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DA TAX UPDATE INDIRECT TAX

An E-Tax update from

Darda Advisors LLP

Fortnightly update – July 2023

Issue -52

Goods and Service Tax

Customs and Others

Goods and Service Tax

M/s Pooja Construction Co. [Advance Ruling/ SGST & CGST/2022/AR/60

The state wherein place of supply is located is the proper AAR to give ruling on any eligible matter.

V S Institute & Hostel Private Limited [UP AAR ADRG – 26/2023]

Exemption from levy of GST on Hostel Accomodation with rent less than INR 1,000 can not be claimed basis the position adopted by Judiciary under Finance Act.

Panji Engineering Private Limited [SCA No 560 of 2022]

Section 56 of CGST Act mandates grant of interest in case of delayed refunds, and shall be payable immediately after expiry of sixty days of filing of refund application to the date of actual payment.

Advance Systems vs Commissioner of CGST [WP (C) 7248/2023]

No Fresh Refund Application is required to be filed after successful appeal. The Department shall act on previous application itself and grant refund.

Devi Traders vs State of Andhra Pradesh [WP No 3659 of 2023]

Initiation of Demand under section 74 of the GST Act does not mandatorily require scrutiny of GST returns.

Goods and Service Tax

Nektar Therapeutics India Pvt Ltd vs Union of India [WP No 15871 of 2023]

The Telangana HC has quashed the issue of Show Cause Notice issued by improper officer, i.e. officer not authorised to issue SCN under GST Act.

Bitumix India LLP vs Deputy Commissioner [MAT/1011/2023]

200% penalty cannot be imposed for mere Non-renewal of expired Eway Bill.

50th GST Council Meeting Decisions

Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.

Issue:

Whether interest under section 50(3) of CGST Act, read with rule 88B of CGST Rules is applicable on wrong availment of IGST credit in cases where the total balance of ITC in the electronic credit ledger under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.

Clarification:

When IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit.

DA Comments:

By expecting the ITC balance never falls below wrongly availed IGST credit from the date of availment to upto such reversal is going to create more challenges and period to period reconciliation and further litigation at various level. The balance as on the date of reversal only should be considered.

Circular No. 192/04/2023-GST dated 17 July 2023

Clarification to deal with difference in ITC in FORM GSTR-3B vis a vis FORM GSTR-2A for the period 1 April 2019 to 31 December 2021

Issue:

To extend the circular No. 183/15/2022-GST dated 27th December, 2022 benefit to FY 2019-20 and FY 2020-21

Clarification:

- Since rule 36(4) came into effect from 09 09 October 2019 only, the guidelines provided by Circular No. 183/15/2022-GST dated 27 December, 2022 shall be applicable, in toto, for the period from 01 April 2019 to 8 October 2019.
- In respect of period from 09 October 2019 to 31 October 2019, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using IFF shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF.
- Similarly, for the period from 01.01.2020 to 31.12.2020, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the IFF shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.
- Further, for the period from 01.01.2021 to 31.12.2021, when rule 36(4) of CGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their FORM GSTR-1 or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable.
- However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

DA Comments:

The circular has extended the benefit to FY 2019-20 and FY 20-21 completely based on applicability of Rule 36 (4) of CGST Rules, however, for FY 21-22, the applicability is partial.

Circular No. 193/05/2023-GST dated 17 July 2023

Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction

Issue	Detail of the issue	Clarification
1	In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?	In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.
2	In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?	In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

DA Comments:

The issue of TCS liability is clarified in in multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC) has given further clarity.

Circular No. 194/06/2023-GST dated 17 July 2017

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

Following issues have been clarified:

Where the manufacturer provides replacement of parts and/ or repair services to the customer during the **warranty period**, without separately charging any consideration at the time of such replacement/ repair services, **no further GST is chargeable** on such replacement of parts and/ or repair service during warranty period. Further, these supplies **cannot be considered as exempt supply** and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.

However, if **any additional consideration** is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.

There may be instances where a **distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer** and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer, therefore, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer.

Where the manufacturer is providing part(s) to the distributor for the customer during the warranty without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.

Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, in such case, **GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail input tax credit of the same, subject to other conditions of CGST Act**.

