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DA TAX ALERT

INDIRECT TAX

AN E-TAX ALERT FROM

Darda Advisors LLP

November 2023
Issue: 42

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We are pleased to present to you the Forty second 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 October 2023.

During the month of October 2023, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such GST refund cannot be denied for merely for multiple inputs & output supplies – HC & No duty liability on Transition from EOU to EPCG Scheme if Export Obligations Fulfilled – CESTAT

In the Forty second 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 October 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

November 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

- HC remanded the cases back to the commissioner (appeals) for denovo consideration based on new GST Amnesty Scheme
- E-Way Bill - Plea that is not put forward in pleading cannot be argued later for grant of relief – HC
- Cancellation of registration on mere having common place of business with group entity is not sustainable – HC
- GST applicable on Affiliation & Inspection Fees collected by Private Medical Colleges – HC
- Order passed without considering reply results into non-speaking order – HC
- GST Registration Cancellation quashed for failure to inform Taxpayer – HC
- GST refund cannot be denied for merely for multiple inputs & output supplies – HC
- Penalty leviable when tax collected is not deposited within specified time – HC
- GST not chargeable on premium and lease rent on plots allotted to hospitals – HC
- Other Notifications/Circulars/Guidelines/instructions/Portal changes

HC remanded the cases back to the commissioner (appeals) for denovo consideration based on new GST Amnesty Scheme

DA Insights:

Orissa The Honorable Orissa High Court has taken note of the recent notification no.53/2023- Central Tax ('Amnesty Scheme') for the time barred appeals) and sets aside the orders under challenge in a batch of writ petitions, remanding the cases back to the commissioner (appeals) for denovo consideration. This is probably the first Order of any HC in the wake of this notification.

Issue:

The multiple writ petitions filed for various cases in relation to invoking provisions of Articles 226 and 227 of the Constitution of India challenging the first appellate orders, whereby the appeals have been rejected being barred by period stipulated in sub-section (1) read with sub-section (4) of Section 107 of the OGST/CGST Act. It is submitted that as yet 2nd appellate Tribunal has not been constituted; as such they are prevented from availing alternative remedy provided under Section 112 of the said Act.

Legal Provisions:

Section 107 (4) of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

In view of the aforesaid Notification, the impugned orders, against which the writ petitions are filed, are set aside and the matters are now remanded to the Appellate Authority to proceed with it in accordance with law. As such, by virtue of either of the interim order passed by this Court or in suo motu the Petitioners, who have deposited the entire amount of tax that should be taken into account while deciding the cases on merit and the refund, if any, would be subject to the outcome of the appeal itself.

M/S Pravat Kumar Choudhury, Cuttack and Others vs ASTO and Others [W.P.(C) No.6684 of 2023 and Batch of Writ Petitions]

E-Way Bill - Plea that is not put forward in pleading cannot be argued later for grant of relief - HC

DA Insights:

The Honorable High Court rightly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

Issue:

The petitioner was transporting the goods from New Delhi to Telangana via Agra, U.P. ,where the same was intercepted after physical verification of the goods, it was found that part B of the e-way bill accompanying with the goods, was not filled on which notice was issued proposing to impose tax along with equal amount of penalty. Thereafter on deposit of impugned tax along with penalty, the goods in question were released and the penalty order passed order in Form GST MOV 09 under Section 20 of IGST read with Section 129 (3) of CGST Act observing that part B of e-way bill was not filled, hence the seizure of the goods was valid. Feeling aggrieved to the said order, the petitioner has filed an appeal which was dismissed and hence the present writ petition is filed.

Legal Provisions:

Section 129 (3) of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

On perusal of the impugned order, it shows that the petitioner pressed only two grounds taken in the appeal. Further not a single word has been whispered in the writ petition about the said argument, as such the petitioner's counsel cannot be permitted to argue the case without any pleading in the writ petition.

The Court relied on the case of Shri Shiv Prakash Vs. Additional District Judge (Matter under Article 227 No. 3423 of 2018, decided on 18.10.2019) Neutral Citation No. 2019: AHC:194707 which held that *"Thus, a party cannot make out a case on the basis of an evidence for which he/ she has laid no foundation in the pleadings. It is fairly well settled that no amount of evidence can prove a case for a party who has not set up the same in his/ her pleadings."*

On perusal of the aforesaid judgements of Apex Court as well as this Court, it has been held that the petitioner cannot be permitted to argue the case without there being any pleading in support of his arguments.

M/S Millennium Impex Pvt. Ltd. Vs AC (A) [WRIT TAX No. -721 of 2020

E-Way Bill - Plea that is not put forward in pleading cannot be argued later for grant of relief - HC

DA Insights:

The Honorable High Court rightly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

Once the finding of fact, which has been recorded against the assessee has not been assailed in the present writ petition, the petitioner cannot be permitted to argue the case beyond the pleadings. In view of the aforesaid facts, the case law as well as circular relied upon by the petitioner are of no help to him. In view of the facts as stated above, no interference is called for by this Court in the impugned order. The writ petition fails and is dismissed accordingly.

M/S Millennium Impex Pvt. Ltd. Vs AC (A) [WRIT TAX No. - 721 of 2020

Cancellation of registration on mere having common place of business with group entity is not sustainable – HC

DA Insights:

The cancellation of registration without considering the complete submission is leading to severe impact on goodwill and business operations and there is need for detailed SOP from CBIC to avoid such instances.

Issue:

The registration certificate is cancelled by the adjudicating authority by alleging that the parent company and petitioner's company doing the business in the same premises which is not maintainable; the registered business was not genuine; the taxpayer obtained registration without any independent place of business and falsely claimed to have conducted business at the premises of M/s. Sakthi Ferrous Alloys India Private Limited which is not suitable for conducting the taxpayer's stated business activities involving TMT bars and iron scrap; that the taxpayer may be engaged in bill trading without proper receipt and supply of goods. The appeal before first appellate authority is dismissed and accordingly the writ petition is filed before the Honorable High Court.

Legal Provisions:

Section 29 (2) of APGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

- Mere issuance of the show cause notice devoid of requisite particulars does not amount to proper compliance of the requirement. Therefore, the very foundation for invocation of cancelation is feeble as it has no legal sanctity.
- We are unable to comprehend, even if the place of business of the petitioner for argument sake is not conducive for its business, how the said fact can be treated as sufficient to conclude that the petitioner obtained registration by committing fraud or wilful misstatement or suppression of facts.
- Therefore, the impugned registration cancellation order is not sustainable in the eye of law.

Sakthi Steel Industries Pvt. Ltd. Vs AAC and Others [WP no. 27654/2023 – AP High Court]

GST applicable on Affiliation & Inspection Fees collected by Private Medical Colleges – HC

DA Insights:

The exemption under GST is limited and available on specified nature of services/goods which cannot be applied on all transactions being part of the sectors like education, health care.

