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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

August 2023
Issue: 39

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We are pleased to present to you the thirty ninth 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 July 2023.

During the month of July 2023, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as Action against supplier to be taken first before asking recipient to reverse ITC & Interest and penalty not applicable on delayed payment of CVD/SAD/Surcharge

In the thirty ninth 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 July 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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Co-founder and Managing Partner

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Tax and Regulatory Services

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GST COMPLIANCE CALENDAR

August 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

- Action against supplier to be taken first before asking recipient to reverse ITC – HC
- Duty paid by mistake on exempted supply eligible for refund – HC
- The time limit prescribed for claiming ITC under section 16(4) of CGST Act valid – HC
- Issuance of SCN when first appellate authority passed the order is bad in law and hit by the principles of res judicata
- Retrospective cancellation of GST registration from the date of the registration as returns not filed due to closure of business is not justifiable
- Rejection of refund without any detailed reasoning is liable to be set aside – HC
- Penalty imposed on department's respondent for causing harassment to the litigants and wasting the precious judicial time of the Court
- Once the substantive conditions are satisfied, refund cannot be denied due to a technical error or lacunae in the electronic system – HC
- Other Notifications/Circulars/Guidelines/instructions/Portal changes

Action against supplier to be taken first before asking recipient to reverse ITC – HC

DA Insights:

The aspect which is clarified by GST Council in circular and press release is mostly not implemented by the adjudicating authorities and now being held by the Honorable High Court will surely provide the relief to the taxpayers.

Issue:

It is the case of the appellant that they have fulfilled all the conditions as stipulated under Section 16(2) of CGST Act and also paid the tax to the supplier and a valid tax invoice has been issued for installation and commission services and the appellant had made payment within the time stipulated under the provisions of the Act. Thus, grievance of the appellant is that despite having fulfilled all the conditions as has been enumerated under Section 16(2) of the Act, the first respondent erred in reversing the credit availed and directing the appellant to deposit the tax which has already been paid at the time of availing the goods/ services.

Legal Provisions:

Section 16(2) of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The first respondent without resorting to any action against the fourth respondent who is the selling dealer has ignored the tax invoices produced by the appellant as well as the bank statement to substantiate that they have paid the price for the goods and services rendered as well as the tax payable there on, the action of the first respondent has to be branded as arbitrarily.

Therefore, before directing the appellant to reverse the input tax credit and remit the same to the government, the first respondent ought to have taken action against the fourth respondent the selling dealer and unless and until the first respondent is able to bring out the exceptional case where there has been collusion between the appellant and the fourth respondent or where the fourth respondent is missing or the fourth respondent has closed down its business or the fourth respondent does not have any assets and such other contingencies, straight away the first respondent was not justified in directing the appellant to reverse the input tax credit availed by them. Therefore, we are of the view that the demand raised on the appellant dated 20.02.2023 is not sustainable.

Suncraft Energy Private Limited and Another Versus Acst [MAT 1218 OF 2023 WITH I.A NO. CAN 1 OF 2023]

Duty paid by mistake on exempted supply eligible for refund – HC

DA Insights:

The excess duty paid to the exchequer cannot be retained for any technical or non-technical reasons which the Honorable High Court rightly held.

Issue:

The petitioner had supplied the goods to the buyer on payment of full duty (under an error) of IGST at the rate of 18% instead of concessional rate of 0.1% in terms of Notification No.41/2017 – Integrated Tax (Rate) dated October 23,2017 and accordingly, filed the refund claim in terms of the clarification issued under Circular dated April 13, 2020 which was rejected. Accordingly, the writ petition is filed.

Legal Provisions:

Section 54 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The conditions mentioned in the aforesaid notification clearly envisages that all the conditions are not to be fulfilled or complied with by the petitioner but the conditions are to be complied with by the exporter. The petitioner uploaded the refund claim on 12.3.2021 however, the respondent on a technical ground did not grant the refund and passed the impugned order dated 22.6.2021.

The Hon'ble Apex Court in the case of Bonanzo Engineering & Chemical Pvt. Ltd. v. Commissioner of Central Excise reported in 2012(4) SCC 771has taken a view that merely because by mistake, the assessee paid duties on the goods which are exempted from payment does not mean that the goods would become goods liable for the duty under the Act.

Thus, in view of the aforesaid view taken by the Hon'ble Apex Court, the petition deserves to be allowed and the same is allowed. The order dated 22.6.2021 passed by the respondents is hereby quashed and set aside and the respondents are directed to refund the amount of 23,09,100/- with interest applicable as per law within reasonable time from the date of receipt of copy of this judgment.

Tagros Chemicals India Pvt. Ltd. vs UOI [R/SPECIAL CIVIL APPLICATION NO. 647 of 2022]

The time limit prescribed for claiming ITC under section 16(4) of CGST Act valid – HC

DA Insights:

There are multiple writ petitions are pending at various Honorable High Courts and need to look into the decisions under the these matter post the said judgment of Honorable AP High Court.

Issue:

The petitioner prays for writ of mandamus declaring:

(a) Section 16(4) of APGST Act, 2017 and Section 16(4) of CGST Act, is violative of Article 14, 19(1)(g) and Section 300-A of Constitution of India.

(b) That the non-obstante clause in Section16(2) of APGST/CGST Act, 2017 would prevail over Section 16(4) of APGST / CGST Act, 2017.

(c) That notification issued by Government of Andhra Pradesh vide G.O.Ms.No.264, dated 11.09.2020 and providing extension of time for filing returns only to the non-resident and not allowing such extension to the others and thereby distinguishing other tax payers on account of COVID-19 pandemic is arbitrary, illegal and violative of Article 14 of Constitution of India.

Legal Provisions:

Section 16 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

When analyzed, Section 16(2) shall not appear to be a provision which allows input tax credit, rather ITC enabling provision is Section 16(1). On the other hand, Section 16(2) restricts the credit which is otherwise allowed to only such cases where conditions prescribed in it are satisfied. Therefore, Section 16(2) in terms only overrides the provision which enables the ITC i.e., Section 16(1). This is evident from the manner in which Section 16(2) is couched. The non obstante clause in Section 16(2) is followed by a negative sentence pellucidly tells that unless the conditions mentioned in Section 16(2) are satisfied, no credit will be eligible. This stipulation manifests that Section 16(2) is not an enabling provision but a restricting provision. What it restricts is the eligibility which was otherwise given U/s 16(1).

Thirumalakonda Plywoods vs ACST [W.P.No.24235 of 2022]

The time limit prescribed for claiming ITC under section 16(4) of CGST Act valid – HC

DA Insights:

There are multiple writ petitions are pending at various Honorable High Courts and need to look into the decisions under the these matter post the said judgment of Honorable AP High Court.

In the present case both Section 16(2) and (4) are two different restricting provisions, the former providing eligibility conditions and the later imposing time limit. However, both these provisions have no inconsistency between them.

