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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

January 2024
Issue: 44

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We wish you a happy new year and happy Pongal to you and your family.

We are pleased to present to you the Forty fourth 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 December 2023.

During the month of December 2023, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as Refund cannot be denied due to 'innumerable' difficulties including technical glitches due to GST rollout and Open Market Raw Material Purchases Not Permitted with DFIA for Exports.

In the Forty fourth 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 December 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

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Tax and Regulatory Services

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GST COMPLIANCE CALENDAR

January 2024

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

- Integral charges for distribution of electricity are not liable to GST and relevant circular imposing tax set aside – HC
- Typographical error in E-Way Bill cannot invite penalty absent intent to evade tax – HC
- Refund cannot be denied due to 'innumerable' difficulties including technical glitches due to GST rollout – HC
- HC upholds credit-reversal on account of belated return-filing
- ITC cannot be denied due to delayed filing of GSTR-3B Returns – HC
- SEZ unit not entitled to exemption from Compensation Cess – HC
- GSTR-1 rectification is allowed due to "inadvertent and bonafide human error" – HC
- Grants liberty to approach Appellate Authority in GSTR-3B/2A mismatch – HC
- Other Notifications/Circulars/Guidelines/instructions/Portal changes

Integral charges for distribution of electricity are not liable to GST and relevant circular imposing tax set aside – HC

DA Insights:

There are many such circular which are ultra vires to the GST Act and relevant notifications issued and being judged by various High Court. There is need for review of all such circulars by CBIC.

Issue:

The petitioner filed the writ petition to challenge the para 4 of circular no. 34/08/2018-GST dated 01.03.2018, which clarified that the charges for metering equipment, testing fee for meter, labour charges from customers for shifting of meters, charges for bills and application for releasing connection of electricity are all not integral part of services of distribution of electricity and liable to GST. As per serial No. 25 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, the transmission or distribution of electricity by an electricity transmission or distribution utility is exempted from the GST.

Legal Provisions:

Para 4 of circular no. 34/08/2018-GST dated 01.03.2018 read with serial No. 25 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017

Observation and Comments:

The Honorable High Court observed and held that:

The Gujarat High Court struck down the impugned circular being ultra-vires to Section 8 of the CGST Act.

Since the impugned circular has been set aside and it is clarified that the supplies mentioned in the impugned circular are bundled supplies and form an integral part of the supplies of distribution of electricity, the said supplies are not chargeable to GST. Consequently, the petitioners are also not entitled to collect such charges from their customers. In this view, we consider it apposite to direct that any GST collected by the petitioners after 08.11.2023, be refunded to customers from whom the said GST has been collected.

We clarify that nothing stated in this order should be construed as limiting the rights of the customers of the petitioners to seek refund of the GST paid by them prior to 08.11.2023 or avail appropriate remedies.

BSES Rajdhani Power Ltd & ANR. Vs UOI and Others [W.P.(C) 9455/2018 & CM APPL. 62085/2023]

Typographical error in E-Way Bill cannot invite penalty absent intent to evade tax – HC

DA Insights:

The Honorable High Court rightly held that a typographical error in the e-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty.

Issue:

It is a contention of the petitioner that the consignment of goods was sent by the petitioner in Vehicle No.DL1 AA 5332. When the vehicle was in transit, the same was intercepted by the GST authorities. The seizure order was passed on the ground that the vehicle number in Part-B of the e-way bill was incorrect as the e-way bill showed the vehicle bearing No.DL1 AA 3552 instead of DL1 AA 5332. Apart from the above factual position, it is clear that there was no other infraction on the part of the petitioner. Furthermore, the authorities have imposed penalty only on the ground that the vehicle number was not mentioned correctly.

Legal Provisions:

Section 129 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

In the present case, one finds that there is definitely an error with regard to typing of the vehicle number and there is a difference of three digits instead of the permitted two digits (as per the government circular) as submitted by the learned Additional Chief Standing Counsel. However, law is not to remain in a vacuum and has to be applied equitably in appropriate cases. The judgment in M/s. Varun Beverages Limited (supra) may be referred to for this purpose.