Issue:

All the petitioners are educational institutions /colleges primarily imparting nursing course and affiliated with the 1st respondent-Kaloji Narayana Rao University of Health Sciences (K.N.R.U.H.S.). Recently, the respondent Nos.2 and 3 have raised demand of G.S.T. on the affiliation fees and inspection fees from the 1st respondent-University. Based upon the said demand, so raised by the respondent Nos.2 and 3, the 1st respondent-University in turn demanded payment of G.S.T. on the affiliation fees and inspection fees paid by each of these petitioners before this Court in the present batch of writ petitions.

Legal Provisions:

Notification No.12 of 2017, dated 28.06.2017,

Observation and Comments:

The Honorable High Court observed and held that:

The admission and the services rendered by the educational institutions to the students, the faculty and the staff are all services rendered subsequent to the affiliation. Therefore, the contention that the petitioners have canvassed is hard to accept.

specific exemption granted specifically on inspection fees and affiliation fees, the petitioners cannot be permitted to claim exemption drawing an inference of the affiliation and inspection fees both being part of the Notification No.12 of 2017, dated 28.06.2017, and also being inter-linked to the curriculum which is undertaken by the educational institutions and the admissions derived therefrom.

Since there were certain handicaps and confusions prevailing, the G.S.T. Council itself in its 47th G.S.T. Council Meeting held on 28/29.06.2022 very categorically held that as regards the question of granting exemption to the affiliation and other fees collected by the 1st respondent- University, it is the Circular dated 17.06.2021 issued by the Government of India which would govern the field.

Under the Notification No.11 of 2017, dated 28.06.2017, (as has been discussed earlier), the entire 'education service' itself is held to be taxable under G.S.T. law, and if the Government intended to exempt the educational institutions and universities from the ambit of G.S.T. law, they would have simply, as in Notification No.11 of 2017, incorporated 'education service' and would have exempted the petitioners and the universities as well. However, that is not the case.

Care College of Nursing and others. Vs Kaloji Narayana Rao University of Health Sciences [Writ Petition Nos.34617 and others – Telangana High Court]

Order passed without considering reply results into non-speaking order – HC

DA Insights:

The Honorable High Court rightly held that orders to be passed by the Assessing Officer should always be a speaking order, safeguarding both the interest of the assessee and the Revenue.

Issue:

The impugned order is challenged under the writ petition for the reason that though the reply to SCN was filed and their reply was also recorded by the respondent, the impugned order was issued without considering the replies and passed a non-speaking order. Though, the opportunity of personal hearing was provided and permitted the petitioner to provide the reply, it is duty of the respondent to deal with the reply filed by the petitioner while passing the impugned order. But, the reply filed by the petitioner has not been taken into consideration and the respondent passed the non-speaking order.

Legal Provisions:

Section 74 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

Even though the petitioner is having appeal remedy before the Appellate Authority, but the Appellate Authority is not conferred with the power to remand the matter to the Assessing Officer for fresh consideration.

In the present case, due to the failure on the part of the respondent/Assessing Officer to consider the reply filed by the petitioner and deal with the same while passing the impugned order, by which, the petitioner will deprive of their right to defend before the Assessing Authority if the matter is remanded to the Appellate Authority.

Therefore, once the assessee filed reply/objections pursuant to the show cause notice, it is bounden duty of the Assessing Officer to pass a speaking order, providing reasons for rejection of the reply/objections raised by the the assessee. If any cryptic order is passed without touching upon the queries/contentions of the assessee, ultimately, it would be fatal to the assessee and also cause huge revenue loss to the revenue.

On this score, since the reply/objections made by the petitioner pursuant to the show cause notice remained undecided, this Court feels that the petitioner is entitled to have a considered opinion of the Assessing Officer after taking into consideration the reply filed by the petitioner. Thus, this Court is inclined to set-aside the impugned order and remit the matter back for re-consideration.

M/s. The Chennai Silks vs AC [W.P.No.29095 of 2023 and WMP No.28693 of 2023 – Madras High Court]

GST Registration Cancellation quashed for failure to inform Taxpayer – HC

DA Insights:

The cancellation of registration is having major impact on the business operations and cancelling the same without even informing the tax payer is unreasonable and unsustainable which is rightly held by the Honorable High Court.

Issue:

The writ petition has been filed seeking to quash the order passed to cancel GST registration and to direct the respondents to revoke the cancellation of petitioner's GSTN registration. The major issue was that the petitioner was unaware of the cancellation of the Registration Certificate and after some time, the petitioner was informed by the other end tax payers that the petitioner GSTN registration was cancelled. Then only the petitioner came to know of his GSTN registration stood cancelled

Legal Provisions:

Section 29 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

In identical circumstances, this Court, in the case of Tvl.Suguna Cutpiece Vs Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos.25048, 25877, 12738 of 2021 etc... batch) held that *"The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid."……..*

As stated above, there is a consistent view taken in these matters. The revenue has not challenged any of such orders of this Court and hence the orders have attained finality. In view of the fact that this Court has been consistently following the directions issued in the case of Tvl.Suguna Cutpiece Vs Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos.25048, 25877, 12738 of 2021 etc... batch) and the Revenue/Department has also accepted the said view as evident from the fact that no appeal has been filed in any of the matters, this Court intends to follow the above order of this Court.

Tvl.Thendral Recreation Club vs CCT and Others [W.P.(MD).No.23075 of 2023 - Madurai Bench Of Madras High Court]

GST refund cannot be denied for merely for multiple inputs & output supplies – HC

DA Insights:

The Honorable High Court rightly held that in a case of accumulation of unutilised input tax credit on account of rate of tax on inputs being higher than the rate of tax on output supplies, the refund mechanism is governed by the said formula providing for maximum limit of refund and therefore, refund claim is to be determined on the basis of computation based on statutory formula prescribed in Rule 89(5) of the CGST Rules, 2017 and not on the basis of any other mode of computation and determination of actual amount of refund payment under the law.

Issue:

The petitioner is into textile business and filed for multiple refund claims under IDS (Inverted Duty Structure) under section 54 (3) of CGST Act, 2017 which was rejected by the adjudicating authority that on the ground that the petitioner's case does not fall in the category of inverted duty structure. The appellate authority also rejected the appeal against which writ petition is filed.

Legal Provisions:

Section 54 (3) of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The provision contained in proviso (ii) to Section 54(3) of the CGST Act, 2017, as it stands and on its plain reading, uses the expression, "where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies". The language of the aforesaid provision is plain and simple signifying the plurality of both inputs and output supplies. The statute purposely uses the words, "inputs" and "output supplies".

It is well settled that a taxing statute is to be strictly construed. Conscious use of the plural words, "inputs" and "output supplies" by the legislature has to be given full effect to. Use of the word, "inputs" signifies a situation where there may be more than one input and it is not possible to read "inputs" as "input" alone, so as to restrict its meaning. In other words, one of the basic principles of interpretation of statute is to read the statute as it is.

