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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

October 2023
Issue: 41

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We are pleased to present to you the Forty first 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 September 2023.

During the month of September 2023, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as Non-filing of GSTR_3B over an extended period can lead to GST registration cancellation & No Penalty for non-fulfilment of export obligation under EPCG due to Court restrictions.

In the Forty first 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 September 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

October 2023

10
GSTR-7
TDS Deductor

10
GSTR-8
TCS
Deductor

11
GSTR-1
Normal Taxpayer

13
GSTR-1/6
QRMP Taxpayer & Input Service Distributor

20
GSTR-5A
OIDAR Service Provider

20
GSTR-3B
Normal & QRMP Taxpayer

20
GSTR-5
Non-Resident Taxable Person

- ITC Cannot Be Denied Merely Based on GSTR 2A and 3B Discrepancies – HC ITC not available if tax not paid by supplier - HC
- Denial of SGST Incentives based on subsequent conditions not sustainable – HC
- GST Assessment Order set aside considering absence of natural justice
- Being an e-commerce operator does not lead to liability under section 9(5) of CGST Act, 2017 – AAR
- Failure to carry valid documents during transit constitutes deliberate tax evasion – HC
- Adjudicating authority needs to follow order of quasi-judicial authority GST Audit cannot be conducted after closure of business – HC
- Errors in filing Tran-1 does not impact eligible credit – HC
- Non-filing of GSTR 3B over an extended period can lead to GST registration cancellation
- Passing of detention order without recording any findings is unsustainable in law – HC
- Refund claim rejected without considering material unjustified – HC
- Other Notifications/Circulars/Guidelines/instructions/Portal changes

ITC Cannot Be Denied Merely Based on GSTR 2A and 3B Discrepancies – HC

DA Insights:

The judgments are in favor and against for eligibility of ITC based on reconciliation of GSTR 2A vs GSTR 3B and there is need to settle the same at the Apex Court to have major relief for all taxpayers.

Issue:

The present writ petition has been filed, impugning assessment order and recovery notice where ITC was denied due to difference in Form GSTR 2A and GSTR 3B.

Legal Provisions:

Section 16(2) of CGST Act, 2017 read with Rule 36(4) of CGST Rules, 2017

Observation and Comments:

From the perusal of the Assessment Order impugned in the present writ petition, it appears that the only ground on which the petitioner has been said to have availed the input tax credit is the difference between GSTR 2A and GSTR 3B. This Court, after taking note of the judgment of the Supreme Court in the case of The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited [2023 (3) TMI 533 SC] as well as Calcutta High Court judgment in Suncraft Energy Private Limited v. The Assistant Commissioner, State Tax, Ballygunge Charge has held that the input tax credit of the assessee under the GST regime cannot be denied merely on the difference of GSTR 2A and 3B. [Judgment dated 02.08.2023 in MAT No.1218/2023].

Paragraph 8 of Diya Agencies v. The State Tax Officer [Judgment dated 12.09.2023 in WPC 29769/2023] of this Court would read as under:

"...Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit. The assessing authority is therefore, directed to give an opportunity to the petitioner to give evidence in respect of his claim for input tax credit....."

In view thereof, the present writ petition is allowed. The matter is remitted back to the file of the Assessing Authority/1st respondent to examine the evidence of the petitioner irrespective of the Form GSTR 2A for the petitioner's claim for the input tax credit. After examination of the evidence placed by the petitioner/assessee, the Assessing Authority shall pass fresh orders in accordance with the law.

M/S Henna Medicals vs STO and Others [WP(C) NO. 30660 OF 2023 – Kerala High Court] and Diya Agencies vs STO and others [WP(C) NO. 29769 OF 2023]

Denial of SGST Incentives based on subsequent conditions not sustainable – HC

DA Insights:

This kind of condition was inserted by all States in their policies [Maharashtra, Rajasthan] at some point post implementation of GST led to non-payment of huge quantum of incentive. Hopefully this decision will bring a spring of life into those halted cases.

Issue:

The instant writ application filed to declare that amendment carried out vide Notification dated 7th March, 2019 by the Department of Industries, Government of Jharkhand to Clause 7.5 of The Jharkhand Industrial Investment and Promotion Policy, 2016 (for short 'Policy of 2016'), wherein an 'Explanation' has been inserted to define the term 'State GST paid on Intrastate sale subject to tax realization in the State Government Treasury' to the extent it has been provided that if any Input Tax Credit is claimed on the goods supplied by the Unit by any subsequent taxable person, then SGST paid on such goods shall not be eligible for reimbursement, is wholly arbitrary, illegal and contrary to the principles of Legitimate Expectationsin and has an effect of imposing additional restriction and/or condition nullifying the effect of the Policy of 2016 and is, thus, wholly without jurisdiction and beyond the power of the Department of Industries which is only entitled under Clause 10.7 to lay down guidelines and/or issue statutory Notification for giving effect to the provisions of the Policy.

Legal Provisions:

Notification dated 7th March, 2019 by the Department of Industries, Government of Jharkhand to Clause 7.5 of The Jharkhand Industrial Investment and Promotion Policy, 2016

Observation and Comments:

The Honorable High Court observed and held that:

The condition of granting "Net SGST" subsidy under the State Industrial Policy to the manufacturer only when the recipient has not availed the ITC (Input Tax Credit) of SGST charged by the manufacturer, is arbitrary and is clearly without jurisdiction, without sanction of law and having an effect of destroying the acquired and/or vested right of the Petitioner.

Adequate industrial development has not taken place in the State of Jharkhand in a proportionate manner due to lack of confidence among the potential investors regarding certainty of implementation of the Industrial Policy and such amendment had the effect of making the incentive illusory.

[Atibir Industries Company Ltd vs State of Jharkhand - W.P. (T) No. 3357 of 2023 – Jharkhand High Court]

GST Assessment Order set aside considering absence of natural justice

DA Insights:

There should be adequate system in GST portal itself so that no proceedings order is issued without personal hearing records to avoid such repetitive litigations at various courts.

Issue:

The present writ petition is filed against the mere ground that the petitioner is not afforded with an opportunity of hearing as mandated under Section 75 of the CGST Act, 2017.

Legal Provisions:

Section 75 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

I find there has been violation of Sub Section 4 of Section 75 of the GST Act and, therefore, the impugned order is hereby set aside and the matter is remitted back to the file of the 1st respondent for passing fresh assessment order after affording an opportunity of personal hearing to the petitioner.

The petitioner is directed to appear before the 1st respondent on 20.09.2023 and make his submission with respect to the Show Cause Notice issued to him for finalization of the assessment order. It is made clear that no notice of hearing shall be given to the petitioner.

Julie Jose vs STO & Others [WP(C) NO. 28911 OF 2023 – Kerala High Court]

Being an e-commerce operator does not lead to liability under section 9(5) of CGST Act, 2017 – AAR

DA Insights:

This ruling provides clarity on the role and tax liability of e-commerce operators in cases where they act as intermediaries connecting service providers with customers through digital platforms. In conclusion, the GST AAR Karnataka ruling has significant implications for businesses operating in the e-commerce sector, shedding light on the distinction between e-commerce operators and service providers and clarifying their respective tax obligations..

Issue:

Advance Ruling was sought to determine the company's status as an e-commerce operator and its liability for GST. The ruling addresses critical questions regarding the definition of an e-commerce operator and the nature of the supply, particularly in relation to Section 9(5) of the CGST Act, 2017, and Notification No. 17/2017 dated 28.06.2017.

Legal Provisions:

Section 9(5) of CGST Act, 2017 read with notification No. 17/2017 dated 28-06-2017

Observation and Comments:

The AAR observed and held that:

In the instant case the applicant owns digital platform ('Namma Yatri' APP), for the supply of services. Thus the applicant squarely fits into the definition and qualifies to be an Electronic Commerce Operator.

However, the crucial and most important issue is whether the impugned services are supplied through the electronic commerce operator or not.

In the instant case, it is observed that the applicant, because of their unique business model, merely connects the auto driver and passenger and their role ends on such connection; they do not collect the consideration; they have no control over actual provision of service-by-service provider; they do not have the details of the ride; they do not have control room/call centre etc. The supply happens independent of the applicant and the applicant is involved only in the identification of the supplier of services and doesn't take responsibility for the operational and completion of the ride.

Thus, it is observed that supply of services are not through the electronic commerce operator, but are independent. Therefore, the applicant does not satisfy the conditions of Section 9(5) for the discharge of tax liability by electronic commerce operator. Thus, the applicant, though qualifies the definition of being an e-commerce operator, is not the person liable for discharge of tax liability under Section 9(5) of the CGST Act, 2017.

Juspay Technologies Pvt. Ltd. (GST AAR Karnataka - Advance Ruling No. KAR ADRG 31/2023

Failure to carry valid documents during transit constitutes deliberate tax evasion - HC

DA Insights:

The Honorable High Court considered the procedural aspect and factual aspect that the appellant has fabricated a story that the local transporter failed to arrange the statutory requirements.