Upon perusal of the judgments, the principle that emerges is that presence of mens rea for evasion of tax is a sine qua non for imposition of penalty. A typographical error in the e-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty.

Hindustan Herbal Cosmetics vs. State of U.P. and Ors [TS-01-HC(ALL)-2024-GST]

Refund cannot be denied due to 'innumerable' difficulties including technical glitches due to GST rollout – HC

DA Insights:

The decision is major relief where non filing of online refund application and also missing to file manual application within period of limitation is still allowed to be processed.

Issue:

The petitioner has filed the writ petition aggrieved by the denial of refund of unutilised input tax credit (ITC) accumulated in respect of the GST paid on inputs in respect of the zero-rated supplies on basis that the application for refund was filed beyond the period of two years as specified under Section 54(1) of the CGST Act, 2017.

Legal Provisions:

Section 54 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

In the present case, there is no dispute that the petitioner had attempted to upload its application for refund but could not do so on account of technical glitches. We find it difficult to accept that the petitioner's legitimate right to seek refund could be foreclosed on account of such technical glitches.

In terms of Rule 97A of the CGST Rules (introduced with effect from 15.11.2017), the petitioner could also file the application manually. However, it must be recognized that the period in question was a period of transition. It was fraught with various kinds of difficulties being faced by the taxpayers migrating to the new regime.

In the peculiar facts of the case, we are unable to accept that the petitioner's claim for refund is required to be denied on the ground of delay.

In view of the above, we direct the proper officer to examine the petitioner's claim for refund and process the same, if it is found that the petitioner is entitled to the same.

Sethi Sons (India) vs. Assistant Commissioner & Ors. [TS-676-HC(DEL)-2023-GST]

HC upholds credit-reversal on account of belated return-filing

DA Insights:

The Honorable High Court lays down that Section 16(2) prescribes the eligibility criteria which are mandatory and in the absence of fulfillment of the eligibility criteria, the dealer will not be entitled to claim ITC, and accordingly, finds no ground to grant any relief to the assessee

Issue:

The appellant filed the writ petition challenging an order-in-appeal and sought for a refund of the tax which is alleged to have been recovered by the appellant in excess of 10% of disputed tax amount and to prohibit the respondents from taking further cohesive action against the appellant. The order impugned in the writ petition was passed under Section 107 of the CGST Act, 2017 whereby the ITC availed by the appellant from the period from November, 2018 to March 2019 was denied on the ground that the returns for the said period was filed beyond the statutory time limit stipulated in Section 16(4) of the GST Act, which time limit expired on 20.10.2019.

Legal Provisions:

Section 107 of the CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The contention that non obstante clause in the Sub Section(2) of Section 16 overrides the other provisions namely Section 16(4) was canvassed before the court which was also rightly rejected after taking note of the various decisions as to how the non obstante clause should be interpreted and rightly held that Section 16(2) does not appear to be a provision which allows Input Tax Credit, rather Section 16(1) is the enabling provision and Section 16(2) restricts the credit which is otherwise allowed to the dealers who satisfied the condition prescribed the interpretation given by the court that the stipulation in Section 16(2) is the restrictive provision is the correct interpretation given to the said provision.

A similar challenge was made to Section 16(4) of the Bihar Goods and Services Taxes Act, 2017 in the case of a Gobinda Construction wherein the court held that in the language of Section 16 does not suffer from any ambiguity and clearly stipulates grants of ITC subject to the condition and restriction put therein. Further it was held that the right of registered person to take ITC under Section 16(1) becomes a vested right only if the conditions to take it are fulfilled, free of restriction prescribe under Sub Section (2) thereof. Further the court held that the provision under Sub Section (4) of Section 16 is one of the conditions which makes a registered person entitled to ITC and by no means Sub Section (4) can be said to be violative of Article 300A of the Constitution of India. The court noted the decision in ALD Automotive Private Limited, Godrej and Boyce Manufacturing Private Limited and Jayam and Company and ultimately upheld the constitutional validity of Section 16(4) of the Act.