Since the orders impugned in these writ petitions are not based on such factual premises but the rejection of claim of refund is based on erroneous interpretation of law and on considerations, we find such factual premises to be untenable in law. Therefore,

M/s Nahar Industrial Enterprises Limited vs UOI and Others [D. B. Civil Writ Petition No. 8476/2021 and Others – Rajasthan High Court]

GST refund cannot be denied for merely for multiple inputs & output supplies – HC

DA Insights:

The Honorable High Court rightly held that in a case of accumulation of unutilised input tax credit on account of rate of tax on inputs being higher than the rate of tax on output supplies, the refund mechanism is governed by the said formula providing for maximum limit of refund and therefore, refund claim is to be determined on the basis of computation based on statutory formula prescribed in Rule 89(5) of the CGST Rules, 2017 and not on the basis of any other mode of computation and determination of actual amount of refund payment under the law.

we would not enter into those factual aspects. However, since in all the cases, the legal premise on which claim of refund has been rejected is contrary to the letter and spirit of the scheme of refund as provided under Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017, we are inclined to set aside all the orders, impugned in these writ petitions.

Therefore, in a case where there is accumulation of unutilised ITC as a direct result of rate of tax on inputs exceeding the rate of tax on output supplies, the scheme of refund as embodied in Section 54(3) of the CGST Act, 2017 gets attracted.

M/s Nahar Industrial Enterprises Limited vs UOI and Others [D. B. Civil Writ Petition No. 8476/2021 and Others – Rajasthan High Court]

Penalty leviable when tax collected is not deposited within specified time – HC

DA Insights:

The penalty is not getting waived till the amount is collected and paid within 30 days under section 73(8) of CGST Act, 2017 which is rightly held by the Honorable High Court.

Issue:

The controversy involved in this writ petition on the question whether an assessee who had paid the tax within thirty days from the issue of notice along with interest would be held to be liable for penalty. The tax has been collected and not paid it to the Government within thirty days from the date of collection.

Legal Provisions:

Section 73 (9) and 73(11) of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

Considering the provisions of Sub-sections 6, 8 and 9 of Section 73 of the GST Act, 2017 it is provided that if a person chargeable to tax fails to deposit the tax collected by him within a period of thirty days from the due date of the payment of the such tax, Sub-section 8 will not have any effect and such a person is liable to pay penalty.

Considering the above facts and the circumstances of the case, I find that the Assessing Authority has taken the correct view in the matter and, therefore, I do not find any error of law which requires interference by this Court. Hence the present writ petition is hereby dismissed.

M/S. Global Plasto Wares vs ASTO and Others [WP(C) NO. 33787 OF 2023]

GST not chargeable on premium and lease rent on plots allotted to hospitals – HC

DA Insights:

When the notification is providing blanket exemption without any specific condition, the benefit of the exemption cannot be denied.

Issue:

The petition has been filed to quash the letter/communication issued by the Advisor to Yamuna Expressway Industrial Development Authority (hereinafter referred to as 'YEIDA') requiring the petitioner to deposit GST at the rate of 18% on the premium Rs. 3.80 crores charged by the YEIDA against Institutional Plot allotted to the petitioner. The transaction falls squarely within the exemption granted by the Central Government under Section 11 of the CGST Act, 2017, vide Notification No. 12/2017, dated 28th June, 2017 read with Notification No. 32/2017, dated 13th October, 2017. The AAR also filed and it attained the finality. The doubt that was entertained, was with respect to availability of exemption to allotment made for public health care purpose such as to set up a Hospital or Nursing Home or Diagnostic Centre etc.

Legal Provisions:

Section 11 of the CGST Act, 2017

Observation and Comments:

As has been extracted above, the Exemption Notification though does contain Column no. 5, to specify the condition for grant of exemption yet, against Entry no. 41 of that Notification there never existed any specification or condition for grant of exemption. In fact, the original Notification No. 12/2017, dated 28th June, 2017 mentions the word 'Nil' against Column no. 5, against Entry no. 41 thereto. Thus the legislature chose to grant unconditional exemption with respect to payment of upfront amounts.

Besides absence of conditions imposed by the legislature while granting exemption, no fact allegation has been made in the said communication of any specific condition having been violated by the petitioner. Consequently, the writ petition is allowed.

M/S Ram Kamal Healthcare Pvt. Ltd. Vs UOI and Others [WRIT TAX No. - 1435 of 2018 – Allahabad High Court]

GST Notification / Circulars / Guidelines / Instructions

CBIC notifies Conditions for GST Appeal Filing with Appellate Authority

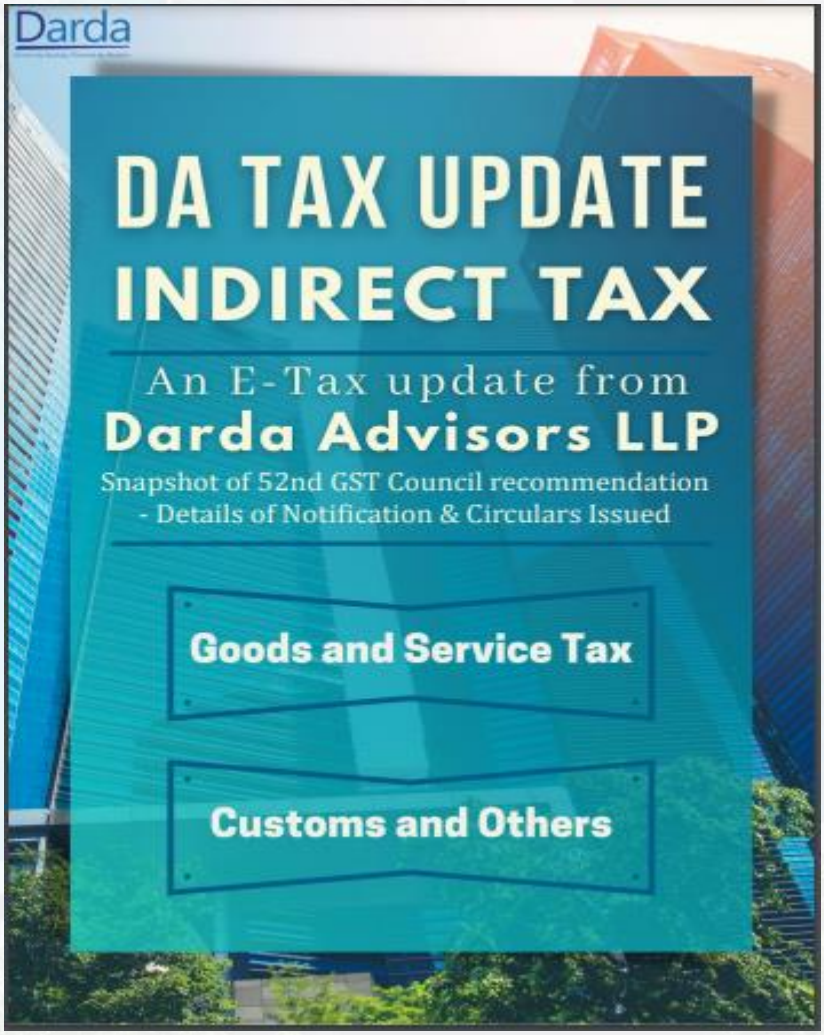
The notification empowers taxable persons who missed the appeal deadline for tax orders under the Central Goods and Services Tax Act, 2017, or had their appeal rejected due to a timing issue to follow a special appeal procedure. They must file an appeal using Form GST APL-01 by January 31, 2024, satisfying specific conditions. These conditions include paying the admitted tax, interest, fine, fee, and penalty, as well as a portion of the disputed tax amount. No refunds are allowed until the appeal is resolved, and the notification doesn't cover appeals for non-tax-related demands. Provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017, apply to appeals filed under this notification.