Mere filing of the return with a delay fee will not act as a springboard for claiming ITC. As rightly argued by learned Advocate General, collection of late fee is only for the purpose of admitting the returns for verification of taxable turnover of the petitioner but not for consideration of ITC. Such a statutory limitation cannot be stifled by collecting late fee.

Thus, it is clear that ITC being a concession/benefit/rebate, the legislature is within its competency to impose certain conditions, including time prescription for availing such right and the same cannot be challenged on the ground of violation of Constitutional provisions.

Thirumalakonda Plywoods vs ACST [W.P.No.24235 of 2022]

Issuance of SCN when first appellate authority passed the order is bad in law and hit by the principles of res judicata

DA Insights:

The Honorable High Court rightly held that reopening concluded assessment amounts to abuse of the process of law and is wholly without jurisdiction and bad in law and procedure and is also against the principles of res judicata contemplated in Section 11 of the Code of Civil Procedure, 1908.

Issue:

The case of the petitioner is that two SCNs were issued for the same period for the self-same cause of action (except March, 2020) issued by two different authorities attempted to start a fresh adjudication proceeding in respect of the self- same cause of action which has already attained finality by First Appellate Order.

Legal Provisions:

Section 107(16) of the JGST Act

Observation and Comments:

The Honorable High Court held that:

- It is evident that the first Appellate Order was accepted by the department and no further appeal was filed and thus; the same has attained finality and therefore the same issue or cause of action cannot be reagitated in a fresh proceeding as the same is contrary to settled proposition of law.
- In the instant case, since the 1st appellate order is not subjected to Section 108, Section 113, Section 117, Section 118; thus, by virtue of sub-Section (16) of Section 107, it has attained finality.
- The actions of the Respondent No.2 and the Respondent No.3 is therefore bad in law and is without jurisdiction and is further hit by the principles of res judicata and is clearly not permissible under the law.

M/s Ambey Mining Pvt. Ltd vs CST and others [W.P. (T) No. 361 of 2023 – HC]

Retrospective cancellation of GST registration from the date of the registration as returns not filed due to closure of business is not justifiable

DA Insights:

When the applicant itself asking for cancellation from the effective date, the adjudicating authority cannot cancel the same retrospectively from the date of registration without any valid reasons. The same has been rightly held arbitrarily by the Honorable High Court.

Issue:

The petitioner has filed the present petition, inter alia, impugning an order passed by the Adjudicating Authority, cancelling the petitioner's GST registration with retrospective effect from 02.07.2017. The petitioner claims that some time in June, 2019, he decided to discontinue his business as he was suffering from various medical issues. Accordingly, on 20.07.2019, the petitioner filed the application for cancellation of his GST registration.

Legal Provisions:

Section 29 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- Although in terms of Section 29 of the CGST Act, 2017, the concerned authority has the discretion to cancel the registration from a retrospective date, however, the said power cannot be exercised arbitrarily.
- The fact that the petitioner had not filed the returns for a continuous period of six months – the ground on which cancellation was proposed in terms of the SCN does not, in any manner, justify retrospective cancellation from the date that the registration was granted.
- Considering the peculiar facts and circumstances of this case, we direct the concerned authorities to, on the strength of this order, process the petitioner's application for cancellation of his registration with effect from 30.06.2019. This is subject to the petitioner providing any information relating to the period prior to 30.06.2019, if the concerned authorities require the same.

Ashish Garg Proprietor Shri Radhey Traders vs ACST [W.P.(C) 6652/2023 – HC]

Rejection of refund without any detailed reasoning is liable to be set aside – HC

DA Insights:

The Honorable High Court rightly held that the without having detailed reasoning for the issuance of appellate order, the same is liable to be set aside.

Issue:

The petitioner is essentially aggrieved by rejection of its claims for refund of ITC and the grievance is limited to rejection of refund of ITC on catering charges and Common Area Maintenance Charges ("CAM") charges and rejection of refund of ITC in respect of certain invoices, which were not furnished. The appeal filed to first appellate authority were rejected by a common OIA which is impugned in the present petition. A plain reading of the impugned order indicates that the Appellate Authority had merely referred to Section 17(5)(b) of the CGST Act and rejected the appeal. There is no discussion as to how Section 17(5)(b) of the CGST Act is applicable to CAM charges and catering charges.

Legal Provisions:

Section 17(5)(b) of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- We are also of the view that there is a fundamental error in the manner in which the petitioner's refund applications have been processed.
- Admittedly, the concerned authority had not issued any notice as required under Rule 92(3) of the CGST Rules, setting out the reasons for rejection of the refund. The petitioner, thus, had no opportunity to satisfy the concerned authorities as to its claim for refund to the extent it has been rejected.
- In view of the above, we consider it apposite to set aside the impugned order as well as the refund rejection orders to the extent, the same reject the refund claims made by the petitioner.

Chegg India Pvt Limited vs CCGST [W.P.(C) 14886/2022 – HC]

Penalty imposed on department's respondent for causing harassment to the litigants and wasting the precious judicial time of the Court

DA Insights:

It is common tendency to delay the proceedings by not filing the affidavit or counter affidavit by the Revenue authorities which has been seriously taken into consideration by the Honorable High Court and imposed cost to the authorities apart from giving relief to the appellant.

Issue:

The present petition has been filed, inter alia, seeking setting aside of the demand order principally on the ground that the same has been passed in gross violation of the principles of natural justice as the petitioner was not afforded an opportunity of personal hearing before passing of the impugned order by the respondent.

Legal Provisions:

Section 74 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- Where the controversy is purely legal and does not involve disputed questions of fact, the High Court ought not to dismiss the writ petition on the ground of availability of alternate remedy. The power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature.
- Despite the period of two years having elapsed, the objection as to availability of alternate remedy is taken for the first time while arguing and that too in the absence of any affidavit. The present case is a clear case of violation of the provisions of the Act as well as the violation of principles of natural justice and is a fit case for exercise of discretionary jurisdiction of the High Court under Article 226 of the Constitution of India.
- The conduct of the respondent, as discussed above, is highly improper. Almost two years of the judicial time has been wasted only for the reason that respondent at first wanted to place the counter affidavit on record and then sought further time to file counter affidavit.
- These kinds of practices cannot be countenanced. The same has the effect of not only causing harassment to the litigants but also wasting the precious

M/S Jupiter Exports vs CCGST [W.P.(C) 6673/2021 & CM APPL. 21011/2021 – HC]

Penalty imposed on department's respondent for causing harassment to the litigants and wasting the precious judicial time of the Court

DA Insights:

It is common tendency to delay the proceedings by not filing the affidavit or counter affidavit by the Revenue authorities which has been seriously taken into consideration by the Honorable High Court and imposed cost to the authorities apart from giving relief to the appellant.

judicial time of the Court. This Court, therefore, considers it apposite to impose a cost of ₹5,000/- on the respondent and if it is found that there is dereliction of duties on the part of the concerned officer, appropriate action for recovery of the amount from the salary of the officer be taken.