BBA Infrastructure Ltd vs Senior Joint Commissioner of State Tax and others [TS-646-HC(CAL)-2023-GST]

ITC cannot be denied due to delayed filing of GSTR-3B Returns – HC

DA Insights:

The Honorable High Court rightly held that when the Rules specifically prescribes GSTR-2 to specify the inward supplies for claiming ITC, when the said form is not notified, the petitioner cannot be expected to file the same to claim ITC.

Issue:

The writ petitions is filed against impugned assessment orders denying the ITC due to delayed filing of GSTR-3B returns.

Legal Provisions:

Section 38 of the CGST Act, 2017 read with Rule 60 of the CGST Rules, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The contention of the petitioner is that as per Section 38 of the GST Act read with Rule 60 of the TNGST Rules, the ITC shall be claimed through GSTR-2, GSTN had not provided the facility of GSTR-2 till now. The Learned Counsel appearing the petitioner specifically submitted that it is due to technical reasons and the mistake ought to be rectified by the GST Council, unfortunately the GST Council had not taken up the issue to rectify the same. Since the GSTR-2 was not notified, which is meant for claiming ITC, hence the petitioner could not claim the ITC within the prescribed time.

When the Rules specifically prescribes GSTR-2 to specify the inward supplies for claiming ITC, when the said form is not notified, the petitioner cannot be expected to file the same to claim ITC.

The respondents without giving any opportunity to file the returns by notifying the Form GSTR-2, cannot expect the taxable person to file returns. In fact, the petitioner has no intension to violate the provisions of the Act. In order to show his bonafide, he has filed physically. Moreover, all tax liability is paid and there is no loss to the department. Moreover, the petitioner has also claimed financial crisis. Even though the financial crisis cannot be a ground for not filing the returns in time, not notifying of Form GSTR-2 is clearly a ground to consider the petitioner's claim of belated returns.

The learned Counsel appearing for the petitioner relied on the judgment rendered by the High Court of Punjab and Haryana in the case of Hans Raj Sons Vs. Union of India and others - 2019-VIL-607-P&H in CWP No.36396 of 2019, dated 16.12.2019, wherein the Hon'ble Court has allowed the tax payer to file the return either electronically or manually, if the portal is not opening. In the said judgment, the

Kavin Hp Gas Gramin Vitrak vs CCT and Others [W.M.P.(MD)Nos.6764 and 6765 of 2023]

ITC cannot be denied due to delayed filing of GSTR-3B Returns – HC

DA Insights:

The Honorable High Court rightly held that when the Rules specifically prescribes GSTR-2 to specify the inward supplies for claiming ITC, when the said form is not notified, the petitioner cannot be expected to file the same to claim ITC.

High Court of Punjab and Haryana has relied on another judgment rendered in CWP No.30949 of 2018, in the case of Adfert Technologies Private Limited Vs. Union of India and others - 2019-VIL-537-P&H, dated 04.11.2019.

In the above said order, this Court has clearly held that in the absence of any enabling mechanism, the assessee cannot be prejudiced by not granting ITC. Therefore, following the aforesaid judgments this Court is inclined to set aside the impugned order.

Therefore, following the above said judgments, this Court is inclined to quash the impugned orders and accordingly the impugned orders are quashed. The respondents shall permit the petitioner to file manual returns whenever the petitioner is claiming ITC on the outward supply / sales without paying taxes. Further the respondents are directed accept the belated returns and if the returns are otherwise in order and accordance to law, the claim of ITC may be allowed. Hence, the matter is remitted back to the authorities for reconsideration.

Kavin Hp Gas Gramin Vitrak vs CCT and Others [W.M.P.(MD)Nos.6764 and 6765 of 2023]

SEZ unit not entitled to exemption from Compensation Cess – HC

DA Insights:

The non availability of exemption from GST Compensation Cess is an heavy burden on SEZ and there is need of issuance of relevant amendments under SEZ, GST and Customs law to provide the same. The Honorable High Court correctly taken the view based on prevalent laws.