Notification No. 53/2023- Central Tax, Dated: 02nd November, 2023

DA Updates and Articles for the month of October 2023

DA Update - Snapshot Of 52nd GST Council Recommendation - Details Of Notification & Circulars Issued

https://dardaadvisors.com/wpcontent/uploads/2023/11/Snapshot-of-52nd-GST-Council-recommendation-Details-of-Notification-Circulars-Issued.pdf



GSTN Portal Changes

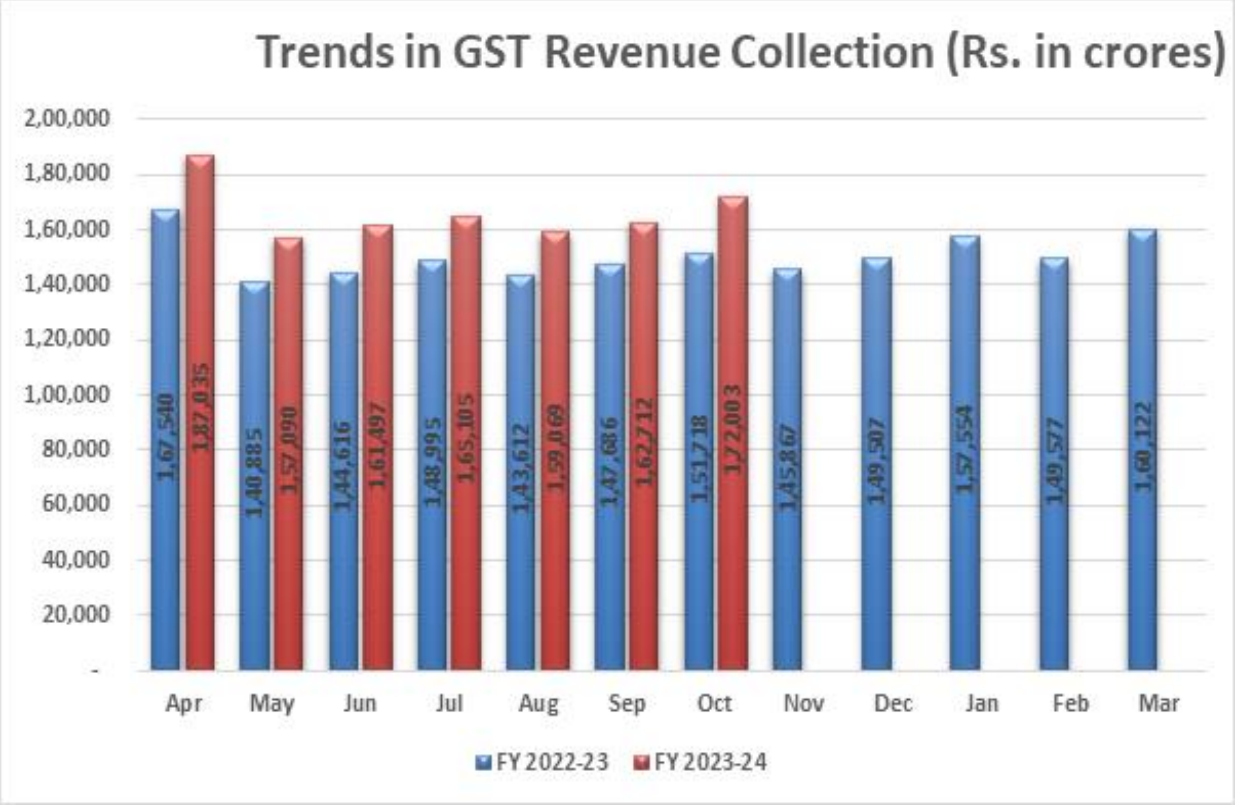
Advisory related to changes in GSTR-5A

Notification 51/2023 dated 29.09.2023 has introduced Table 5B in GSTR 5A w. e. f 01.10.2023. In this notification, Table 5B has been introduced to report supplies made to Registered GSTINs (B2B supplies). This would be implemented shortly at GSTN and till such time, OIDARs are advised to file the return in the existing GSTR 5A itself.

Advisory for Pilot Project of Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Gujarat and Puducherry

The recent developments in the GST registration process include amendments to Rule 8 of the CGST Rules, 2017. The GSTN has introduced a functionality for Biometric-based Aadhaar Authentication and document verification, launched in Puducherry and to be rolled out in Gujarat. The process involves receiving either an OTP-based Aadhaar Authentication link or an appointment booking link. If the applicant receives the appointment link, they must book a slot at a GST Suvidha Kendra (GSK) for biometric authentication and document verification. The applicant needs to carry specific details, including the appointment confirmation, jurisdiction information, Aadhaar Number, and original documents. Biometric authentication and document verification will be conducted at the GSK, generating ARNs upon completion. This appointment feature is currently available for Gujarat and will be extended to other states/UTs. GSKs' operation days and hours will align with state administration guidelines.

GST Revenue Collection in October 2023 - Rs. 1,72,003 Cr.



Source: PIB

- Customs Duty Payable for Unfulfilled Export Obligation - SC
- Disallowance of Excise Duty Refund for a Genuine Interpretation Error Unjustified – CESTAT
- Importer cannot be forced to follow non-beneficial provision - CESTAT
- Cenvat credit of entire input service available even if portion of service is used in manufacture of exempt goods
- CENVAT Credit on ISD invoice issued without obtaining ISD registration available – CESTAT
- Failure to Timely Notify Assessment Orders Renders Them Fatal – HC
- Mis-declaration cannot be alleged with Incomplete Evidence & Violation of Natural Justice – CESTAT
- No duty liability on Transition from EOU to EPCG Scheme if Export Obligations Fulfilled – CESTAT
- Show Cause Notice Issued Under Wrong Section Void - CESTAT
- Voluntary payment of differential duty doesn't confirm acceptance of undervaluation – CESTAT
- Other Notifications/Circulars/Instructions

Customs Duty Payable for Unfulfilled Export Obligation - SC

DA Insights:

The liability to pay should arise only on unfulfilled export obligation which is rightly held by the Honorable Supreme Court.

Issue:

The assessee had availed benefit of 100 per cent exemption from payment of customs duty, for the import of capital goods. This was hedged with two conditions; that its export obligations fixed by the Development Commissioner under the exemption policy had to be fulfilled and also that the final products could not be sold outside the Domestic Tariff Area (DTA) without fulfilling the condition of the positive Net Foreign Exchange (NFE). The assessee could fulfill the export obligation partially and also violated the condition imposed i.e. that it could not sale outside the DTA. The relief was partly given against which CCE filed the petition before the Honorable Supreme Court.