- In view of the above, we set aside the impugned demand notice and remand the matter to enable the respondent to pass a fresh order after affording the

M/S Jupiter Exports vs CCGST [W.P.(C) 6673/2021 & CM APPL. 21011/2021 – HC]

Once the substantive conditions are satisfied, refund cannot be denied due to a technical error or lacunae in the electronic system – HC

DA Insights:

The manual application filing allowed by the Honorable High Court is major relief as such inadvertent and clerical error cannot impact

Issue:

The present case is for the petitioner's refund claims of unutilized ITC used in making zero-rated supply of goods in FY 2020-2021 and 2021-2022 to an extent of Rs.1,10,67,67,172/-, however, the petitioner erroneously lodged claims for a lower amount of Rs.1,00,47,38,439/- due to inadvertent arithmetical error of their employee and therefore the respondents have sanctioned and paid refund aggregating to Rs.1,00,47,38,439/-. It is further stated that when the petitioner realized the error and lodged supplementary refund claims for the left out amount of refund being Rs.10,20,28,733/-, the respondents have refused to sanction and pay such refund on a specious basis that the category under which such supplementary claims were lodged was not applicable in the case of the petitioner. The petitioner has, therefore, filed the present petition.

Legal Provisions:

Section 54(3) of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

Keeping in view the aforesaid decisions, it is settled law that the benefit which otherwise a person is entitled to once the substantive conditions are satisfied cannot be denied due to a technical error or lacunae in the electronic system. As discussed hereinabove, the petitioner has no option but to upload the supplementary application under "any other" category for the refund of the left-out amount, which was due to an arithmetical error committed by the employee of the petitioner.

The petition is allowed. The impugned order is hereby quashed and set aside. The respondents are directed to allow the petitioner to furnish manually the refund applications for refund of the left-out amount. However, it is open for the respondents authority to scrutiny the claim of the petitioner for refund of the aforesaid amount in accordance with law and to take appropriate decision on the applications which may be made by the petitioner.

Messrs Shree Renuka Sugars Ltd. vs State of Gujarat [R/Special Civil Application No. 22339 of 2022]

GST Notification / Circulars / Guidelines / Instructions

Amnesty Extended for GSTR-10 non-filers

The date for filing the GSTR-10 form has been pushed back from the initial 30th June 2023 to the 31st August 2023. The GSTR-10 form, also known as the final return, needs to be filed by registered persons whose registration has been surrendered or cancelled

Notification No. 26/2023- Central Tax Dated: 17th July, 2023

Clarification on Charging of Interest for Wrong Availment of IGST Credit

CBIC provides clarification on the charging of interest for wrong availment of IGST credit. It specifies that the total input tax credit available in the electronic credit ledger, including IGST, CGST, and SGST, should be considered for interest calculation. The circular also clarifies that the credit of compensation cess cannot be utilized for interest calculation purposes.

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

Clarification on Input Tax Credit Availment in GSTR-3B and GSTR-2A

It provides clarification on the availing of Input Tax Credit (ITC) in GSTR-3B and GSTR-2A for the period 01.04.2019 to 31.12.2021. The circular addresses the guidelines and conditions for dealing with discrepancies and determining the eligibility of ITC based on rule 36(4) of CGST Rules.

It clarifies the application of Circular No. 183/15/2022-GST for different time frames to explain the calculation of eligible ITC.

It also mentions the changes in rule 36(4) and section 16 of the CGST Act from 01.01.2022 and emphasizes that ITC can only be availed if reported by suppliers in FORM GSTR-1 or using IFF and communicated through FORM GSTR-2B.

These instructions apply to ongoing proceedings and cases with pending adjudication or appeal proceedings during the period 01.04.2019 to 31.12.2021.

Circular No. 193/05/2023-GST, Dated 17 July, 2023

GST Notification / Circulars / Guidelines / Instructions

Clarification on TCS Liability for Multiple E-commerce Operators

The circular highlights the distinction between the platform-centric model of e-commerce and the ONDC Network, where multiple ECOs may be involved in a single transaction.

It clarifies that the ECO responsible for collecting TCS and ensuring compliance under Section 52 of the CGST Act depends on the specific scenario. If the supplier-side ECO is not the supplier of the goods or services, the supplier-side ECO is liable for compliances and TCS collection. On the other hand, if the supplier-side ECO is also the supplier, the buyer-side ECO is responsible for collecting TCS.

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

Clarification on ITC Availability for Warranty Replacement

The circular examines various warranty scenarios where replacement goods or services are provided to customers free of charge. It clarifies that no additional GST is chargeable when replacement parts or repair services are provided during the warranty period without separately charging any consideration.

The value of the original supply already includes the likely cost of such replacements or repairs. However, if any additional consideration is charged, GST becomes applicable. The circular also provides guidance on ITC reversal requirements and clarifies scenarios involving distributors providing replacement parts or repair services on behalf of manufacturers.

Circular No. 195/07/2023-GST, Dated 17 July, 2023

Clarification on GST Refund Issues

a) The circular clarifies the refund of accumulated input tax credit under Section 54(3) of the CGST Act. It states that the refund shall be restricted to the input tax credit available as per the invoices reflected in FORM GSTR-2B.

b) It highlights the amendments made to Section 16(2) (aa) of the CGST Act and Rule 36(4) of the CGST Rules, linking the availment of input tax credit to FORM GSTR-2B.

c) The circular removes references to Section 42, FORM GSTR-2, and FORM GSTR-3, which have been omitted or amended from the undertaking in FORM RFD 01. The undertaking now focuses on compliance with clause (c) of subsection (2) of Section 16 of the CGST Act.

d) It also addresses the refund of accumulated input tax credit, the calculation of adjusted total turnover, and the admissibility of refunds for exporters complying with sub-rule (1) of rule 96A.

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

GST Notification / Circulars / Guidelines / Instructions

Clarification on Applicability of E-Invoice for Supplies to Government Departments

Circular aims to provide clarity on the applicability of e-invoice under rule 48(4) of the CGST Rules for supplies made to Government Departments, establishments, agencies, local authorities, and PSUs registered for tax deduction at source.
It clarifies that such registered persons, whose turnover exceeds the prescribed threshold, must issue e-invoices for these transactions.

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

Clarification on Taxability of Services between Distinct Offices under GST

It provides clarity on the taxability of services provided by an office of an organization in one state to the office of the same organization in another state, considering their distinct person status.

Further, it explains the options for distributing input tax credit and determines the value of supply based on the open market value.
The circular addresses the inclusion of salary costs in the computation of taxable value for services provided by the HO (Head office) to the Bos (Branch offices) and clarifies that the inclusion of salary costs is not mandatory, even when full input tax credit is not available to the BOs.