Issue:

The assessee, a ferro alloys manufacturer in SEZ unit, sought clarification on exemption on GST cess payable under the Goods and Services Tax (Compensation to States) Act, 2017 on import of coal under the Customs Act, 1962 or Customs Tariff Act, 1975. The Director (SEZ) clarified that the same was not available to the assessee as there was no CBEC/GST notification exempting the said cess. Accordingly, the Director (SEZ) made a demand for the assessee to submit a bond along with a bank guarantee equal to the amount of compensation cess, as a condition to allow goods to be brought into the SEZ area. Hence, the writ petition.

Legal Provisions:

Section 26(1)(a) of SEZ Act, 2005, Notification No.64/2017 dated 05.07.2017, Section 3(9) of Customs Tariff Act, 1975

Observation and Comments:

The Honorable High Court observed and held that:

In our view, when Section 26 of SEZ Act is perused, it is discernible that the word "duty" alone is used in the said section but not the word "cess" More prominently U/s 26(1)(a), on which much reliance is placed duty of customs but not any cess much-less the GST Compensation Cess. Therefore, it is difficult to accept the contention that the exemption of duty of customs under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law on import of goods encompasses the Compensation Cess also merely because its rate of tariff is mentioned in Section 3(9) of Customs Tariff Act, 1975. In our considered view, such an argument is of no avail to the petitioners.

It should be noted that in Section 7 the words "tax, duty and cess" are specifically and distinctly used and stated that any goods or services exported or imported or procured from the DTA by a SEZ unit or developer shall subject to such terms and conditions and limitations be exempt from payment of taxes, duties or cess under all enactments specified in the First Schedule. The sine qua non for application of Section 7 is that in order to get exemption, the enactment which imposes tax, duty or cess shall be mentioned in the First Schedule.

Therefore, a conjunctive study of Section 26(1)(a), 2(zd) of SEZ Act, 2005 and Section 2(15) of Customs Act, 1962 would pellucidly tell us that the phrase 'duty of customs' used in Section 26(1)(a) of SEZ Act only refers to duty leviable under Customs Act, 1962 but the said phrase does not include cess under GST Compensation Act.

Maithan Alloys Ltd vs UOI [TS-677-HC(AP)-2023-GST]

GSTR-1 rectification is allowed due to "inadvertent and bonafide human error" – HC

DA Insights:

The clerical error for reporting the voluminous transaction is very common and the Honorable High Court rightly held that the department needs to avoid unwarranted litigation on such issues, and make the system more assessee friendly...

Issue:

The writ petition is filed by the assessee seeking approval to modify/amend FORM GSTR-1 as GSTIN of third parties to whom shipment was delivered, was reported instead of declaring GSTIN of customer under 'Bill to Ship to' model.

Legal Provisions:

Section 37 (3) and section 37 (9) of CGST Act 2017

Observation and Comments:

The Honorable High Court observed and held that:

The provisions of law are required to be alive to such considerations and it is for such purpose the substantive provisions of sub-section (3) of Section 37 and sub-section (9) of Section 39 minus the proviso, have permitted rectification of inadvertent errors.

There was not an iota of an illegal gain being derived by the assessees. In fact, the scheme of the GST laws itself would contemplate correct data to be available in each and every return of tax, being filed by the assessees. Any incorrect particulars on the varied aspects touching the GST returns would have serious cascading effect, prejudicial not only to the assessee, but also to the third parties.

This necessarily would mean, that a bonafide, inadvertent error in furnishing details in a GST return needs to be recognized, and permitted to be corrected by the department, when in such cases the department is aware that there is no loss of revenue to the Government. Such freeplay in the joint requires an eminent recognition. The department needs to avoid unwarranted litigation on such issues, and make the system more assessee friendly. Such approach would also foster the interest of revenue in the collection of taxes.