Issue:

During inspection at the checkpost, the vehicle was intercepted and officer found that no documents prescribed under Section 129 of the Kerala GST Act, 2017 read with Rule 138 of the Rules made thereunder were accompanied with the consignment and accordingly issued the SCN against which the writ petition was filed which was disposed of directing the adjudication authority to complete the adjudication of the SCN. Accordingly, the goods again inspected and in the absence of documents as prescribed under GST law, the adjudicating authority passed the penalty order. Accordingly, the present writ petition has been filed.

Legal Provisions:

Section 129 of the Kerala GST Act, 2017 read with Rule 138 and the CGST Rules, 2017

Observation and Comments:

The Honorable High Court observed and held that:

In the absence of valid documents in possession of the person in charge of the goods would be treated as a wilful act of evasion of tax. If the vehicle was not intercepted and goods were not verified, it would have led to the leakage or evasion of the revenue by the dealer.

The taxing provisions have to be construed strictly. When the mandate of law is that the goods being transported must be accompanied with relevant statutory documents and if the goods are being transported without the relevant statutory documents, the consequences would follow.

Considering the provisions of Section 129 of the Kerala Goods and Services Tax Act, 2017 read with Rule 138 of the Rules made thereunder and the facts of the case, I am of the opinion that the impugned order imposing the tax and penalty does not require any interference and therefore the writ petition fails and hereby dismissed.

M/S. EVM Passenger Cars India Pvt. Ltd., vs State of Kerala [WP(C) NO. 10565 OF 2018 – Kerala High Court]]

Adjudicating authority needs to follow order of quasi-judicial authority

DA Insights:

The appellate authority under GST regime cannot remand the matter back to adjudicating authority; however, the adjudicating authority could have filed the appeal against the order instead of not following the order which is rightly considered by the Honorable High Court.

Issue:

The writ petition is filed by the appellant against the impugned order passed by the adjudicating authority on remand by the higher authority by clearly defying and in violation of the order of the higher Appellate Authority which was binding upon the Adjudicating Authority being a subordinate to the Appellate Authority.

Legal Provisions:

Section 100 and 101 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

Such conduct of the Adjudicating Authority is highly deprecable and if such stand is taken by an adjudicating authority on his senior authority's order by contending that his officer's order is not correct and he will not obey and comply such order, there will be administrative anarchy in the Government offices and such conduct is also beyond the norms of the quasi-judicial authority's' function.

If Adjudicating Authority was of the view that order of the Appellate Authority was not in accordance with law he could have gone to further appeal.

DA Insights: The appellate authority under GST regime cannot remand the matter back to adjudicating authority; however, the adjudicating authority could have filed the appeal against the order instead of not following the order which is rightly considered by the Honorable High Court.

Keysight Technologies India Private Limited vs AC [WPA 19783 of 2023 – Calcutta High Court]

Errors in filing Tran-1 does not impact eligible credit – HC

DA Insights:

The decision of High Court considering credit as legible right which cannot be denied even having clerical and procedural error beyond GSTN portal aspect is going to assist in other cases too where ITC eligibility is declined due to errors in filing returns.

Issue:

The Petitioner has challenged the impugned communication which disallowed the transitional credit as claimed under Table7(a)7(A)/7.a.A in the revised FORM GST TRAN-1 filed by the petitioner under Section 140 of CGST Act, 2017, as inadmissible Transitional Credit and asked to pay with interest. The appellant made multiple errors even during revision of Tran-1 by showing the amounts against the inputs held in stock where duty paid invoices are available in Table7.a.A.

Legal Provisions:

Section 140 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The petitioner is responsible for the mistake committed by him in filing TRAN-1 on 24.08.2017. However, the fact remains that the aforesaid amount had remained unutilized as per the monthly returns filed by the petitioner for the month of June-17, which was the last return filed under the TNVAT Act, 2006 before the enactment of the respective GST Acts with effect from 01.07.2017.

The Hon'ble Supreme Court in CCE Vs. Dai Ich Karkaria Limited, 1999 (112) ELT 353, has held that the credit that was validly availed and cannot be denied.

It is held that validly availed credit is indefeasible in law. Although, the petitioner has blundered all the way by filing form TRAN-1 on 24.08.2017 and the revised return on 28.11.2022, the fact remains that the amount of Rs.89,88,498/- was the credit that was lying unutilized in the last return filed by the petitioner for the month of June 2017. Such credit cannot be denied even if there is a mistake in the returns filed in TRAN-1 twice.

Considering the above, Court is inclined to quash the impugned order and remits the case back to the respondents to re-examine the records of the petitioner afresh from the last VAT return for the month of June 2017 under the TNVAT Act, 2006.

M/s.Sri Renga Timbers vs AC [W.P.No.22854 of 2023 and W.M.P.Nos.22327 and 22328 of 2023 – Madras High Court]

Non-filing of GSTR_3B over an extended period can lead to GST registration cancellation

DA Insights:

The decision is going to have impact on the people who filed the belated returns after cancellation of registration.

Issue:

The present writ petition has been filed against the order of cancellation of GST registration of the petitioner on the ground of non filing of the returns, despite notice. The petitioner has paid the tax along with the interest thereon, the petitioner's registration is liable to be restored. As per Section 15 of the GST Act, 2017, an assessee is liable to pay interest, if he failed to make payment of the GST amount or part thereof. According to the learned counsel, if the GST amount and the interest is paid, then the petitioner cannot be held to be a defaulter for not filing the return and therefore, the proceedings for cancellation of the registration becomes non est and the order cancelling registration ought to be restored.

Legal Provisions:

Section 29 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The provisions for cancellation of registration and making payment of the tax due with interest are different. Both the provisions have different scope, purpose and intent. If an assessee fails to make payment of the full GST amount or part thereof, interest is liable to be levied for the delayed payment.

An alternative remedy is available to the petitioner as per the Act and the Rules thereto, which the petitioner should have resorted to within the statutory prescribed limit. Against the order of cancellation of registration, the petitioner ought to have availed the remedy of appeal within a maximum period of three months from the date on which the order is communicated. Admittedly, the petitioner did not file returns for a period of six months consecutively and therefore, the authority has no option than to cancel the registration. I do not find any error of law in the exercise of jurisdiction by the authority in cancelling the registration of the petitioner.

M/s. Sanscorp India Private Ltd vs AC and Others [W.P.(C). No. 24904 of 2023 – Kerala High Court]

Passing of detention order without recording any findings is unsustainable in law – HC

DA Insights:

It is common procedure of detention of goods at various check posts without any adequate reasoning and the Honorable High Court rightly set aside the said detention orders which does not have findings.

Issue:

In the present case, two Eway Bills were generated having validity upto 12.3.2023, and a GR was also prepared on the same day i.e., 6.3.2023 in which invoice numbers and Eway bills have specifically been mentioned. It is stated that after completing the formalities goods were in transit and on way the Driver of the Vehicle fell ill and there was also some break down of the vehicle, therefore onwards journey could not be continued to reach the destination before 12.3.2023. The Vehicle was intercepted and an order under section 129 (3) of the Act was passed to impose penalty against which the appeal was preferred under section 20 of the Act which has been rejected and hence the present writ petition was filed.

Legal Provisions:

Section 129 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The proceedings were initiated only the ground that the goods were transited after expiry of the Eway bills. No other discrepancy has been found either in quality, quantity or goods as disclosed in the invoices, Eway bills or GR.

From a perusal of the aforesaid order the reply submitted by the petitioner has been rejected by only saying that the reply is not found to be acceptable. No other reason has been assigned for rejecting the claim of the petitioner.

In view of the facts and circumstances of the case and since the authorities below have not recorded any findings with regard to the submissions made by the petitioner the impugned orders as well as seizure memo could not be sustained in the eye of law and are hereby quashed. The writ petition succeeds and is allowed.

M/S Rateria Laminators Pvt.Ltd. vs ADC and Others [WRIT TAX No. - 599 of 2023 – Allahabad High Court]

Refund claim rejected without considering material unjustified – HC

DA Insights:

The Honorable High Court rightly set aside the OIA and OIO which did not consider the submission made by the assessee.

Issue:

The petitioner filed an application for seeking refund of ITC for the zero-rated supplies but rejected the petitioner's application for refund, inter alia, on the ground that the petitioner was unable to co-relate the input supplies respect of which ITC refund claim was made and the export of the commodities. The petitioner appealed against the said order however the same was rejected against which the present petition is filed.

Legal Provisions:

Section 54 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The learned counsel for the petitioner has also drawn our attention to various invoices and sample invoices which do, prima facie, indicate that the petitioner had produced the relevant material to establish that input supplies in respect of which ITC was claimed were in respect of export of sugar. Neither the Order-in-Original passed by the Adjudicating Authority nor the impugned order passed by the Appellate Authority discusses the aforesaid invoices and the material produced by the petitioner. None of the said orders indicate any reason as to why the authorities have not considered the said material to be relevant for establishing that the input supplies in respect of which refund was claimed, were directly corelated to export of sugar.