Circular No. 199/11/2023-GST, dated 17 July, 2023

Continuation of RCM/FCM Option: Filing Annexure-VI for GTA

It provides explanations related to sub-items under certain serial numbers, modify due dates for exercising options by Goods Transport Agencies (GTAs) under reverse charge mechanism, and omit sub-clauses in the Explanation of clause (i).

Further, Annexure V is revised to reflect new wording for exercising options, and a new Annexure VI form is introduced for GTAs to exercise their option to revert under reverse charge mechanism.

So now, if a taxpayer exercises their option for RCM or FCM for a specific financial year by filing Annexure-V between 1st of January to 31st of March, that option will remain in effect until the taxpayer decides to change it. The taxpayer can change the option by filing Annexure-VI before the commencement of any subsequent financial year.

The notification states that GTAs can now exercise the option to pay GST under forward charge until March 31 of the preceding Financial Year, instead of March 15. The option can be exercised starting from January 01 of the preceding Financial Year.

Notification No. 06/2023- Central Tax (Rate) [G.S.R. 537(E).], dated 26 July, 2023
Notification No. 06/2023- Integrated Tax (Rate) (G.S.R. 538(E)), dated 26 July, 2023
Notification No. 06/2023- Union Territory Tax (Rate) (G.S.R. 539(E)), dated 26 July 2023

GST Notification / Circulars / Guidelines / Instructions

GST Exemption for Private Sector Satellite Launch Services

An amendment is issued to provide GST exemption for satellite launch services offered by private sector organizations. This amendment is based on the recommendations of the 50th GST Council Meeting.

Notification No. 07/2023 Union Territory Tax (Rate) G.S.R. 542 (E)), dated 26 July, 2023
Notification No. 07/2023 Integrated Tax (Rate) G.S.R. 541 (E)), dated 26 July 2023
Notification No. 07/2023 Central Tax (Rate) G.S.R. 540(E)), dated 26 July 2023

GST Clarification 2023: Applicability of GST on certain services

a) The circular clarifies that services supplied by directors to the company in their personal capacity, like renting immovable property, are not taxable under RCM. Only services supplied by directors in their capacity as company directors are taxable under RCM.

b) Food and beverages in cinema halls, are taxable as a "restaurant service" as long as they are provided independently of the cinema exhibition service. If they are part of a bundled supply satisfying the test of a composite supply, the entire supply will attract GST at the rate applicable to the cinema exhibition service, which is the principal supply.

Circular No. 201/13/2023-GST Dated 01 August, 2023

CBIC Notifies GTA Exemption from Yearly GST Declaration

a) Earlier, GTAs were obligated to file Annexure V on a yearly basis for paying GST under forward charge. However, the recent amendment exempts them from this requirement.

b) As per the new notification, GTAs exercising this option for a specific financial year will be deemed to have chosen it for subsequent years unless they decide to revert to the reverse charge mechanism (RCM).

c) For the current financial year, GTAs under Forward Charge Mechanism (FCM) who didn't file the declaration won't face any issues and will remain under FCM. If GTAs wish to return to RCM from the next financial year (2024-2025), they must file Annexure VI between January 01, 2024, and March 31, 2024.

Notification No. 08/2023 Central Tax (Rate); (G.S.R. 543(E)) dated 26 July, 2023
Notification No. 08/2023 Integrated Tax (Rate); (G.S.R. 544(E)), dated 26 July, 2023
Notification No. 08/2023 Union Territory Tax (Rate); (G.S.R. 545(E)), dated 26 July 2023

GST Notification / Circulars / Guidelines / Instructions

Taxability of Shares in Subsidiary Company

Shares held by a holding company in a subsidiary company are considered neither good nor services under the definition of the CGST Act.

Purchase or sale of shares alone does not qualify as a supply of goods or services. To be treated as a supply of services, there must be a supply as defined under Section 7 of the CGST Act.

The circular emphasizes that holding shares of a subsidiary company by a holding company does not constitute a supply of services and, therefore, is not taxable under GST.

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

New eCommerce Tax Rules for Composition Taxpayers

eCommerce operators are now required to follow a unique procedure for goods supplied through them by composition taxpayers.

Key aspects of this special procedure include barring inter-State supply of goods by the taxpayer, collection of tax at source by the eCommerce operator, and mandatory furnishing of supply details through FORM GSTR-8 on the common portal.

The new regulation would be effective from October 1, 2023.

Notification No. 36/2023- Central Tax, dated 04 August, 2023

GST eCommerce Tax Guidelines for Supplies by Unregistered Persons

eCommerce operators will now have to follow specific procedures for goods being supplied through them by unregistered persons.

Operators can only allow supplies if the person has an enrolment number on the common portal. They cannot permit inter-State supply of goods and are not required to collect tax at source for such supplies.

Operators will also be required furnish supply details in FORM GSTR-8 on the common portal.

When multiple operators are involved in a single supply, the operator releasing the final payment is considered responsible.

The new regulation will become effective from October 1, 2023.

Notification No. 37/2023- Central Tax, dated 04 August, 2023

GST Notification / Circulars / Guidelines / Instructions

Central Goods and Services Tax (Second Amendment) Rules, 2023

CBIC has inaugurated the Central Goods and Services Tax (Second Amendment) Rules, 2023, which is a suite of amendments to the existing Central Goods and Services Tax (CGST) Rules, 2017.

Key amendments are;

a) Amendment in Rule 9-Under this amendment, the phrase "in the presence of the said person" has been eliminated from Rule 9 of the CGST Rules.

b) Changes to Rule 10A -Rule 10A now prescribes a new deadline for submitting information related to bank account details.

c) Significant Changes in Rule 21A

d) Extension in Rule 23- The CGST (Second Amendment) Rules, 2023 extends the period permitted for filing an application for the revocation of the cancellation of registration under Rule 23

e) Introduction of New Rule 25

f) Modification in Rule 43 -The changes in Rule 43 relate to the valuation and processing of transactions.

g) Simplification in Rule 46

h) New Clauses in Rule 59- Rule 59 now contains two new clauses related to restrictions on providing the details of outward supplies under certain situations

i) Inclusion in Rule 64-A significant inclusion to Rule 64 is the term "non-taxable online recipient" as referred to in the Integrated Goods and Services Tax (IGST) Act, 2017.

j) Modification of Rule 67-Rule 67 has been changed to modify the method in which tax collected at source (TCS) details are furnished by the operator.

k) Introduction of New Rule 88D -A new rule, has been introduced to deal with the difference in input tax credit as per the auto-generated statement and that availed in the return

Additionally, new forms have been introduced, like FORM GST DRC-01C and FORM GST DRC-01D.