Legal Provisions:

Foreign Trade Policy

Observation and Comments:

The Honorable Supreme Court observed and held that:

Having heard learned counsel for the parties and having considered the material on the record, the Court is of the opinion that for the purpose of calculating duty and interest, the respondent - assessee should be given the benefit to the extent of valuation based upon the exports already made (i.e. Rs.3,89,87,054/)-. The export commitments were fulfilled to this extent is not in dispute.

In the circumstances, the impugned order is modified. Instead of the depreciated value, a proportion may be duly worked out considering the export commitment actually fulfilled by the respondent - assessee while working out the duty liability component payable as well as its liability, towards interest. The appeal is partly allowed in above terms.

CC vs M/S. Shiva Analyticals (India) Limited [CIVIL APPEAL NO.6708 OF 2013]

Disallowance of Excise Duty Refund for a Genuine Interpretation Error Unjustified – CESTAT

DA Insights:

The CESTAT rightly held that the benefit of refund under Project Import cannot be denied when the Department has accepted nonpayment of duty for the previous and subsequent periods.

Issue:

The appellants, are manufacturers of castable refractory goods and have supplied goods to Bhusawal Thermal Power Station Project; claiming that they have paid Central Excise duty by mistake, they filed a refund claim on the grounds that the supplies were against International Competitive Bidding and thus, exemption under Notification No.06/2006-CE dated 01.03.2006 was applicable; the exemption under Notification No.20/2002 is also applicable as the goods were supplied to power projects. A show cause notice was issued proposing to reject the claim for the reason that the project had two different units of 500 MW each whereas the exemption is applicable only to power projects of a capacity of 1000 MW. The show cause notice was confirmed vide OIO and it was upheld vide OIA. Hence, this appeal.

Legal Provisions:

Project Import under CTH 9801 under Customs Tariff Act, 1975

Observation and Comments:

The Honorable CESTAT observed and held that:

It is not the case of the department that the appellant is not a sub-contractor. This Tribunal in the case of CST Ltd.-2008 (230) E.L.T. 85 (Tri. - Bang.) and 2007 (217) E.L.T. 513 (Tri. - Bang.) held that exemption is available to the sub-contractors also.

Coming to the allegation that Condition No.19 of Notification no.06/2006 is not satisfied since as per Notification No 21/2002-Cus as amended by Notification No.49/2009-Cus prescribes Customs Duty @2.5%. We find that learned Commissioner has erred in looking at the Customs duty applicable to the project imports falling under CTH 9801 whereas the appellants have supplied castable refractory goods falling under Chapter 69 and 38 of Central Excise Tariff Act. To this extent, we find that the findings of the Commissioner are erroneous.

Once the Department has accepted nonpayment of duty for the previous and subsequent periods, it is not open for the Department to deny refund, if otherwise in order, for the short period during which the appellants have paid duty under mistaken notion of law.

In view of the above and in the facts and circumstances of the case, we are of the considered opinion that the impugned order is not sustainable and is liable to be set aside. We do so and allow the appeal.

M/s Souvenior Ceramics vs CCE [Excise Appeal No. 60107 Of 2013 – CESTAT Chandigarh]

Importer cannot be forced to follow non-beneficial provision - CESTAT

DA Insights:

The Honorable CESTAT rightly held that the assessee is entitled for the more beneficial Notification, if there are two Notifications on the same issue.

Issue:

There are multiple appeals from assessee and department and following is the key aspect under appeal:

"During the period under review the goods in question, Pisum Sativum [Peas] falling under Customs Tariff Heading 0713 10 00, are required to be assessed @ NIL rate of BCD in terms of Sl No.20 as claimed by the importers [two appellants and five respondents] or the goods are required to be assessed @50% rate of BCD in terms of Sl No.20A, as claimed by the Revenue. The conclusion is required to be drawn based on the joint and cohesive reading and interpretation of Notification No.50/2017 Cus dated30.6.2017, as amended by Notification Nos.84/2017 Cus dated 8.11.2017, 93/2017 Cus dated 21.12.2017 and 29/2018 Cus dated1.3.2018.

If there is a scope to hold that the product may fall both under Sl No.20 as well as under Sl No.20A during the period under dispute. If so, as to whether the beneficial rate of BCD can be claimed by the importers or the same is not to be extended to them in terms of the Hon"ble Supreme Court"s judgement in the case of Dilip Traders as is being canvassed by the Revenue."

Legal Provisions:

Notification No.50/2017 Cus dated30.6.2017, as amended by Notification Nos.84/2017 Cus dated 8.11.2017, 93/2017 Cus dated 21.12.2017 and 29/2018 Cus dated1.3.2018

Observation and Comments:

The Honorable CESTAT observed and held that:

The Hon"ble Supreme Court in the case of Share Medical Care cited supra has held that on discovery of a more beneficial Notification, the same can be claimed by the assesse. There is nothing on record to suggest that subsequently any contrary decision was taken by the Supreme Court in any other case. Further, the High Courts and Tribunals have been consistently taking the view that the assessee is entitled for the more beneficial Notification, if there are two Notifications on the same issue. The ratio laid down in these case laws are squarely applicable to the facts of the present proceedings.

Applying the case laws cited supra, the importers would be eligible to claim NIL rated BCD and file the consequent Refund claim. Accordingly, we hold that the importers have correctly sought Refund

CC (Port) vs M/s. Uma Export Ltd. [Customs Appeal No. 76127 of 2019 – CESTAT Kolkata].

Importer cannot be forced to follow non-beneficial provision - CESTAT

DA Insights:

The Honorable CESTAT rightly held that the assessee is entitled for the more beneficial Notification, if there are two Notifications on the same issue.

claim on the ground that they were not required to pay 50% BCD in the first place.

Revenue‟s stand that the goods in question Peas [Pisum Sativum] was liable to be taxed only under Sl No.20A of the Master Notification No.50/2017 Cus dated 30.6.2017 is rejected. It is held that the goods were specified both under Sl No.20 as well as under Sl No.20A during the period in question. The importer is allowed to choose the more beneficial provision and cannot be forced to opt for / follow the non-beneficial provision.

CC (Port) vs M/s. Uma Export Ltd. [Customs Appeal No. 76127 of 2019 – CESTAT Kolkata].

Cenvat credit of entire input service available even if portion of service is used in manufacture of exempt goods

DA Insights:

The reversal of proportionate credit was not applicable in case of 'input services' under CENVAT Credit Rules, 2004 which is rightly held by the CESTAT.