In view of the above, the impugned order is set aside. We restore the petitioner's appeal before the learned Appellate Authority for reconsideration on merits. The Appellate Authority shall examine the material relied upon by the petitioner and if the Appellate Authority is of the view that the same cannot be corelated to the export of sugar as claimed by the petitioner, the Appellate Authority will state the reasons for the same. The petition is disposed of in the aforesaid terms.

KS Commodities Private Limited vs AC [W.P.(C) 8221/2023 – Delhi High Court]

GST Notification / Circulars / Guidelines / Instructions

Amendment to Implement 50th GST Council Decisions

It removes the exemption of integrated tax for the services provided by a person located in a non-taxable territory to another person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

It means that such services will now be subject to integrated tax at the rate of 5% under the reverse charge mechanism, where the recipient of the service in India will be liable to pay the tax and the notification is effective from 1st October 2023

Notification No. 11/2023- Integrated Tax (Rate) Dated: 26th September, 2023

Amendment Implementing 50th GST Council Decisions

The amendment implies that online information and database access or retrieval services received by Certain persons located in a non-taxable territory will be subject to integrated tax from October 1, 2023.

Notification No. 12/2023- Integrated Tax (Rate) Dated: 26th September, 2023

Amendment to 50th GST Council Decisions

The IGST rate for the service of transportation of goods by a vessel from outside India has been changed from 5% to 18%. This is because this service was previously covered under serial number 10, which has been omitted by the amendment it is effective from 1st October 2023.

Notification No. 13/2023- Integrated Tax (Rate) Dated: 26th September, 2023

CBIC Notification on supply of Online Gaming & Actionable Claims

This Notification regulate and tax the supply of online money gaming, online gaming (excluding money gaming), and actionable claims in casinos under section 15 (5) of the CGST Act, 2017.

Notification No. 49/2023- Central Tax Dated: 29th September, 2023

CBIC Amends Notification: Specified Actionable Claims Excluded

The CBIC has amended Notification No. 66/2017-Central Tax to exclude specified actionable claims from the composition levy under section 10 of the CGST Act, 2017.

Notification No. 50/2023- Central Tax Dated: 29th September, 2023

GST Notification / Circulars / Guidelines / Instructions

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

Rules or Forms	Amendments
Rule 8	This amendment specifies that every person liable to be registered under section 25(1) or seeking registration under section 25(3), excluding certain categories such as non-resident taxable persons and those required to deduct or collect tax at source, must declare their Permanent Account Number (PAN) and State or Union Territory in FORM GST REG-01 before applying for registration. Input Service Distributors are required to make separate registration applications.
Rule 14	This amended to include persons supplying online money gaming from outside India to a person in India within the scope of this rule. This implies that certain tax provisions are applicable to such supplies.
New Rule 31B and 31C	Rules 31B and 31C are introduced, specifying the valuation methods for online gaming and actionable claims in casinos, respectively. The rules detail the determination of the value of supplies in these sectors, including considerations like total amounts paid by players.
Rule 46	This amended to specify that certain cases involving the supply of online money gaming require special considerations
New Rule 64	This rule outlines the form and manner of submission of returns by persons providing online information and database access or retrieval services and persons supplying online money gaming from outside India to a person in India
Rule 87	This amended to incorporate provisions related to persons supplying online money gaming from outside India to a person in India, aligning with section 14A of the CGST Act.
Form GST REG-10	Form GST REG-10 is revised to accommodate applications for registration of persons supplying online money gaming from outside India to a person in India and for registration of persons supplying online information and database access or retrieval services from outside India to a non-taxable online recipient in India.
New Form GSTR-5A	Form GSTR-5A is introduced to capture details of supplies of online information and database access or retrieval services made to non-taxable online recipients in India and to registered persons in India, as well as details of supplies of online money gaming from outside India to a person in India.

These amendments are effective from 1st October 2023

Notification No. 51/2023- Central Tax Dated: 29th September, 2023

CBIC Notifies Online Money Gaming as Taxable Goods wef 1st October, 2023

This notification pertains to the supply of online money gaming and its classification as taxable goods under the Integrated Goods and Services Tax (IGST) Act, 2017.

Notification No. 03/2023- Integrated Tax Dated: 29th September, 2023

Customs Notification / Circulars / Guidelines / Instructions

GST council Decision:

The GST Council meeting held on October 7, 2023, covered a range of important decisions and discussions related to taxation and other matters. Here is a summary of the key highlights from the meeting:

Extra Neutral Alcohol (ENA):

- The GST Council decided to give states the power to tax ENA (Extra Neutral Alcohol). States can choose whether to tax it or not, as the right to tax ENA has been ceded to them. The GST Council will not impose a tax on ENA.
- The GST Council exempt Extra Neutral Alcohol (ENA), a key raw material for manufacturing alcoholic liquor for human consumption, from the goods and services tax (GST) giving states the exclusive right to tax the item.
- To be sure, ENA manufactured for industrial purposes will continue to be under the ambit of GST and attract 18 percent tax.

GST Rate Cuts:

- The GST rate on Zari (a type of fabric) was reduced from 18% to 5%.
- The GST rate on molasses was slashed from 28% to 5%.
- There is no tax rate on millet flour containing 70% composition when sold loose without branding, but 5% GST is applicable to branded products containing millet flour.
- The GST Council also discussed reducing the GST rate on millet flour food preparations from 18% to 5%.

Promoting Tourism:

- Conditional exemption from IGST was approved for foreign-flagged vessels engaged in coastal runs to promote tourism.

Appellate Tribunal:

- The tenure of the President of the appellate tribunal was increased to 70 years from the previous 67 years.
- Members of the appellate tribunal can now serve up to 67 years of age.
- Advocates with up to 10 years of experience are eligible to become appellate tribunal members.

Online Gaming Tax:

- States raised concerns about imposing GST on online gaming companies retrospectively.
- Several online gaming companies have received show-cause notices for alleged GST evasion, with some dating back to 2017.

Customs Notification / Circulars / Guidelines / Instructions

Data Centers:

- The GST Council is likely to issue a clarification circular regarding the taxation of data centers. Data center services may be treated as exports and exempt from GST for overseas customers.

Steel Scrap:

- The GST Council discussed the treatment of GST on steel scrap and the possibility of levying it on a reverse charge mechanism (RCM) basis.

Corporate Guarantees:

- The council considered levying an 18% GST on loans secured by India Inc on bank guarantees and corporate guarantees provided by holding companies/subsidiaries.

Distilled Alcohol for Liquor:

- The council discussed exempting distilled alcohol used to manufacture liquor from GST.

ENA (Extra Neutral Alcohol) for Industrial Purpose under GST:

- ENA for industrial purposes will now come under the purview of GST. This implies that GST will be applicable to ENA when it is used for industrial purposes.

Revenue Secretary's Announcement on Appeals:

- Revenue Secretary Sanjay Malhotra announced that appeals can be filed until January 31, 2024, for orders passed until March 2023. This can be done with enhanced pre-deposits.

Miscellaneous:

- The meeting also touched upon various other issues, including GST clarification on bank and corporate guarantees, extension of concessional tax rates for visually impaired persons, and exemptions for millets sold in powdered form.

GSTN Portal Changes

Advisory: Time limit for Reporting Invoices on the IRP Portal

The government has imposed a time limit on reporting old invoices on e-invoice IRP portals for taxpayers with AATO greater than 100 crores. To ensure timely compliance, taxpayers cannot report invoices older than 30 days. This restriction applies to all document types, including invoices, credit notes, and debit notes. No reporting restriction is currently in place for taxpayers with AATO of less than 100 crores. Implementation is proposed from November 1, 2023.

Advisory: Geocoding Functionality for the Additional Place of Business

1.GSTN geocoding functionality for the "Additional Place of Business" address is now active across all States and Union Territories. This builds upon the geocoding functionality earlier implemented for the principal place of business, operational since February 2023.

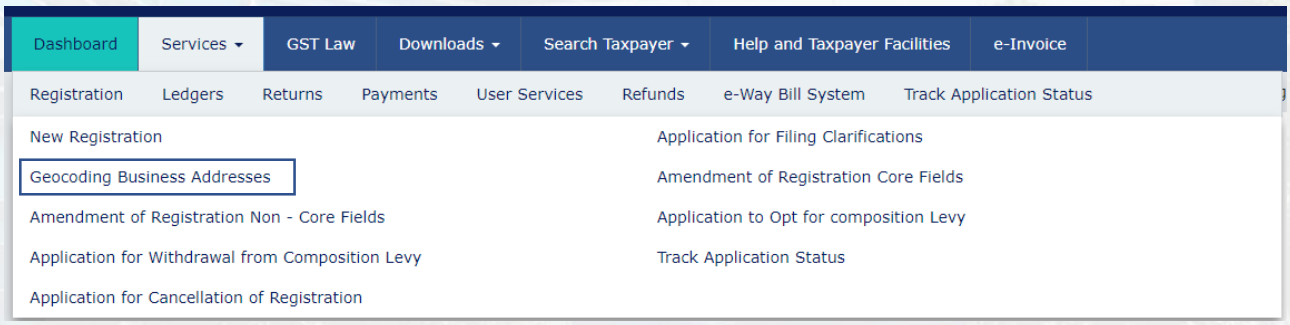
2. Here is a brief guide on how to utilize this feature:
Access: Navigate to Services>>Registration>>Geocoding Business Addresses tab on the FO portal to find this functionality.