Notification No. 38/2023- Central Tax, dated 04 August, 2023

GSTN Portal Changes

Geocoding Functionality Now Live for All States and Union Territories

The functionality for geocoding the principal place of business address is now live for all States and Union territories. This feature, which converts an address or description of a location into geographic coordinates, has been introduced to ensure the accuracy of address details in GSTN records and streamline the address location and verification process.
GSTN has successfully geocoded more than 1.8 crore addresses of principal places of business. Furthermore, all new addresses post-March 2022 are geocoded at the time of registration itself, ensuring the accuracy and standardization of address data from the outset.
The taxpayers can access and use this functionality:

a) The functionality can be accessed under the Services/Registration tab in the FO portal.

b) The system-generated geocoded address will be displayed, and you can either accept it or update it as per your requirements. In cases where the system-generated geocoded address is unavailable, a blank will be displayed, and you can directly update the geocoded address.

c) The geocoded address details will be saved separately under the "Place of Business" tab on the portal. It can be viewed under My profile>>Place of Business tab under the heading "Principal Geocoded" after logging into the portal.

d) The geocoding link will not be visible on the portal once the geocoding details are submitted by you. This is a one-time activity, and once submitted, revision in the address is not allowed. The functionality will not be visible to the taxpayers who have already geocoded their address through new registration or core amendment.

e) The address appearing on the registration certificate can be changed only through the core amendment process. The functionality would not impact the previously saved address record.

f) It is available for normal, composition, SEZ units, SEZ developers, ISD, and casual taxpayers who are active, cancelled, and suspended.

GSTN Portal Changes

Advisory: e-Invoice Exemption Declaration Functionality Now Available

E-Invoice Exemption Declaration functionality is now live on the e-Invoice portal.
The functionality is specifically designed for taxpayers who are by default enabled for e-invoicing but are exempted from implementing it under the CGST (Central Goods and Services Tax) Rules.

a) The e-Invoice Exemption Declaration functionality is voluntary and can be accessed at the e-Invoice portal (www.einvoice.gst.gov.in).

b) It is applicable to taxpayers who are exempted from e-Invoicing as per the provisions of the CGST Rules.

c) Any declaration made using this functionality will not change the e-Invoice enablement status of the taxpayer.

d) The responsibility to take decision vis-à-vis exemption with reference to various Notifications issued by the Government and report on the portal is of the person.

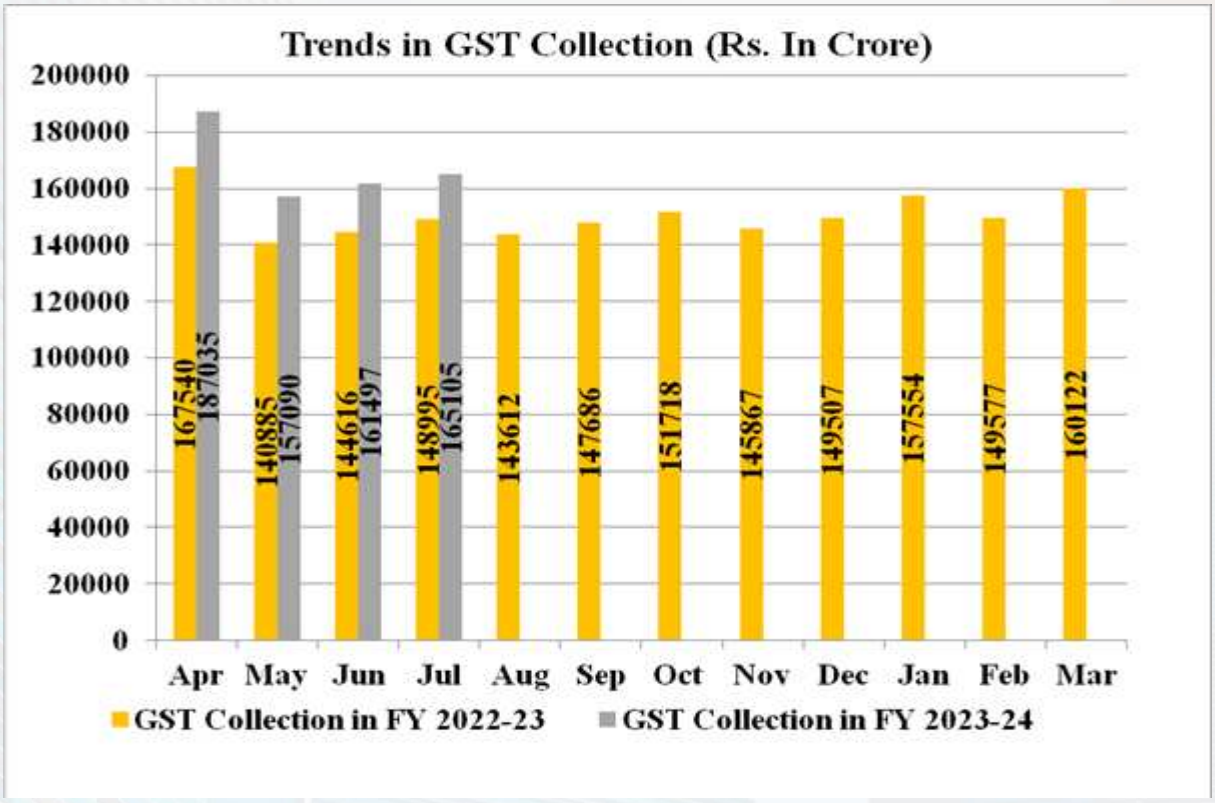
e) The facility to report exemption declaration is purely for business facilitation purposes.

Advisory on E-Invoice - Services Offered by the Four New IRPs

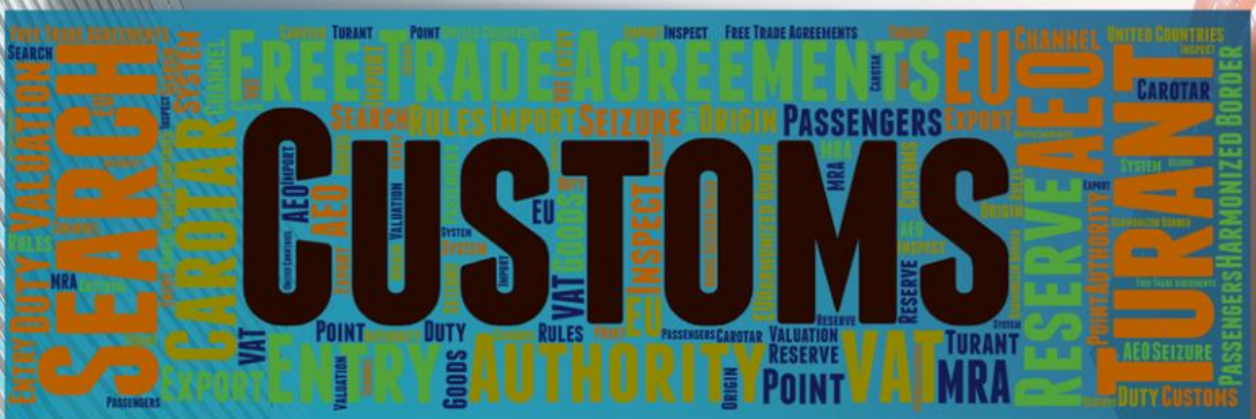
To access the detailed advisory, please follow the link below

https://tutorial.gst.gov.in/downloads/news/e_invoice_services_offered_by_the_new_irps_updated_irps_final_1Aug2023.pdf

GST Revenue Collection in July 2023 - Rs. 1,65,105 Cr.



