- Lok Sabha approves setting up of GST Appellate Tribunal
- Constitution of GST tribunal goes against several rulings of Supreme Court
- Denied GST refund for 'unjust enrichment', IIMA moves Gujarat high court



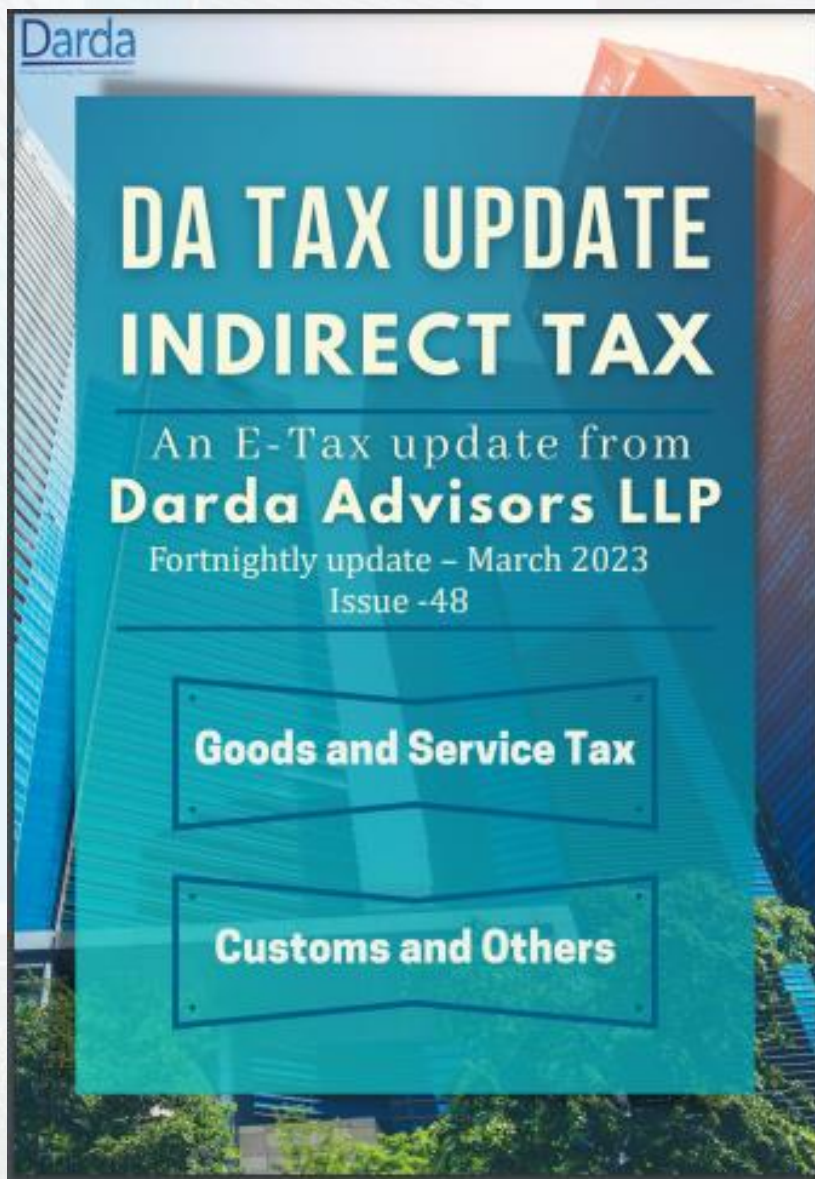
# Customs and other

- How exporters are getting steamrolled by a six-decades-old law
- Customs duty recast may make telecom gear imports costlier
- DGFT notifies special one-time amnesty scheme for defaulters of export obligation.
- Basic Customs Duty on Drugs, Food for Treatment of Rare Diseases Waived

# DA Updates and Articles for the month of March 2023

## Indirect Tax Fortnightly Update for the month of March 2023

[https://dardaadvisors.com/wp-content/uploads/2023/03/DA-Indirect-Tax-Fortnightly-Update\\_March-2023.pdf](https://dardaadvisors.com/wp-content/uploads/2023/03/DA-Indirect-Tax-Fortnightly-Update_March-2023.pdf)





## Snapshot Of New Foreign Trade Policy 2023

<https://dardaadvisors.com/wp-content/uploads/2023/03/DA-Newsflash-Snapshot-Foreign-Trade-Policy-2023-1.pdf>

The image shows the cover of a report titled "Snapshot - New Foreign Trade Policy 2023". The cover features the Darda logo at the top left, with the tagline "Driven by Quality, Powered by Innovation". The main visual is a silhouette of a person in a suit standing on a balcony, looking out over a modern city skyline. To the right, the title "Snapshot - New Foreign Trade Policy 2023" is written in large white text against a dark background. Below the title, there is a smaller image of a blue cargo ship at sea, with an orange banner that reads "FOREIGN TRADE POLICY OF INDIA". At the bottom right of the cover, the website "www.dardaadvisors.com" is listed. In the bottom left corner of the cover, there is a circular logo with the Darda name and icons representing various services: "INTEGRITY", "INTELLECTUAL PROPERTY", "LEGAL AND REGULATORY", and "BUSINESS".



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



## Indirect Tax Services

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

## Other Services

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



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