Usage: The system will display a system-generated geocoded address. You have the option to accept this or modify it as needed. If a system-generated address is not available, you can input the geocoded address directly.

Viewing: Saved geocoded address details can be found under the "Geocoded Places of Business" tab. After logging in, go to My Profile >> Geocoded Places of Business.

One-time Submission: This is a one-time activity, and post-submission, address revisions are not permitted. Taxpayers who have already geocoded their addresses through new registration or core amendment would not be required to do this as on the GST portal their address will be shown as geocoded. Remember, changes to the address on your registration certificate can only be made through the core amendment process. This geocoding feature will not affect previously saved addresses.

Eligibility: This feature is accessible to normal, composition, SEZ units, SEZ developers, ISD and casual taxpayers whether they are active, canceled, or suspended.



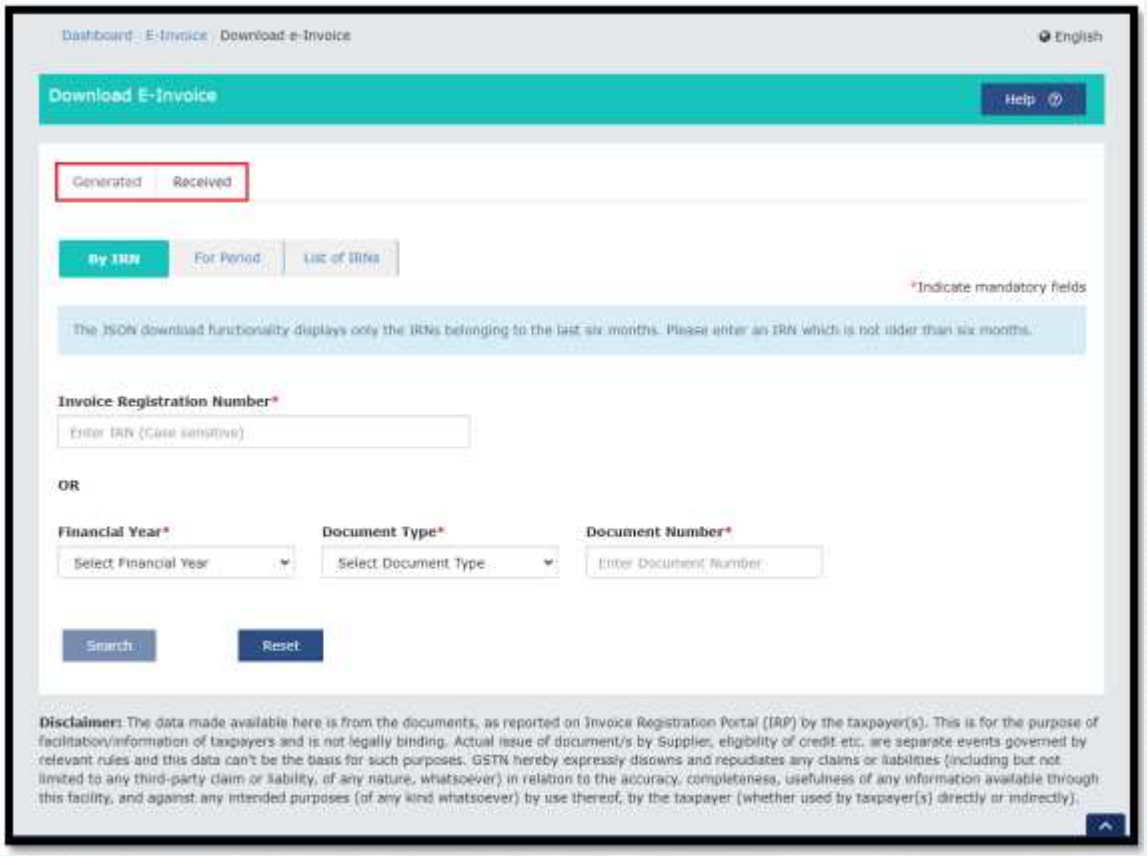
GSTN Portal Changes

Advisory: e-Invoice JSON download functionality Live on the GST e-Invoice Portal

e-Invoice JSON download functionality is now live on the GST Portal this functionality allows to download all e-invoices reported across all six IRPs (Invoice Registration Portals), i.e. complete data and we can download e-Invoice JSON files for up to 6 months from the date of IRN generation.

For your convenience, we have attached a comprehensive manual and FAQ document below for your ready reference. The same can be accessed at:

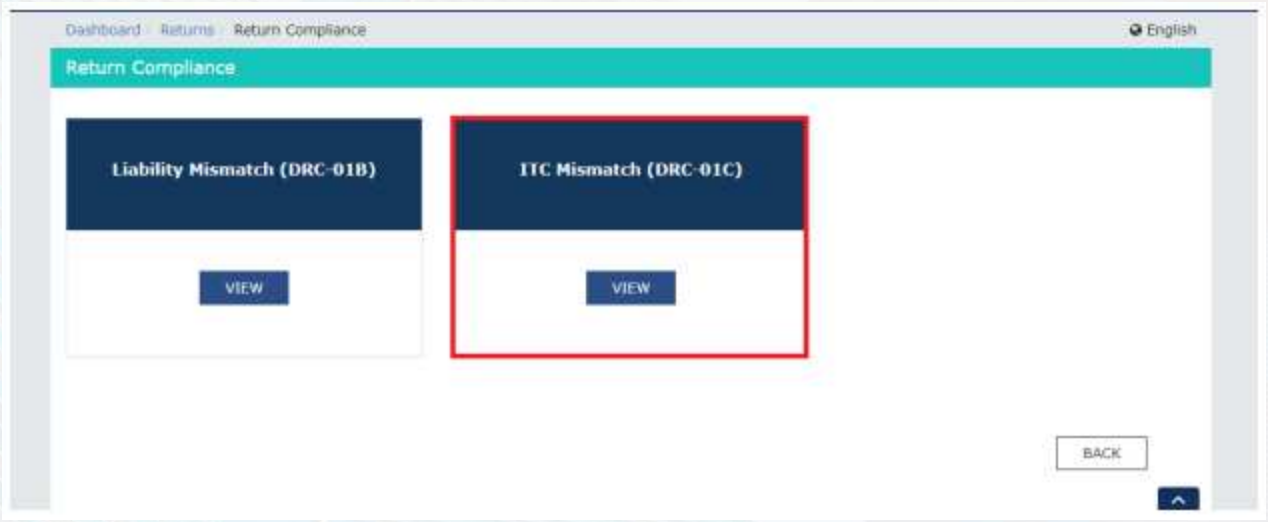
https://tutorial.gst.gov.in/downloads/news/e-invoice_json_download_functionality.pdf