Source: PIB



- Interest and penalty not applicable on delayed payment of CVD/SAD/Surcharge – SC
- Second hand goods not liable to Anti-Dumping Duty – CESTAT
- Enhancement of the transaction value without first establishing the prices of contemporaneous imports of identical or similar goods is not legally sustainable – CESTAT
- Rejection of conversion of shipping bill due to inadvertent error not sustainable – CESTAT
- Earphones common for all gadgets eligible for exemption – CESTAT
- Product chemically modified is still liable for exemption – CESTAT
- When the assessee alleges 'mala fides' from the adjudicating authority, the same has to be specifically pleaded with full particulars- HC
- Other Notifications/Circulars/Instructions

Interest and penalty not applicable on delayed payment of CVD/SAD/ Surcharge – SC

DA Insights:

The importer can consider this judgment as landmark judgment and thus lead to non-payment of interest and penalty on delayed or non-payment of CVD/SAD/Surcharge. In our view, the decision can be applied in following scenarios also:

- *Delayed or non-payment of Integrated Tax (IGST) on import of goods*
- *CVD/SAD/IGST paid on Advance Authorisation and EPCG defaults*
- *Since 1985, there was no provision to levy interest on CVD/SAD and all the interest collected by the Government in last 48 years was an illegal collection. Therefore, the taxpayer may explore to file refund of interest paid in the past, relying on the 9-judges' decision of SC in the case of Mafatlal Industries.*
- *Importer can now analyse whether to opt for DGFT Amnesty scheme or not to opt since the portion of CVD/SAD is always higher in total duty for EPCG scheme.*

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Issue:

The Hon'ble Supreme Court ('SC') in the case of Union of India v. Mahindra and Mahindra, SLP (C) Diary No. 18824/2023 dismissed the SLP filed by the Government of India against the decision of the Honorable Bombay High Court (HC) which held that the interest and penalty is a substantive levy and there is no provision under Customs Tariff Act, 1975 to provide for such levy. Hence, interest and penalty are not payable on delayed or non-payment of CVD/SAD/Surcharge.

Legal Provisions:

Section 28(2) of the Customs Act, 1962 and, therefore, Section 28AB of the Customs Act, 1962

Observation and Comments:

The Honorable Apex Court observed and held that:

- There is no determination of duty under Section 28(2) of the Customs Act, 1962 and, therefore, Section 28AB of the Customs Act, 1962 is also not applicable. Petitioner has also paid the difference between the admitted duty liability and the amount settled by respondent no.2. We do not agree with respondent no.2 that CVD, SAD, and surcharge are being recovered under Section 28 of the Customs Act, 1962. Consequently, Section 28AB of the Customs Act, 1962 also will also not be applicable. In the absence of specific

UOI v. Mahindra and Mahindra [SLP (C) Diary No. 18824/2023]

Interest and penalty not applicable on delayed payment of CVD/SAD/ Surcharge – SC

DA Insights:

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provision relating to levy of interest in the respective legislation, interest cannot be recovered by taking recourse to machinery relating to recovery of duty.

- The provisions relating to interest contained in Section 28AB of the Customs Act, 1962 are not borrowed in the legislation imposing levy of surcharge or CVD or SAD. Deriving financial benefits itself cannot be a ground to order payment of interest in the absence of any statutory provisions for payment of interest.

UOI v. Mahindra and Mahindra [SLP (C) Diary No. 18824/2023]

Second hand goods not liable to Anti-Dumping Duty – CESTAT

DA Insights:

The CESTAT rightly held that merely because the value is based on a new product originated from China, it cannot be said that the second-hand goods is subject to levy of ADD.

Issue:

The respondent filed Bill of Entry for import of used and second hand Injection Moulding Machine /Star Robotic Arm under EPCG Scheme and since the goods were second hand and used, these were subjected to first check examination and the value was apprised by the Chartered Engineer on higher side from the estimated value of the new machinery as on the year of manufacture. Further, the department alleged that originated from China attracts ADD at the rate of 174% as per the provisions of Sl.No.13 of Customs Notification No.39/2010 dt. March 23, 2010 and accordingly BoE assessed. The appeal is filed against the order before Commissioner (A) which held that the goods being used and second-hand goods levy of ADD is not attracted which was also noted that in a similar a case in C.Cus.No.103/2010 dt. 01.02.2010 in respect of an appeal filed by M/s.Trinity Exporters. The department filed the appeal to CESTAT against the order.

Legal Provisions:

Customs Notification No.39/2010 dt. March 23, 2010

Observation and Comments:

The Honorable CESTAT observed and held that:

- Merely because the value is based on a new product originated from China, it cannot be said that the second-hand goods is subject to levy of ADD. The ADD is levied to protect domestic industry. The findings in respect of an investigation for levy of ADD are in regard to manufacture / price of new machinery. It cannot be said that the manufacturers of new machine will suffer material injury due to import of second hand and used machine which has also been held by the Tribunal in a similar issue in the case of Trinity Exports.
- After appreciating the facts and following the above decision, we are of the considered opinion that there are no grounds to interfere with the impugned order. The same is sustained. The appeal is dismissed being devoid of merits.

CC vs M/s.First Engineering Plastics India Pvt. Ltd. [Customs Appeal No. 40478 OF 2014]

Enhancement of the transaction value without first establishing the prices of contemporaneous imports of identical or similar goods is not legally sustainable – CESTAT

DA Insights:

The Honorable CESTAT rightly held that the transaction value cannot be enhanced based on contemporaneous imports of identical goods when there is no finding, no allegation of mis-declaration, when no additional amount paid by the importer and also when the price is not influenced being related party.

Issue:

The respondent has imported Raw Silk Yarns in hanks and the value declared by was at USD 13.75 per kg. Basing on contemporaneous value of import of Raw Silk at USD 28.5 per kg., the Revenue has sought to enhance the transaction value of the imported goods. The Commissioner (A) set aside the revenue order against which the appeal is filed by the revenue at CESTAT.

Legal Provisions:

Section 14 of Customs Act, 1962 and Customs Valuation Rules, 2007

Observation and Comments:

The Honorable CESTAT observed and held that:

- There is no finding as to how this consignment was considered as contemporaneous import of identical goods in terms of Rule 4 of the Customs Valuation Rules, 2007.
- We find that there were no allegations that the assessee had mis-declared the price actually paid or misdescribed the goods or that the particular import fell within any of the situations enumerated under the Customs Valuation Rules.
- The import was found to be made within the contract period. It is not the case of the Revenue that any amount over and above the contracted price was paid by the importer to the supplier, nor is it their case that the importer was related to the supplier or that the price paid was influenced by any extra commercial consideration.