Issue:

The issue in the appeal before CESTAT is whether the input services credit proportionately to be reversed if used for manufacture of exempted goods. The input services of 'operation and maintenance' service and for transport of coal by 'goods transport agency' for generation of electricity and steam in the coal fired 50 MW 'captive power plant' installed for consumption in the factory and that the entire production of steam and bulk of electricity were utilized in manufacture of various excisable goods. However, vide power purchase agreement (PPA) of the appellant with PTC India Ltd dated 24th April 2009, the appellant had been supplying excess production to the Tamil Nadu Electricity Board (TNEB) and the notices proposed recovery of credit proportional to such sale for the period in dispute.

Legal Provisions:

CENVAT Credit Rules, 2004

Observation and Comments:

The Honorable CESTAT observed and held that:

I find ample force and substance in the Appellants' above contentions that The definition of 'input services' does not restrict itself only to services which are used in manufacture of final products, but it also covers all activities relating to the business of manufacture. The scope of term 'input service' as defined in rule 2(1) of the CENVAT Credit Rules, 2004 has been spelt out by the Hon'ble High Court in the case of Ultratech Cement reported in 2010 (20) STR 577 (Bom.) and The Hon'ble High Court, in the case of COCA COLA INDIA PVT. LTD. vs. COMMISSIONER OF C.EX., PUNE-III 2009 (15) S.T.R. 657 (Bom.)

CCEST vs DCW Ltd [EXCISE APPEAL NO: 87060 OF 2013 – CESTAT - Mumbai]

CENVAT Credit on ISD invoice issued without obtaining ISD registration available - CESTAT

DA Insights:

The transfer of credit by ISD prior to registration is procedural lapse and cannot impact on availment of Cenvat Credit. In our view, the similar view stands hold good under GST regime also.

Issue:

The following issues involved in the present case:

(A) Whether the appellant is liable to reverse the CENVAT Credit distributed by its head office prior to its registration as Input Service Distributor?

(B) Whether the HO (registered as ISD) of the appellant while distributing 100% of the credit to a single unit has contravened the mandate under Rule 7 (d) of CENVAT Credit Rules, 2004 (as existed during the relevant period)?

Legal Provisions:

CENVAT Credit Rules, 2004

Observation and Comments:

The Honorable CESTAT observed and held that:

We find that there is no dispute about the payment of Service Tax on the service received by the appellant. Therefore, merely because the ISD invoice was issued without having registration of the appellant's head office, the fact of the payment of Service Tax will not get extinguished. Hence the credit cannot be disallowed. This issue has been considered by the Hon'ble Jurisdictional Gujarat High Court in the case of M/s. Dashion Ltd (supra). Therefore, merely because the ISD registration was not obtained the CENVAT Credit cannot be denied.

From the reading of the above rule and interpretation made by the Hon'ble Bombay High Court, it is clear that before the amendment was carried out in the year 2016, the assessee was given the option to distribute the CENVAT Credit to one unit or also to other unit, and provision for proportionate credit was brought only post amendment of 2016. Therefore, it is at the option of the head office whether it wanted to distribute the credit to the appellant only or to distribute it to other units.

Unifrax India Ltd vs C.C.E. & S.T.- [EXCISE Appeal No. 10125 of 2016-DB – CESTAT AHD]

Failure to Timely Notify Assessment Orders Renders Them Fatal – HC

DA Insights:

The Honorable High Court rightly held that the order would become effective against the person affected when it comes to the knowledge of the person either directly or constructively, otherwise not.

Issue:

The edifice of the case set out by the Petitioner in the three writ petitions is that the respondent could not have exercised the power under Section 37 of the Assam VAT Act, 2003 without issuance of notice as mandated under Section 37(1) of the Assam VAT Act of 2003. It is the further case of the Petitioner in respect to the Assessment Years 2012-13 and 2013-14, the impugned assessment orders were passed in violation to Section 39 of the Act of 2003 in as much as the said assessment orders were passed beyond the period of limitation.

Legal Provisions:

Section 37 of the Assam VAT Act, 2003

Observation and Comments:

From a perusal of the above quoted Section, it would show that the assessments which are carried out under the provisions of Sections 34, 35, 36 and 37 have to be completed within 5 years from the end of the year for which the assessment relates. Both the assessment orders dated 21.12.2017 relates to the period 2012-13 and 2013-14. Under such circumstances, for the Assessment Year 2012-13, the last date for completion of the assessment was 31.03.2018 and for the Assessment Year 2013-14, the last date for completion of the assessment was 31.03.2019. The impugned assessment orders dated 21.12.2017 on the face of it are within the period stipulated in Section 39 of the Act of 2003. But the question which arises is as to whether the noncommunication of the assessment orders to the Petitioner with the prescribed period would render the Assessment Orders for the Assessment Year 2012-13 and 2013-14 fatal?

The order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. It was further observed that the order would become effective against the person affected when it comes to the knowledge of the person either directly or constructively, otherwise not.

In the instant case, it would be seen that though the period as stipulated under Section 39 ended on 31.03.2018 and

M/S Vishal Udyog vs The State Of Assam And 3 ORS [WP(C)/5223/2021 – Gauhati High Court]

Failure to Timely Notify Assessment Orders Renders Them Fatal – HC

DA Insights:

The Honorable High Court rightly held that the order would become effective against the person affected when it comes to the knowledge of the person either directly or constructively, otherwise not.

31.03.2019 for the assessment years 2012-13 and 2013-14, but the notice of demands were issued in the month of July and August, 2019. There is no mention by way of affidavit or even from a perusal of the records as to why there was a delay in issuance of the said notice for more than two long years. Under such circumstances, this Court taking into account the judgment of the Supreme Court more particularly in the case of M. Ramakishtaiah and Company (supra) is further of the opinion that the impugned assessment orders for the Assessment Years 2012-13 and 2013-14 cannot be presumed to have been passed on 21.12.2017 as the same could have been made after the expiry of the period prescribed. For this reason also, the assessment orders for the period 2012-13 and 2013-14 are set aside.

M/S Vishal Udyog vs The State Of Assam And 3 ORS [WP(C)/5223/2021 – Gauhati High Court]

Mis-declaration cannot be alleged with Incomplete Evidence & Violation of Natural Justice – CESTAT

DA Insights:

The Honorable CESTAT rightly held that the adjudicating authority has failed to provide the test report to the appellant and therefore has grossly violating the principals of natural justice and further mis-declaration cannot be established.

Issue:

On filing of shipping bills, the officer asked to test the product and the Department on the basis of first test report entertained view that the export consignment under two shipping bills are not of the Iron Oxide Dry Powder, but of "Iron Ore'", which is classifiable under Customs Tariff Heading 2601119, accordingly SCN alleging mis-declaration of the export consignment and demanding the duty @ of 30% was issued. The provisions of Section 113(d) of Customs Act, 1962 has also been invoked..

Legal Provisions:

Section 113 (d) of Customs Act, 1962

Observation and Comments:

The Honorable CESTAT observed and held that:

It can be seen from the above test report that the consignments consisted of Iron Oxide and the only evidence on the basis of which it has been held that the subject consignments are of Iron ore/ concentrate by the Adjudicating Authority is Joint Director CRCL's letter dated 12.02.2016 which has neither been provided to the appellant nor that was existing at the time of issuing SCN. We don't take the cognigence of the Joint Deputy CRCL's letter as the Adjudicating Authority has failed to provide the same to the appellant and therefore has grossly violating the principals of natural justice following the principle of the natural justice. At the same time since the initially two reports clearly holds that export consignments are made of the Iron Oxide. We are of the opinion that charges of mis-declaration of description of subject consignments is not established.