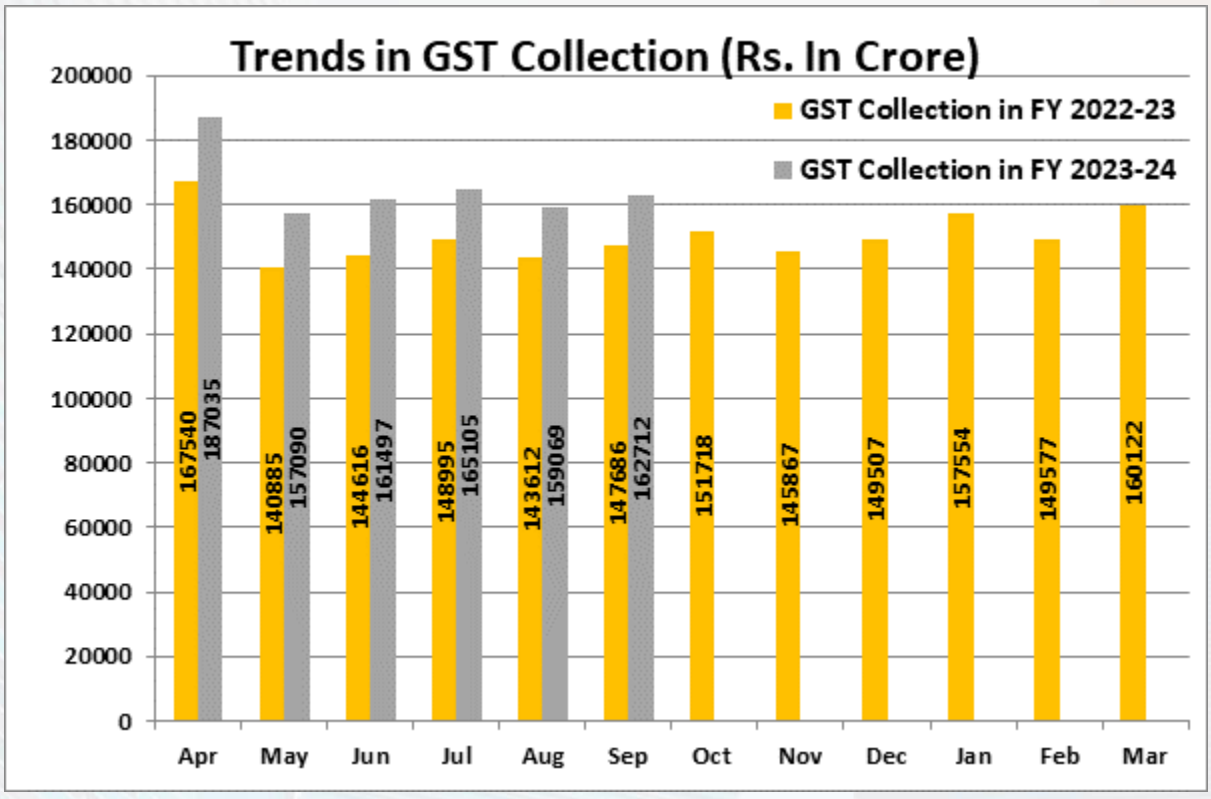
GSTN Portal Changes

Advisory in respect of introduction of Compliance Pertaining to DRC-01C (Difference in Input Tax Credit (ITC) available in GSTR-2B & ITC claimed in the GSTR-R3B)

The Government has inserted Rule 88D in CGST Rule, 2017 to compare input tax credit available in GSTR-2B and ITC availed in GSTR-3B. The GST portal now operates this functionality, comparing ITC available and claimed for each return period. If claimed ITC exceeds GSTR-2B, taxpayers must file a response using Form DRC-01C Part B, which can include payment details or explanations.



GST Revenue Collection in September 2023 - Rs. 1,62,712 Cr.



Source: PIB

- Refund of anti-dumping duty wrongly paid is allowed – CESTAT
- Cenvat Credit available on construction service for renovation, modernization upgradation of existing plant – CESTAT
- Cenvat Credit Can Be Used for Excise Duty on Finished Goods or Indigenous Inputs
- CENVAT Credit for Input Services used in Manufacturing & Sale of Final Products Cannot Be Denied
- CENVAT Credit on inputs used for fabrication of capital goods is eligible
- Pre deposit does not partake character of tax hence it cannot be retained or adjusted under DVAT Act – HC
- Area-Based Excise Duty Exemption denied due to Late production Commencement
- Interest on Delayed Refund allowed from 3 months after initial applications date – CESTAT
- Circular 36.2010 Customs is ultra vires of section 149 of Customs Act [Amendment of Shipping Bill] – HC
- Extended period not invocable as wrong assessment not pointed out during scrutinizing return – CESTAT
- No Penalty for non-fulfilment of export obligation under EPCG due to Court restrictions
- 25-Year-Old SCN quashed, Refund granted with Interest – HC
- Other Notifications/Circulars/Instructions

Refund of anti-dumping duty wrongly paid is allowed – CESTAT

DA Insights:

The CESTAT rightly held that refund of anti-dumping duty wrongly paid is very much governed by Section 27 of the Customs Act, due to same having been borrowed in the Customs Tariff Act by Section 9A(8), which clearly indicates that even Custom Tariff Act envisages situations, where refund could arise even in anti-dumping otherwise in listed situations..

Issue:

The issue involves whether refund of anti dumping duty wrongly paid by the assessee and upheld as such by this Tribunal in Appeal No. A/10443-10447/2014 vide order date 12.02.2014, in their own case, could be denied by the department on the ground that the refund sought under Section 27 cannot be given to the party as Customs Act And Customs Tariff Act, 1962, and Customs Tariff Act, 1975 are different legislations and anti dumping law.

Legal Provisions:

Section 27 of Customs Act, 1962

Observation and Comments:

The Honorable CESTAT observed and held that:

Section 9AA Customs Tariff Act deals only with those specified cases of refund where done the limitation is governed by the aforesaid Notification No. 05/2012-Customs (Non-Tariff). However, there is no bar on the refund arising otherwise in distinct situations to be allowed.

In view of the fact that refund in this particular case arose due to pronouncement by court of law that anti-dumping duty whatsoever was not payable by the party. We, in the instant case find that the situation is very much governed by Section 27 of the Customs Act, due to same having been borrowed in the Customs Tariff Act by Section 9A(8), which clearly indicates that even Custom Tariff Act envisages situations, where refund could arise even in anti-dumping otherwise in listed situations. As legislature is not known to waste any words like "refund' as mentioned in Section 9A Customs Tariff Act, 1975, we find appropriateness in our interpretation.

Posco India Processing Center Private Limited vs CC [CUSTOMS Appeal No. 11453 of 2018-DB – CESTAT AHD]

Cenvat Credit available on construction service for renovation, modernization upgradation of existing plant – CESTAT

DA Insights:

The CESTAT has taken well settled view under erstwhile regime that of construction service used in relation to modernization, renovation of the existing factory is eligible for CENVAT Credit. The issue under GST on eligibility of the same is pending at Apex Court.

Issue:

The issue involved in the present case is that whether the appellant are entitled for Cenvat Credit in respect of insurance of Staff/Directors services and construction and restoration services for upgradation of factory premises for the period of April-2008 to October-2012.

The Adjudicating Authority denied the Cenvat Credit in respect of construction service on ground that as per the Vandana Global judgment of the Larger Bench of CESTAT, the appellant are not entitled for the Cenvat Credit due to amendment to Rule 2K with effect from 08.07.2009, which was made effective retrospectively. The Adjudicating Authority has also taken into account the amendment made with effect from 01.04.2011, whereby the setting of factory was excluded from the definition of input service.

Legal Provisions:

Cenvat Credit Rules, 2004

Observation and Comments:

The CESTAT observed and held that:

From the definition of input service under Rule 2(l) before and after 01.04.2011, the services in relation to modernization, renovation and repairs of factory premises was clearly covered under the inclusion part of the definition.

If in fact the said services were not covered by Rule 2(l), it would not have been necessary to introduce the amendment. It is clear, therefore, that prior to the amendment the setting up of a factory premises of a provider for output service relating to such a factory fell within the definition of 'input service.' The amendment of 2011 is not retrospective and is not applicable to the respondents' case.

From the above judgments, it can be seen that constant view was taken by various forums that in case of construction service used in relation to modernization, renovation of the existing factory is

General Motors India P Ltd vs C.C.E. & S.T. [Excise Appeal No. 11124 of 2015- DB – CESTAT Ahmedabad]

Cenvat Credit available on construction service for renovation, modernization upgradation of existing plant – CESTAT

DA Insights:

The CESTAT has taken well settled view under erstwhile regime that of construction service used in relation to modernization, renovation of the existing factory is eligible for CENVAT Credit. The issue under GST on eligibility of the same is pending at Apex Court.

admissible input service, in terms of inclusion part of the definition under Rule 2(l) of Cenvat Credit Rules, 2004 therefore, the issue is no longer res-Integra. Accordingly, we hold that appellant is entitled for the Cenvat credit on construction service used for modernization, renovation, upgradation of the existing factory.

As regard the admissibility of Cenvat credit on insurance service for health insurance of staffs/directors, we find that in the following judgment the similar issues has been considered and it was held that Cenvat credit on insurance service for staffs /directors is admissible.

General Motors India P Ltd vs C.C.E. & S.T. [Excise Appeal No. 11124 of 2015- DB – CESTAT Ahmedabad]

Cenvat Credit Can Be Used for Excise Duty on Finished Goods or Indigenous Inputs

DA Insights:

The dispute related to pre GST law still prevailing and availing refund of Cenvat credit under Rule 142 of CGST Act, 2017 is settled at higher forum due to rejection at lower levels.

Issue:

The issue involved in the present case is that whether the payment of duty by 100% EOU can be paid from cenvat credit account while debonding the 100% EOU unit.

Legal Provisions:

CENVAT Credit Rules, 2004

Observation and Comments:

The CESTAT observed and held that:

I am of the view that the cenvat credit can be utilized for payment of excise duty either on the finished goods or on the indigenous inputs. However, in case of imported inputs the additional duty of custom has to be paid in cash and not by debiting cenvat credit account in terms of Rule 3 of CCR, 2004. In view of this unambiguous position of law, I hold as under: -

(i) In case of imported inputs/raw material, the additional duty of custom shall be paid from cash and not from cenvat credit.

(ii) In case of duty liability on indigenous raw material and finished goods, since the duty is of excise the same shall be paid from cenvat account.