CC vs M/s. Kaveri Silks & Jute Private Limited [Customs Appeal No. 41617 of 2013 and Customs Appeal No. 41619 of 2013]

Rejection of conversion of shipping bill due to inadvertent error not sustainable – CESTAT

DA Insights:

The rejection of conversion of shipping bills based on circular and other vague reasons is very common for which the CESTAT rightly countered on each allegation under the said appeal. Currently, the law have been amended with the prescribed time limit.

Issue:

The appellant on shipping bill eligible for Focus Product Scheme and AIR Duty Drawback inadvertently omitted to claim the drawback applicable to the exported goods under the scheme. The appellant then filed a request for conversion /amendment of the shipping bills into drawback shipping bills as provided under Section 149 of the Customs Act, 1962 read with Rule 12 of the Customs, Central Excise and Service Tax Drawback Rules, 1995. The original authority vide orders impugned herein rejected the request. Hence these appeals.

Legal Provisions:

Section 149 of the Customs Act, 1962 read with Rule 12 of the Customs, Central Excise and Service Tax Drawback Rules, 1995

Observation and Comments:

The Honorable CESTAT observed and held that:

- The first ground for rejection is that some of the requests are made beyond the period of 3 months as stipulated in the Board circular No.36/2010. The very same issue came up for consideration before the Tribunal in the case of Autotech Industries (India) Ltd. (supra) and the Tribunal held that the request for conversion of shipping bill cannot be rejected as time barred on the basis of the Board circular.
- The exporter cannot be disadvantaged by rejecting the request for conversion of the shipping bill when the export of goods have not been disputed. Further, there is no evidence brought forth by the department as to any specific violation of any provisions of law with regard to the goods exported.
- The third ground for rejection is that the appellant has not put forward any ground justifying that the omission to file drawback shipping bill was for reasons beyond his control. It can be seen that the said rule allows conversion of shipping bill, if the exporter or his authorized agent has, for reasons beyond his control, failed to file the declaration.

M/s. Gupta Enterprises vs CC [Customs Appeal No. 40150 of 2014]

Earphones common for all gadgets eligible for exemption – CESTAT

DA Insights:

The parts vs accessories dispute is common under various notifications. In the present case, the notification is very clear on which aspect is excluded when being part of the mobile phone and not when it is an accessory common to all IT hardware.

Issue:

The appellant filed two appeals to assail the OIO. The appellant imported earphones of two models and classified these two goods under customs tariff heading 8518 30 00 which attracted basic customs duty of 15 %. The appellant claimed the benefit of exemption Notification No. 57/2017-Cus dated June 30, 2017 as amended by Notification No. 22/2018-Cus dated February 02, 2018 (S. No. 18). This exemption notification exempted all goods falling under customs tariff heading 8518 except "the following parts of cellular mobile phones, namely, microphone, wired headset, receiver" in excess of 10%.

Legal Provisions:

Notification No. 57/2017-Cus dated June 30, 2017 as amended by Notification No. 22/2018-Cus dated February 02, 2018 (S. No. 18)

Observation and Comments:

The Honorable CESTAT observed and held that:

- Thus, the earphones are neither a part of nor are they essential to use a mobile phone. They only add additional utility. Therefore, the earphone will qualify as an accessory which can be used with cellular mobile phone as well as other electronic devices. When used with the cellular mobile phone, it will be an accessory to mobile phone but will not be its part. Therefore, the submission of the learned counsel for the appellant that earphones are not parts of cellular mobile phones must be accepted.
- What is evident from the entry no. 18 is that only such microphones, wired headsets and receivers as are parts of cellular mobile phones get excluded from the exemption notification and all other goods falling under CTH 8518 are exempted.
- The earphones in dispute CX 275s are not parts of any mobile phone but are accessories which can be used with a variety of electronic gadgets including cellular mobile phones.
- The demand of duty in the impugned orders cannot, therefore, be sustained and need to be set aside. Consequently, the penalty imposed in one of the order dated June 1, 2020 also need to be set aside.

M/S Sennheiser Electronics India Pvt Ltd vs PC [CUSTOMS APPEAL NO. 50983 OF 2020]

Product chemically modified is still liable for exemption – CESTAT

DA Insights:

When the classification itself is not changing due to chemical modification, the benefit of the exemption notification cannot be denied which is also held by CESTAT.

Issue:

The issue involved in the present case is that whether the high-density polyethylene (HDPE) granules which is chemically modified is liable for exemption Notification No. 12/2012-Cus dated 17.03.2012 (Serial No. 237) or otherwise.

Legal Provisions:

Notification No. 12/2012-Cus dated 17.03.2012 (Serial No. 237)

Observation and Comments:

The Honorable CESTAT observed and held that:

From the above composition, it can be seen that the product is high density polyethylene and it consists of 98% ethylene by weight. Therefore, even though some additives in very miniscule percentage exists in the composition but chemical character of the product i.e., high density polyethylene does not get altered and the same cannot be classified in any other entry other than high density polyethylene.

Therefore, we are of the clear view that even though miniscule percentage of different chemicals including additive mixed with HDPE, the goods remain as high-density polyethylene and therefore clearly covered under the exempted entry in Notification No. 12/2012-Cus dated 17.03.2012. The judgments cited by the learned Counsel also support their case. Accordingly, we are of the view that the appellant is entitled for exemption under Notification No. 12/2012-Cus in respect of their imported goods i.e., High density polyethylene. Hence the impugned order is set-aside and the appeal is allowed.

Vikram Plasticizers vs CC [Customs Appeal No. 12727 of 2018-DB]

When the assessee alleges 'mala fides' from the adjudicating authority, the same has to be specifically pleaded with full particulars- HC

DA Insights:

The issue is well settled that the new issue cannot be raised at higher level during the legal proceedings if the same is not raised during the initial level. Further, any allegation of 'mala fide' to be specifically pleaded with full particulars.

Issue:

The appellant has filed the present appeal impugning the order passed by the Appellate Tribunal dismissing the appellant's appeal against an order passed by the Objection Hearing Authority ('OHA'). In terms of the said order, the OHA had rejected the appellant's objection under Section 74 of the DVAT Act, 2004 against the default assessment of tax framed by the Assessing Authority, under Section 32 of the DVAT Act, for the financial year 2013-14.

Legal Provisions:

Section 32 of DVAT Act, 2004

Observation and Comments:

The Honorable High Court observed and held that:

- It would not be open for the appellant now to raise any new challenge to the order passed by the Assessing Authority including on the ground that it had not been signed. This question does not arise from the impugned order passed by the Tribunal. The appellant has all along proceeded on the basis that the said order was passed by the Assessing Authority and had assailed the same on merits, which was considered by the OHA and by the learned Tribunal.
- It is well-settled that in case mala fides are alleged, the same has to be specifically pleaded with full particulars. The scope of the appeal, in the present case, is limited to examining the substantial questions of law that arise in the matter. The appeal is, accordingly, dismissed.