In view of the above findings, we hold that the impugned order in original and order in appeal are without any merit, and therefore, we set aside the same.

Lexus Paints And Coating vs CC [CUSTOMS Appeal No. 10919 of 2022-DB]

No duty liability on Transition from EOU to EPCG Scheme if Export Obligations Fulfilled – CESTAT

DA Insights:

When No dues certificate is issued and EODC is issued, there is no question of duty liability on transition from EOU to EPCG Scheme.

Issue:

The export obligation could not be fulfilled by the respondent and applied to Development Commissioner for grant of permission to exit from EOU Scheme to EPCG Scheme in terms of the Foreign Trade Policy, 2004-09. The SCN was issued to the respondent for recovery of duty on the imported and indigenously procured capital goods procured duty-free in terms of the FTP which was adjudicated and proceedings were dropped which has been challenged by the Revenue before CESTAT.

Legal Provisions

Foreign Trade Policy 2004-09

Observation and Comments:

The Honorable CESTAT observed and held that:

We find that in this case, without considering the proceedings taken by the Development Commissioner and the payment of duty by the respondent, the Deputy Commissioner of Central Excise & Customs, opted for existing from EOU Scheme to EPCG Scheme in terms of the Foreign Trade Policy, 2004-09 on 07.02.2007 and after payment of duty, no dues certificate was issued. The show-cause notice was issued and the adjudicating authority has gone into this case and development taken before the Development Commissioner as well as the payment of duty by the respondent at the time of opting out from EOU Scheme to EPCG Scheme and the adjudicating authority dropped the proceedings against the respondent.

We further take note of the fact that after adjudication, the respondent has fulfilled their export obligation and obtained for EODC on 09.03.2018. In those circumstances, no proceedings are sustainable against the respondent.

CCGST&E vs M/s National Aluminium Company Limited [Excise Appeal No.76050 of 2018, Cross Objection No.76235 of 2018 – CESTAT Kolkata]

Show Cause Notice Issued Under Wrong Section Void - CESTAT

DA Insights:

When the SCN itself is issued under wrong provision, it cannot be sustained and is void ab initio which is rightly held by CESTAT.

Issue:

The Department issued a show cause notice to the respondent whereby it alleged that the respondent had violated the provisions of Regulation 11 of Customs Broker Licensing Regulations 2013 (CBLR) (Regulation 13 of Customs House Agents Licensing Regulations, 2004), at the time of applying for a new Customs House Agents Licence, in terms of Section 146 of the Customs Act, 1962 which was later dropped and against which Revenue filed the appeal.

Legal Provisions

Section 146 of the Customs Act, 1962

Observation and Comments:

The Honorable CESTAT observed and held that:

The fact of notice being issued in terms of Section 124 of the Customs Act, is also recorded in Para 1 of the impugned Order-in- Original, now appealed by the Revenue. We note that Section 124 of the Customs Act, deals with the subject of issuance of notice before adjudging confiscation of goods. The said section does not cater to a situation concerning issuance of a notice to an individual seeking a Customs Broker Licence, in terms of Section 146 of the Customs Act.

In the circumstances, we find that the show cause notice issued by the Department is ab initio void and is therefore liable to be quashed. We, therefore, dismiss the show cause notice issued by the Department as a nullity in law. Under the circumstances, all and any proceeding issued in pursuance of a void show cause notice are in themselves void ab initio and therefore, carry no legal force.

CC (Preventive) vs M/s. Axis Shipping Agency [Customs Appeal No. 75292 of 2016]

Voluntary payment of differential duty doesn't confirm acceptance of undervaluation – CESTAT

DA Insights:

Mere voluntary acceptance of the reassessed value and payment thereof will not be sufficient to confirm the allegations of under valuation which is rightly held by the CESTAT.

Issue:

In the present case, BOE (Bill of Entry) was assessed and based upon the statement and the report of market survey that the declared assessable value of was rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the value was reassessed with the total reassessed duty. The already paid duty was acknowledged to have been paid. The goods were confiscated with an option of getting those released on payment of redemption fine and the penalty was imposed upon the appellant vide the order-in-original when it was challenged the findings have been confirmed by upholding the order vide the order-in appeal under challenge. Being aggrieved, the appellant is before this Tribunal.

Legal Provisions

Customs Valuation Rules, 2017

Observation and Comments:

The Honorable CESTAT observed and held that:

Rule 7 has straightway wrongly invoked. As already discussed, sequentially Rule 4 to Rule 9 have to be followed to arrive at reassessed value. Admittedly no contemporaneous import data of related period nor any enquiry w.r.t. similar imported goods sold in bulk is on record.

It appears that the sole ground for the confirmation is the admission of the authorized representative of the appellant in his statement. We observe that in the original submissions made on behalf of the appellant, it is mentioned that to avoid any delay and the demurrage charges, in case the consignment is held by the Customs Authority, that the appellant opted to pay the differential amount demanded by them. The voluntary payment hence cannot be called as admission of the appellant towards alleged mis-declaration for value from the above discussion. Since it is apparent that the Department has not followed the statutory procedure nor there was any misdeclaration of quantity as alleged, the mere acceptance of the reassessed value and payment thereof will not be sufficient to confirm the allegations of under valuation. The burden was still on the Department to prove the allegations levelled. The said burden has not been discharged.

M/s River Side Impex vs Comnr (Preventive) [CUSTOMS APPEAL NO. 52057 OF 2019 – CESTAT New Delhi]

Customs Notification / Circulars / Guidelines / Instructions

Discontinuation of Physical Copies for Restricted Import Authorizations

This trade notice announces the discontinuation of the issuance of physical copies of Authorisation for Restricted Imports, effective from October 19, 2023, for Electronic Data Interchange (EDI) ports. Key points include:

1. All Authorisations for Restricted Imports at EDI Ports from 19.10.2023 will be issued electronically, with no paper copies provided.
2. Authorisations for Restricted Imports at non-EDI ports will continue to be issued on paper.
3. Amendment or revalidation of Authorisations issued before 19.10.2023 will follow the existing process with paper copies for amendments.
4. For EPCG imports of Restricted Items, the authorisation number and date must be endorsed on the condition sheet.
5. Authorisation holders can download soft copies from the DGFT website.

Trade Notice 31/2023-24 - DGFT, dated 19th October 2023

Allowing advance assessment of Courier Shipping Bills

Further enhancing the ease of doing business, it has been decided to provide for advance assessment of Courier Shipping Bills on the Express Cargo Clearance System (ECCS). The Directorate General of Systems has confirmed the enabling of appropriate technical changes in the ECCS export workflow for this purpose. An Advisory No. 11/SYS/WZU/2023 dated 19.10.2023 has also been issued by DG (Systems).