If a customer enters in to an agreement of **extended warranty with the at the time of original supply**, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

However, in case where a consumer enters into an agreement of **extended warranty at any time after the original supply**, the same is separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)

DA Comments:

By having multiple issues clarified on warranty and extended warranty, the same will silent multiple interpretation and litigation.

Circular No. 195/07/2023-GST dated 17 July 2023

Clarification on taxability of shares held in a subsidiary company by the holding company

It is clarified that:

It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act.

Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

DA Comments:

The CBIC has to clarify the said issue as certain advance rulings have given ruling that the same is liable to GST.

Circular No. 196/08/2023-GST dated 17 July 2023

Clarification on refund related issues

The following issues are clarified by CBIC:

Refund of accumulated input tax credit under Section 54(3) on the basis of that available as per FORM GSTR 2B

The said amendments in section 16(2) (aa) of CGST Act and Rule 36(4) of CGST Rules have been brought into effect from 01.01.2022, therefore, the said restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per FORM GSTR-2B for the said tax period or for any of the previous tax periods, shall be applicable for the refund claims for the tax period of January 2022 onwards. **However, in cases where refund claims for a tax period from January 2022 onwards has already been disposed of by the proper officer before the issuance of this in accordance with the extant guidelines force, the same shall not be reopened because of the clarification being issued this circular.**

Manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of Rule 89 vide Notification No. 14/2022- CT, dated 05.07.2022

In this regard, it is mentioned that consequent to amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, Circular 147/03/2021-GST dated 12.03.2021 was issued which inter alia clarified that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89.

Clarification whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of sub-rule (1) of rule 96A of CGST Rules

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

DA Comments:

The major relief of clarifying that the refund already granted from 1 January 2022 onwards will not be re-opened due to mandatory requirement of reflection of ITC in GSTR 2B.

Circular No. 197/09/2023- GST dated 17 July 2023

Clarification on issue pertaining to e-invoice

It is clarified that:

Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to be treated as registered persons under the GST law as per provisions of clause (94) of section 2 of CGST Act.

Accordingly, **the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4) of CGST**

DA Comments:

Necessary clarification has been issued to avoid any further legal complications.

Circular No. 198/10/2023-GST dated 17 July 2023

Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons

Scenario:

Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

S. No.	Issue	Clarification
1	Whether HO can avail the ITC in respect of common input services procured from a third party but attributable to both HO and Bos or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (ISD) mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?	In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.

Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons

S. No.	Issue	Clarification
2	In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the concerned BOs.	In respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.
3	In respect of internally generated services provided by the HO to BOs, in cases where full input tax credit is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.	In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.

Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons

DA Comments:

The major relief to the industry considering its an major issue where the notices has been been issued to industry for cross charge of employee and related cost after the advance ruling made the same taxable in 2018.

Customs & Others

Commissioner of Customs Vs Vestas Wind Technology India Pvt Ltd [Customs Appeal No 40973 of 2013]

CESTAT Chennai held that the licence fee is includible in transaction value only when licence fee is paid as condition of sale. Accordingly, licence fee cannot be included to the transaction value when the same is not a condition of sale.

Commissioner of Customs Vs Jindal Drugs Ltd [CUSAP No 5 of 2019]

In a major landmark decision, the Punjab and Haryana High Court ruled that no customs duty demand can be enforced under advance authorization scheme once a discharge certificate has been issued.

Arcelormittal Projects India Limited Vs C.C.-Mundra [CUSAP No 10312 of 2015 – DB]

CESTAT allowed the refund application in terms of limitation period prescribed under General Clauses Act 1987 relying on the judgement by Bombay High Court in the case of Skoda Auto Volkswagen India Pvt Ltd.

Import and Export data

Imports of June 2023 at $ 68.98 B

Exports of June 2023 at $ 60.09 B

		June 2023 (USD Billion)	June 2022 (USD Billion)
Merchandise	Exports	32.97	42.28
	Imports	53.10	64.35
Services*	Exports	27.12	26.92
	Imports	15.88	15.77
Overall Trade (Merchandise +Services) *	Exports	60.09	69.20
	Imports	68.98	80.12
	Trade Balance	-8.89	-10.92

Source : PIB

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

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