(iii) In case of payment of duty in cash as against the debit in Cenvat account already made, the appellant is at liberty to recredit the same in their cenvat account and approach the department for refund in cash in terms of Section 142 of CGST Act and the same shall be disposed of in accordance with law.

In view of the above observation, the matter needs to be re-considered by the Adjudicating Authority.

Zydus Lifesciences Limited vs CCE [Customs Appeal No. 414 of 2010 – SM – CESTAT AHD]

CENVAT Credit for Input Services used in Manufacturing & Sale of Final Products Cannot Be Denied

DA Insights:

The number of issued on eligibility of credit under CENVAT Credit era was settled at various Courts and during the course of period, it will also be reflected in the GST regime too.

Issue:

The appellants, is engaged in the manufacture of auto parts; the appellants have availed CENVAT credit on certain input services i.e. "Commercial and Industrial Construction Service", "Rent-a-Cab Service", "Outdoor Catering Services" and "Real Estate Agent Service". Revenue was of the opinion that the credit is not admissible to them as there was no nexus between the services and the output products cleared on payment of duty.

Legal Provisions:

CENVAT Credit Rules, 2004

Observation and Comments:

The CESTAT observed and held that:

As discussed above, we find that the issues raised in the impugned show-cause notice and the impugned order, on the admissibility of credit on certain input services, are no longer res integra as settled at various courts i.e Commercial and Industrial Construction Service, Hon"ble Punjab & Haryana High Court in the case of Belsonica Auto Components Private Ltd., Rent-a-Cab Service, Hon"ble High Court of Punjab & Haryana in the case of Maruti Suzuki India Ltd., Outdoor Catering Services, Hon"ble High Court of Bombay in the case of Ultratech Cement Ltd., Real Estate Agent Service, Coordinate Bench at Mumbai in the case of Axis Bank.

We also find that in view of the wider scope given in the definition under Section 2(l) of CENVAT Credit Rules, 2004, the services of which the credit was availed by the appellants, merit to be classified as Input Services used in or in relation to the manufacture and sale of final products or in relation to the business activity of the appellants. In view of the same, credit cannot be denied and accordingly, the impugned order is not legally sustainable. Therefore, we set aside the impugned order and allow the appeal.

M/s NGK Spark Plugs India Private Limited vs CCE [Excise Appeal No.55978 Of 2013 – CESTAT Chandigarh]

CENVAT Credit on inputs used for fabrication of capital goods is eligible

DA Insights:

The fabrication covers under the definition of capital goods and the CESTAT rightly held that the definition of capital goods under CCR does not differentiate between movable and immovable goods..

Issue:

The issue involved in this Appeal is whether the Appellant have rightly taken Cenvat credit on various items of MS steel etc., utilized in fabrication of capital goods like pollution control equipment, heating furnace, casting machine, coating machine, chimney, rolling machine, reheating machine, control panel, etc., during the period December, 2005 to March, 2010.

Legal Provisions:

CENVAT Credit Rules, 2004

Observation and Comments:

The Honorable CESTAT observed and held that:

We further find that with the introduction of Cenvat credit rules 2004, capital goods as defined in rule 2(a)(A) of CCR includes items like pollution-control equipment, storage tank which are practically immovable. Thus, the concept of movable or immovable for allowing credit have been done away with. We further find Rule 2(K) of CCR entitles a manufacturer to take credit of all items/goods received in the factory of production whether forming part of the finished product or not. Even inputs received for fabrication of capital goods are also entitled for Cenvat credit. Only condition is that such fabricated capital goods should have been used in the production of dutiable finished goods. There is no such dispute raised in the SCN that the capital goods fabricated by the Appellant out of the inputs have not been used for manufacture of dutiable finished goods.

We further find that as regards the capital goods fabricated out of the inputs, there is no allegation that such capital goods have been sourced from any other manufacturer by the Appellant/ assessee. We further find that under the facts and circumstances, the court below failed to consider the eligibility of Cenvat credit disputed as inputs, as defined in rule 2(K) of CCR.

MS Agarwal Foundries Pvt Ltd vs CCE [Excise Appeal No. 23336 of 2014]

Pre deposit does not partake character of tax hence it cannot be retained or adjusted under DVAT Act - HC

DA Insights:

In most of the VAT assessments, the assessing officer issues adjustment order instead of processing refund of pre deposit which is rightly rejected by the Honorable High Court and accordingly provided relief under erstwhile regime.

Issue:

The petitioner claimed refund of excess tax credit which arose due to Input Tax Credit, the credit of which was brought forward for the 4th quarter of 2015-16 and for the 1st quarter of 2017-18, along with the applicable interest as under Section 42 of the Delhi Value Added Tax Act of 2004. However, instead of processing the refund, the adjustment order was passed to adjust the refund amount with other quarter liabilities as assessed by the officer against which the writ petition is filed.

Legal Provisions:

Section 38 of DVAT Act, 2004

Observation and Comments:

The Honorable High Court observed and held that:

At the outset, we have no hesitation in holding that the impugned adjustment order dated 18 November 2022 falls foul of Section 38 of the DVAT Act.

A fortiori the impugned adjustment letter dated 18 November, 2022 cannot be sustained in law since the mandate of Section 38 read with Section 3921 and 59 of the DVAT Act was not followed. Therefore, the petitioner is entitled to the refund claimed.

In view of the foregoing discussion, the instant Writ Petition is partly allowed to the effect that the impugned adjustment order dated 18 November 2022 is hereby quashed and the respondent is consequently directed to refund for the 4th quarter of 2015-16 and also for the 1st quarter of 2017-18 along-with interest as per Section 42 of the DVAT Act from the date it fell due till realisation. The refund be effected within a period of three weeks from the date of this decision.

Femc Pratibha Joint Venture Vs Commissioner Of Trade And Taxes [W.P.(C) 2491/2023 & CM APPL. 9539/2023]

Area-Based Excise Duty Exemption denied due to Late production Commencement

DA Insights:

The CESTAT has considered all the facts and countered with evidence given by the authorities to deny the benefit of area-Based Excise Duty Exemption notification benefits.

Issue:

The issue involved is whether the appellant was entitled to the benefit of area-based exemption Notification No. 50/2003-CE dated 10.06.2003 or not. It is undisputed that one of the conditions for availing the benefit of this notification was that the factory should have commenced "commercial production on or before 31.03.2010

.**Legal Provisions:**

Notification No. 50/2003-CE dated 10.06.2003

Observation and Comments:

The Honorable CESTAT observed and held that:

The date on which the option shall be exercised is indicated as "from the date of start of commercial production (shall be intimated separately)". Since this letter was served upon the Deputy Commissioner on 30.03.2010 and on the Range superintendent on 31.03.2010, it is evident that the appellant had not begun commercial production until 31.03.2010 nor was it able to indicate by then the date on which the commercial production would begin. Therefore, the appellant mentioned that the date will be intimated separately. For this reason itself, the invoice dated 31.03.2010 issued by the appellant for aluminium sections does not appear to be correct or pertain to products manufactured by it.

It needs to be pointed out that the electricity consumption as per the electricity authorities was nil prior to April, 2010 and we find it hard to believe that the production could have taken place without any electricity at all. The appellant claimed that it had a diesel generator set for a few days, but was unable to provide any evidence to support its claim.

In view of the above, we find that the impugned order is correct and proper and calls for no interference. The impugned order is upheld and the appeal is dismissed.

M/s Agarwal Aluminiums vs CCGE [EXCISE APPEAL NO. 51157 OF 2020 – CESTAT New Delhi]

Interest on Delayed Refund allowed from 3 months after initial applications date – CESTAT

DA Insights:

The CESTAT has given landmark judgment to allow interest from the date of refund application irrespective of further litigation. The same principle can be applied under GST regime based on legal provision.

Issue:

The appeal is against OIA which rejected the claim of interest on refund already sanctioned to the appellant on the ground that the appellant was granted the refund within three months from the order allowing the refund therefore, no interest is payable.

Legal Provisions

Section 27 A of Customs Act, 1962

Observation and Comments:

The CESTAT observed and held that:

From the plain reading of Section 27A it is clear that the assessee is entitled for the refund if the same is not refunded within three months from the date of receipt of application under sub section (1) of Section 27. In the fact of present case undisputedly application for refund which had arisen from the CEGAT's order dated 15.11.2002 was filed on 22.04.2003. The said refund though sanctioned but credited into Consumer welfare fund thereafter from 22.04.2003 till 25.06.2012 refund was not granted as the matter of refund itself was under litigation before the High Court, Commissioner (Appeals) and finally the refund was granted to the appellant only on 25.06.2012. Therefore, in the clear provision under Section 27 A and the landmark judgment of Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd (Supra), the appellant is entitled for interest on the amount already refunded for the period from 22.07.2003 (three months after the date of application) till 25.06.2012 (date of grant of refund).

As regard the contention of the Commissioner (Appeals) that interest is payable after three months from the date of Commissioner (Appeals) order wherein the refund was allowed is absolutely absurd and contrary to Section 27 A and principle laid down by Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd (Supra).