Circular No. 28/2023-Customs, dated 08th November, 2023

Submission of data to RoDTEP Committee for review of RoDTEP rates

This notice pertains to the submission of data to the RoDTEP (Remission of Duties and Taxes on Exported Products) Committee for the review of RoDTEP rates. RoDTEP aims to provide refunds of duties and taxes on exported products to enhance India's export competitiveness

Trade Notice 30/2023-24 - DGFT, dated 19th October 2023

Customs Notification / Circulars / Guidelines / Instructions

DGFT Introduces Centralized Video Conference Facility for Exporters

The Directorate General of Foreign Trade (DGFT) has introduced a centralized Video Conference facility at its headquarters to address grievances and facilitate trade. Effective from 08.11.2023, this facility will be available every Wednesday from 10 am to 12 noon. It allows exporters to discuss matters unresolved by regional authorities, provide suggestions, and raise concerns about DGFT systems. Interested parties can register on the DGFT portal, with preference given to those who register in advance. The facility aims to improve communication between DGFT and the exporting community. Daily online VCs with regional authorities and individual appointments over VC with concerned officers will continue as usual.

Trade Notice 32/2023-24 - DGFT, dated 06th November, 2023


DA NEWS
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Goods and Services Tax

- As GST notices pile up, FMCG, auto, insurers face the brunt
- GST departments on an overdrive with notices and summons
- GST: Finance ministry launches amnesty scheme for filing appeals against demand orders
- Offshore E-gaming apps try no-GST ploy to woo users; Binny Bansal's Curefoods push
- Online Gaming Companies Get ₹1 Trillion GST Notices Over Tax Evasion

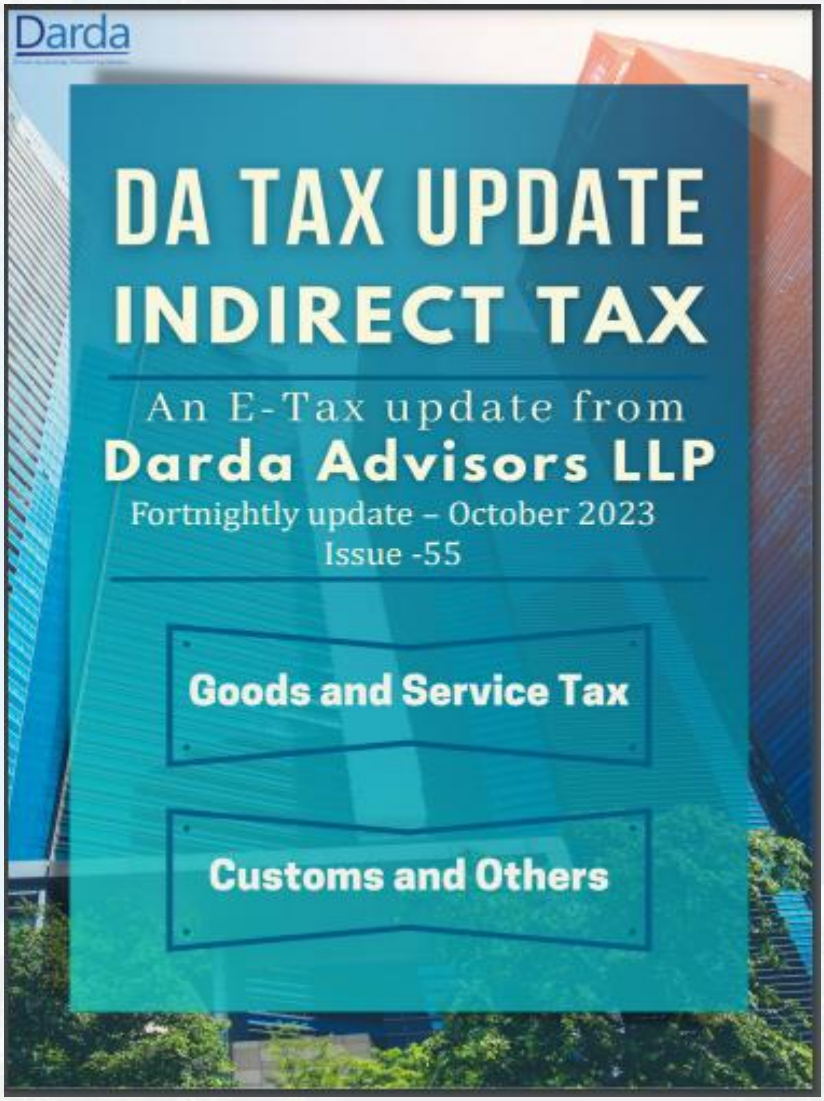
Customs and other

- Important issue of jurisdiction raised, says HC, seeks CBI reply over sending letter to Customs
- Customs using cutting-edge tech to detect illicit trade: CBIC Chairman
- Maruti Suzuki receives show cause notice worth over ₹16 lakh, accused of evading customs duty
- AAI seeks 10% import duty on aluminium scrap

DA Updates and Articles for the month of October 2023

DA - Indirect Tax Fortnightly Update – October 2023

https://dardaadvisors.com/wp-content/uploads/2023/10/DA-Indirect-Tax-Fortnightly-Update_October-2023...pdf



DA Updates and Articles for the month of October 2023

DA Newsflash (Status Holder): Automated Approval for Status Holder Certificate

https://www.linkedin.com/pulse/da-newsflash-status-holder-automated-approval-certificate/?trackingId=v0aQvuV24iP4XZvQeM7Vew%3D%3D

DA Updates and Articles for the month of October 2023

DA Newsflash (SEZ): Update on Notice of Online Invoice Endorsement in SEZ

https://www.linkedin.com/pulse/da-newsflash-sez-update-notice-online-invoice-endorsement-e060c/?trackingId=cKmmRPxzW4UZWVUHnwgWhA%3D%3D

DA Updates and Articles for the month of October 2023

DA Newsflash (DGFT): Update on Export Obligation Discharge Certificate (EODC) Camp

https://www.linkedin.com/pulse/da-newsflash-dgft-update-export-obligation-discharge-daiwe/?trackingId=8BbtsgyCSZ5cSCNrdVp5%2Fg%3D%3D

DA Updates and Articles for the month of October 2023

DA Newsflash (DGFT): Update on Export Obligation Discharge Certificate (EODC) Camp

https://www.linkedin.com/pulse/da-newsflash-dgft-update-export-obligation-discharge-daiwe/?trackingId=8BbtsgyCSZ5cSCNrdVp5%2Fg%3D%3D

DA Updates and Articles for the month of October 2023

DA Newsflash (DGFT): Update on restricted import authorisation for IT hardware

https://www.linkedin.com/pulse/da-newsflash-dgft-update-restricted-import-authorisation-clzfc%3FtrackingId=DY9VVrrw%252BuYKY578poORmQ%253D%253D/?trackingId=DY9VVrrw%2BuYKY578poORmQ%3D%3D

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