M/S Chitra Hardware vs Commissioner of Vat & Anr [VAT APPEAL 11/2023 – HC]

Customs Notification / Circulars / Guidelines / Instructions

Expansion of Auto LEO Facility in ECCS

It highlights the expansion of the automatic Let Export Order (LEO) facility in the Express Cargo Clearance System (ECCS). The circular aims to enhance ease of doing business by introducing new provisions for Customs Shipping Bills (CSB). Through Circular 19/2023-Customs, the auto LEO facility is now extended to CSBs marked for 'assessment only', subject to X-ray clearance and no mandated examination.

Circular No. 19/2023-Customs, dated 02 August 2023

CBIC Standardizes AD Code Registration Process for Exports

These

CBIC has issued an instruction to rely on only two specific documents uploaded through the e-Sanchit portal for AD Code approval and bank account registration. These documents include the Bank's Authorization Letter and a copy of a cancelled cheque or a bank statement endorsed by the bank.

Instruction No. 25/2023-Custom, dated 28 July 2023

Implementation of RoDTEP & RoSCTL

It makes amendments to customs Notification No. 45/2017-Customs, Notification No. 47/2017-Customs and Notification No. 50/2017-Customs. The amendments are related to the implementation of two schemes: the Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP) and the Scheme for Rebate of State and Central Taxes and Levies (RoSCTL). These schemes are part of the Foreign Trade Policy, 2023 and to implement recommendation of GST COUNCIL in its 50th meeting.

Notification No. 46/2023-Customs, dated 26 July, 2023

Deferred Payment of Import Duty (Amendment) Rules, 2023

The amendment brings two significant changes to the 2016 rules.

It provides the Central Government the power, under exceptional circumstances, to allow payment on a different due date if deemed necessary and expedient. This introduces a degree of flexibility that can accommodate unusual circumstances.

It allows eligible importers to make deferred payments if they have paid the duty for a bill of entry within the due date and also paid the differential duty along with the interest for reassessment within one day, excluding holidays.

Notifications No. 58/2023-Customs (N.T.), dated 03 August, 2023

Customs Notification / Circulars / Guidelines / Instructions

New Procedure for Clearance of Restricted Goods

The notice elaborates the conditions under which clearance of restricted goods will be permissible and the specific procedural aspects of port registration and clearance. Importantly, it designates the role of the Turant Suvidha Kendra (TSK) section, outlining how it will facilitate the process, from forwarding the covering letter to endorsing the debit entry in the register.

The new procedure also emphasizes the critical role of uploading the debit sheet attached with the SIL on e-Sanchit against the Bill of Entry for import of restricted goods.

Public Notice: 66/2023-Customs, Dated: 03 August 2023

RoDTEP Regularization for 18 HS Codes from 01.01.2021 by DGFT

RoDTEP benefit relating to 18 HS codes under heading 5208 notified vide Notification no. 63/2015-20 dated 25.03.2023 is being regularized w.e.f. 01.01.2021, in consultation with Department of Revenue

Notification No. 24/2023-DGFT, dated 03 August, 2023

DGFT extended Deadline for Restricted Computer Imports in India

The start date of the new import requirements to November 1, 2023, giving businesses an extended transitional period to adjust to the changes.

Consequently, importers of Laptops, Tablets, All-in-one Personal Computers, ultra small form factor Computers, and Servers classified under HSN 8471 can continue their operations without disruption till the end of October.

Notification No. 26/2023-DGFT, dated: 04th August 2023


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Goods and Services Tax

- Big traders exit gaming stock Delta Corp as GST rates rise.
- GST Council to review taxation on online gaming, casinos & horse racing in 6 months from implementation
- New GST Rules: What has changed for companies with more than Rs 5 crore turnover today?
- Landmark GST Ruling! ITC Can't Be Denied Automatically for Non-Payment of Taxes by Supplier, Says Calcutta HC

Customs and other

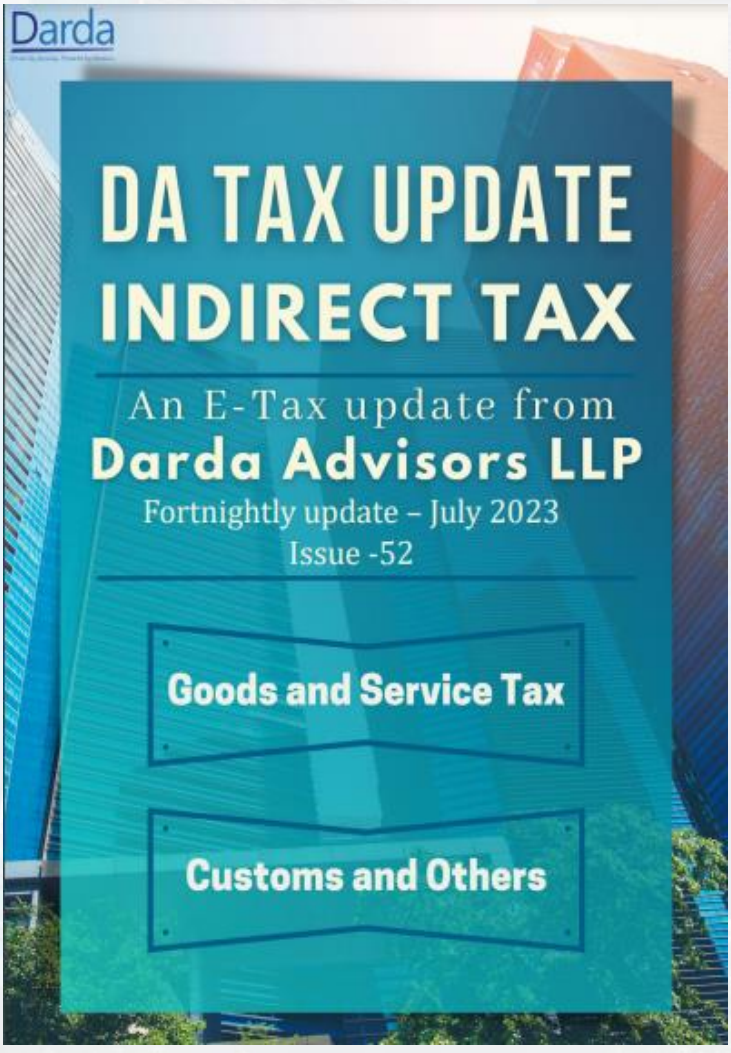
- CBIC redefining NAC role to make Customs assessment more efficient: Johri

- Oppo, Vivo, Xiaomi Found Evading Tax Worth Rs. 9,000 Crore; Rs. 1,630 Crore Recovered So Far: MoS IT

DA Updates and Articles for the month of July 2023

Indirect Tax Fortnightly Update for the month of July 2023

https://dardaadvisors.com/wp-content/uploads/2023/07/DA-Indirect-Tax-Fortnightly-Update_July-2023.pdf



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