Videocon Industries Ltd vs CCE & ST [Customs Appeal No. 13084 of 2013 – DB – CESTAT AHD]

Circular 36.2010 Customs is ultra vires of section 149 of Customs Act [Amendment of Shipping Bill] – HC

DA Insights:

The time limit to amend shipping bill vide circular was always set aside by the various High Courts and by declaring it as ultra vires to the section 149 of Customs Act, 1962 by the Honorable High Court is welcome judgment. Now the section itself covers the timeline for the amendment since 2022 so the applicability of circular will not arise.

Issue:

The petition is filed under Article 226 of the Constitution of India being aggrieved by an order the amendment of the shipping bills has been rejected and further to strike down para 3(a) of Circular No.36/2010 Custom dated 23.09.2010 as ultra vires Section 149 of the Custom Act, 1962 and also ultra vires of Articles 14 and 19(1)(g) of the Constitution of India.

Legal Provisions

Para 3(a) of Circular No.36/2010 Custom dated 23.09.2010

Observation and Comments:

The Honorable High Court observed and held that:

At the outset, we may observe that prior to the amendment of Section 149 by the Finance Act, 23 of 2019, i.e. prior to 1st August 2019, admittedly, there was no authority and/or any power vested with the Central Government to prescribe any time-frame and/or restrictions and conditions to be imposed on amendment of the documents as Section 149 would stipulate. It is admittedly during the prevalence of the provision as it stood prior to the 2019 amendment, that the Circular in question (impugned Circular No.36/2010) came to be issued. The impugned Circular could not have prescribed any time limits when the substantive provision of Section 149 of the Customs Act itself did not confer such power on the Central Government and, hence, for such reason, the impugned Circular prescribing the time limits was per se contrary and ultra vires of Section 149 of the Customs Act.

Thus, there is also no warrant in the Respondents contending that by virtue of the amendment as brought about to Section 149 by the 2019 Amendment Act, without following the procedure as mandated by Section 149, namely, in the "manner as prescribed" and as recognized by Section 2(35) the Circular would be valid.

Colossustex Private Limited, Todi Rayons Private Limited vs UOI and others [Writ Petition No.2010 OF 2022]

Extended period not invocable as wrong assessment not pointed out during scrutinizing return – CESTAT

DA Insights:

The CESTAT with adequate reasoning did not allow to apply extended period of limitation by stating that a check against such self-assessment was the scrutiny which the officers were mandated to do by Rules. Audit is the next level of check against the scrutiny by the officers. If the audit points out some wrong assessment which was not pointed out by the officer scrutinising the ER-1 return, the fault lies at the doorstep of the officer. It does not, by itself, establish that the assessee had suppressed any facts.

Issue:

The appeal filed against OIA whereby the appeal of the appellant was dismissed and upheld OIO. The issue is authority alleged that the sale of goods to a related party who, in turn, consumed the goods captively, duty should have been paid under Rule 8 of Customs Valuation Rules, 20005 at the rate of 110% of the cost of production as certified in the CAS 4 certificates and not on the invoice values. Accordingly, it was felt that differential duty needs to be paid by the appellant. Thereafter, a SCN was issued to the appellant proposing recovery of the differential excise duty invoking extended period of limitation under section 11A along with interest under Section 11AA. It was also proposed to impose penalty under section 11AC.

Legal Provisions

Section 11A of Customs Act, 1962

Observation and Comments:

The CESTAT observed and held that:

That the appellant had contested the observations of the audit cannot be a ground to presume wilful suppression of facts. Nothing in the law requires the assessee to accept the views of audit team or preventive team or any other team of officers. Therefore, this submission of the Revenue cannot be accepted.

Secondly, the ERI Returns are not designed by the assessee but by the department under the Rules and the obligation of the appellant is to disclose information in them. If the ER 1 returns are defectively designed and do not have columns requiring the assessee to disclose its relationship with its buyers, the assessee cannot be held responsible for it. Since the Returns are filed online, there is also no scope to modify the columns or provide extra information. The responsibility of assessee ends with filing the return in the format prescribed. Thus, the assessee was not only NOT REQUIRED to disclose the relationship but it was also not possible for it to disclose the relationship in ER1.

M/s. Gripsurya Re-cycling LLP vs CCGE [Excise Appeal No. 50295 Of 2022 – CESTAT New Delhi]

Extended period not invocable as wrong assessment not pointed out during scrutinizing return – CESTAT

DA Insights:

The CESTAT with adequate reasoning did not allow to apply extended period of limitation by stating that a check against such self-assessment was the scrutiny which the officers were mandated to do by Rules. Audit is the next level of check against the scrutiny by the officers. If the audit points out some wrong assessment which was not pointed out by the officer scrutinising the ER-1 return, the fault lies at the doorstep of the officer. It does not, by itself, establish that the assessee had suppressed any facts.

In other words, the officer is mandated under the Rules to do what the audit has done much later. Had the officer, who is an expert in taxation scrutinised the returns as he was mandated to do and called for any records as he was authorised to call for, the alleged mistakes which were pointed out by the audit would have come to light and an SCN could have been issued under section 11A within the normal period of limitation.

Beyond the limitation, Revenue has no remedy although the charge remains. It is like a time-barred debt which, though owed, cannot be recovered by the creditor. If differential duty was chargeable but was not paid and it is later discovered by audit and it gets time barred under Section 11A, the responsibility for it rests squarely on the officers mandated to scrutinize the returns in time and raise a demand in time.

M/s. Gripsurya Re-cycling LLP vs CCGE [Excise Appeal No. 50295 Of 2022 – CESTAT New Delhi]

No Penalty for non-fulfilment of export obligation under EPCG due to Court restrictions

DA Insights:

The CESTAT rightly affirmed the appellate order and setting aside penalty and interest for non-fulfilment of export obligations as no blame or aspersions can be cast on the respondents that they had malicious intent to defraud the revenue when the Apex Court is not allowing mining activity.

Issue:

The appellant obtained an EPCG Authorization to import duty free capital goods for mining of marbles and exporting the same. However, even before the mining activity could actually start, the mining activity was stayed by the orders of the Hon'ble Apex Court. Subsequently, a demand notice was served on the respondents, seeking recovery of the duty foregone, once the export obligation period. In adjudication proceedings, the said demand was confirmed alongwith interest and imposition of penalty. In appeal proceedings the learned Commissioner (Appeals) confirmed only the demand amount towards the duty foregone.

The impugned appeal has been filed by the revenue assailing the order passed by learned Commissioner (Appeals) whereby he has set aside the order for imposition of penalty and demand of interest on the respondents.

Legal Provisions

Foreign Trade Policy 2005

Observation and Comments:

The CESTAT observed and held that:

It cannot be anybody's case that the respondents continued to import the capital goods with intentions of defrauding the revenue and depriving the department of its rightful claim. In any case the department has not been able to adduce any evidence in support of this proposition of theirs of mis-representation and deliberate suppression of facts. The fact that the respondents could not discharge their export obligation and hence failed to meet the export commitments leading to non issue of the EODC is understandably beyond the control of the respondent.

We also note that this is not the first time that any importer has not been able to fulfill the export obligation for reasons beyond his control. Thus in the wake of global economic crisis in Asia and particularly so in Southeast Asia, this Tribunal in the case of Sanghi Industries Ltd. Vs. CC (Export Promotion), Mumbai [2010(259) ELT 223(Tri.-Bang)], had set aside the penalty interest and fine imposed where export obligation under the EPCG Licence could not be fulfilled by the importer due to global economic crisis.

CC vs M/s. B R Marbles Pvt. Ltd. [Customs Appeal No. 75151 of 2018 – CESTAT Kolkata]

25-Year-Old SCN quashed, Refund granted with Interest – HC

DA Insights:

The Honorable High Court has relied on the settled principles of law, that the show cause notice having not been adjudicated for more than 25 years, the show cause notice ought to be quashed and set aside.

Issue:

The writ petition under Article 226 of the Constitution primarily prays that the SCN issued about 25 years back, be quashed and set aside and refund of the amount deposited by the Petitioner under protest during the course of the investigation with interest at the rate of 12 per cent per annum from the date of deposit till the date of actual refund.

Legal Provisions

Central Excise Act, 1944

Observation and Comments:

The Honorable High Court observed and held that:

We are in complete agreement with appellant that it has become impossible for the respondent to proceed to adjudicate the show cause notice, not only for the reasons, which the Additional Commissioner is on record to say, but also in view of the settled principles of law as observed in the decision of the ATA Freight Line (I) Pvt. Ltd. vs. Union of India & Ors [Writ Petition No. 3671 of 2022].

The failure of the adjudicating authority to adjudicate upon the same, for about 25 years, itself would be illegal, and that the authorities could not have been liberal in granting adjournment and not adjudicating the show cause notice for such a long lapse of time.

EPL Ltd. Vs UOI and Others [WRIT PETITION NO. 597 OF 2023 – Bombay High Court]

Customs Notification / Circulars / Guidelines / Instructions

Customs Circular 22/2023: Ex-Bond Shipping Bill in ICES 1.5

The circular cover following things:

Ex-Bond Shipping Bill: A new format for exporting warehoused goods from a bonded warehouse in India. It is linked with the original warehousing bill of entry (BE) in the ICES system.

Design and workflow: The exporter needs to declare the warehouse code, item-wise details of into-bond BE, and quantity of goods to be exported. The system will debit and credit the ledger accordingly.

Scope and limitations: The ex-bond SB is only for export of warehoused goods as such, not for goods resulting from manufacturing or other operations. No incentive such as drawback or RoDTEP/RoSCTL benefit is available for such cargo.

Circular No. 22/2023-Customs, dated 19th September 2023

CESTAT Virtual Hearings & Procedures

The introduction of virtual hearings through CESTAT's Notification No. 02/2023 represents a significant shift in the tribunal's procedures. Parties involved must adapt to the new technical requirements and protocols outlined in the notification Embracing these changes will ensure the efficient and effective functioning of virtual hearings, ultimately benefiting all stakeholders.

Notification No. 02/2023, dated 21st September, 2023

CBIC exempt deposits into ECL till 30th November 2023

The amendment extends the exemption period for deposits into the Electronic Customs Ledger (ECL) until November 30, 2023. This amendment is a welcome relief for importers and businesses, ensuring that they can continue their customs-related transactions without the financial burden of mandatory deposits for an extended duration.

Notification No. 69/2023-Customs (N.T.), dated 27th September, 2023

Customs Act: Section 51 Deposit Exemption Extended to Dec I, 2023

This notification brings significant amendments to the Customs Act, 1962, particularly concerning Section 51. Section 51 deals with the clearance of goods for exportation. The amendment extends the exemption of deposits related to this section until December 1, 2023.

Notifications No. 70/2023-Customs (N.T.), dated 27th September, 2023

IGST Act Section 16(4) Implementation: Export Restrictions on certain goods

The circular focusing on the implementation of Section 16(4) of the Integrated Goods and Services Tax (IGST) Act, 2017. This circular addresses the restrictions imposed on the export of certain goods and their coverage under the refund mechanism.

Circular No. 24/2023-Customs, dated 30th September 2023

Customs Notification / Circulars / Guidelines / Instructions

New Import/Export Declaration Rules for Chemical Products

New circular on chemical products: The Ministry of Finance has issued Circular No. 23/2023-Customs on 30th September 2023, which introduces mandatory additional qualifiers for import/export declarations concerning specific chemical products.

Changes from previous circular: The circular modifies Circular No. 15/2023-Customs, which originally outlined the requirement for additional qualifiers. The changes are based on consultations with stakeholders and the Department of Chemicals and Petrochemicals.

Additional qualifiers for imports: Importers must specify the chemical category, CAS number, and IUPAC name of the product or its main/active ingredient. If the information is unavailable due to supplier confidentiality, importers must provide a self-undertaking in the Bill of Entry.

Implementation timeline: The additional qualifiers are mandatory for imports under the specified chapters for all bills of entry filed on or after 15.10.2023. The additional qualifiers for exports remain the same for all shipping bills filed on or after 10.2023.

Circular No. 23/2023-Customs, dated 30th September 2023

RoDTEP Scheme Extended: Export Support Until June 2024

The The extension of the RoDTEP Scheme until June 2024 is a positive and strategic move by the Ministry of Commerce & Industry. It ensures the continuity of export support at existing rates, further aligning India with international trade norms. The involvement of the RoDTEP Committee and Export Promotion Councils underscores the government's commitment to addressing the needs and concerns of the export community. With a substantial budget allocation for the upcoming fiscal year, the RoDTEP Scheme continues to be a crucial instrument in promoting India's exports and enhancing its global competitiveness.

Notification No. 33/2023-DGFT, dated 26th September, 2023

Clarification on Instruction no. 95 - allowing SEZ unit to set up cafeteria, creche, gymnasium and similar facilities — reg.

Instruction no. 95 allows SEZ units to set up cafeterias, creches, gymnasiums, and similar facilities for exclusive use, subject to not being eligible for exemptions or concessions under the SEZ Act. However, the Department of Commerce received complaints about the GST zero-rating benefit on lease rental services provided by developers to SEZ units for employee welfare facilities. The zero-rating benefit remains available for lease rental charges for these facilities, with the approval of the Competent Authority.

No. K-43013(13)/1/2022-SEZ, dated 3rd October 2023

Customs Notification / Circulars / Guidelines / Instructions

Advance Authorization Scheme Pre-Import Condition Clarifications

Issue raised	Clarification
In case Advance Authorizations under which exports have been made in the period 13.10.2017 to 09.01.2019 and the import is made on or after 10.01.2019, whether pre-import condition will be considered to have been violated.	Pre-import condition will not be considered to have been violated
If Advance Authorizations were issued on or prior to 09.01.2019 and imports were made on or after 10.01.2019, whether pre-import condition will be applicable	Pre-import condition will not be applicable.
If against an Advance Authorization, import were partly made up to and including 09.01.2019 and remaining imports were made on or after 10.01.2019, whether imports made on or after 10.01.2019 will be subject to pre- import condition.	In such a scenario, the imports made on or after 10.01.2019 will not be subject to pre-import condition.
In case of imports made under Advance Authorisation on payment of IGST and Compensation Cess, whether pre-import condition will be applicable.	In such a scenario, the imports will not be subject to pre-import condition irrespective of date of import.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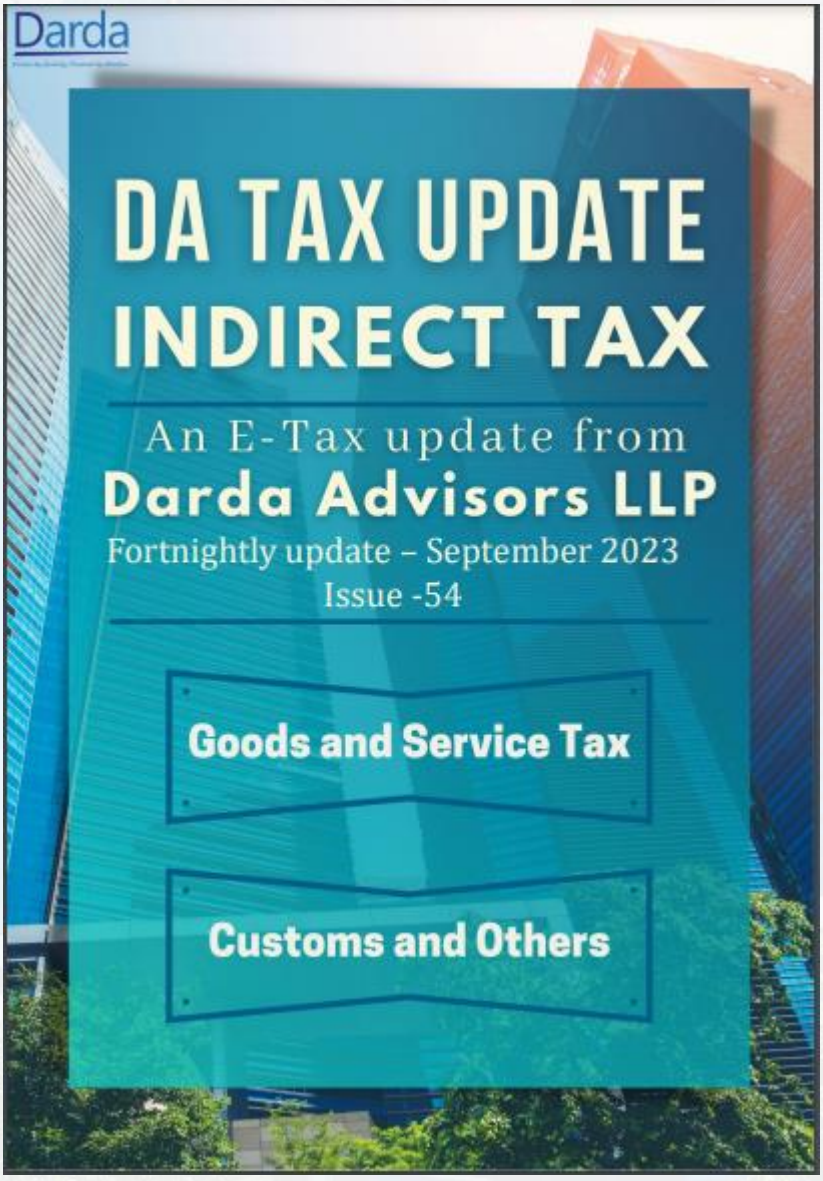
DA Updates and Articles for the month of July 2023

Indirect Tax Fortnightly Update for the month of September 2023

https://dardaadvisors.com/wp-content/uploads/2023/09/DA-Indirect-Tax-Fortnightly-Update_September-2023-1.pdf



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