Star Engineers (I) Pvt. Ltd. vs. UOI & Ors. [TS-654-HC(BOM)-2023-GST]

Grants liberty to approach Appellate Authority in GSTR-3B/2A mismatch – HC

DA Insights:

The relief sought was to file appeal beyond limitation period before first appellate authority and not to set aside the order which has rightly been accordingly considered by the Honorable High Court.

Issue:

The writ petition is filed against the impugned assessment order passed by adjudicating authority. The contention was that all communications pertaining to the impugned proceedings were intimated to the mobile number of one of the petitioner's staff who expired. In so for as the communications sent via email is concerned, the same were sent to the mail ID provided by the petitioner, which belongs to consultant of the petitioner, who has also expired and hence, the petitioner was not aware of the initiation of impugned proceedings against him and only when the petitioner's bank account came to be attached, the petitioner came to know about the impugned proceedings, and immediately, the petitioner approached this Court seeking for quashing the impugned orders.

Legal Provisions:

Section 73 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

Since the learned counsel for the petitioner submitted that the petitioner would be satisfied, if this Court grants liberty to the petitioner to agitate their case before the Appellate Authority by way of Appeal, this Writ Petition is disposed of granting liberty to the petitioner to approach the Appellate Authority by way of filing an appeal within a period of thirty days from the date of receipt of a copy of this order, in which case, the authorities concerned shall entertain the same without insisting upon limitation aspect, if any and dispose of the same, in accordance with law, after affording an opportunity to the petitioner. No

Samadhu Medicals vs. The Deputy State Tax Officer [TS-669-HC(MAD)-2023-GST]

GST Notification / Circulars / Guidelines / Instructions

Revised Time Limits for GST Notice Issuance - Financial Years 2018-19 and 2019-20

The Ministry of Finance has extended the deadlines for issuance of GST notices and orders for the financial years 2018-19 and 2019-20. The new deadlines allow show cause notices to be issued until 31st January 2024, and orders related to tax recovery until 30th April 2024. This move aims to streamline the GST process and provide more time for taxpayers to handle compliance matters effectively.

Notification No. 56/2023- Central Tax, Dated: 28th December, 2023

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

The Central Goods and Services Tax (Second Amendment) Act, 2023, recently enacted by the Ministry of Law and Justice, aims to enhance the Central Goods and Services Tax Act, 2017. The amendment, receiving presidential assent on December 28, 2023, specifically targets Section 110, focusing on elevating standards for key appointments, including the President and Members of appellate bodies. Notable changes include increasing the qualifications and experience required for these appointments. This legislative development signifies a crucial step in refining the indirect tax administration landscape in India.

Notification No. 48/2023 – Dated: 28th December, 2023

Seeks to rescind Notification No. 30/2023-CT dated 31st July, 2023

The Ministry of Finance, through Notification No. 03/2024-Central Tax dated January 5, 2024, has revoked Notification No. 30/2023-CT dated July 31, 2023, (Special Procedure for Registered Manufacturers of certain goods) under the authority of section 148 of the Central Goods and Services Tax Act, 2017. The reasons behind the rescission, its impact on businesses, compliance considerations, transitional provisions, and the effective date of January 1, 2024, are crucial aspects for businesses to understand. The rescission is based on the Council's recommendations, and a proactive approach is recommended for businesses to navigate these changes, reassess operations, and ensure compliance with the amended regulations.

Notification No. 03/2024 – Central Tax, Dated: 5th January, 2024

Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.

The government, under section 148 of the Central Goods and Services Tax Act, 2017, has issued a notification outlining a special procedure for registered persons engaged in manufacturing specific goods listed in the schedule. The procedure includes submitting details of packing machines, a special monthly statement, and a certificate from a Chartered Engineer. The notification comes into effect on April 1, 2024, and applies to goods like pan-masala, tobacco, and related products. The schedule provides a detailed list of goods with corresponding tariff items and descriptions. The notification aims to streamline compliance and reporting for manufacturers of specified goods.

Notification No. 04/2024 – Central Tax, Dated: 5th January, 2024

GSTN Portal Changes

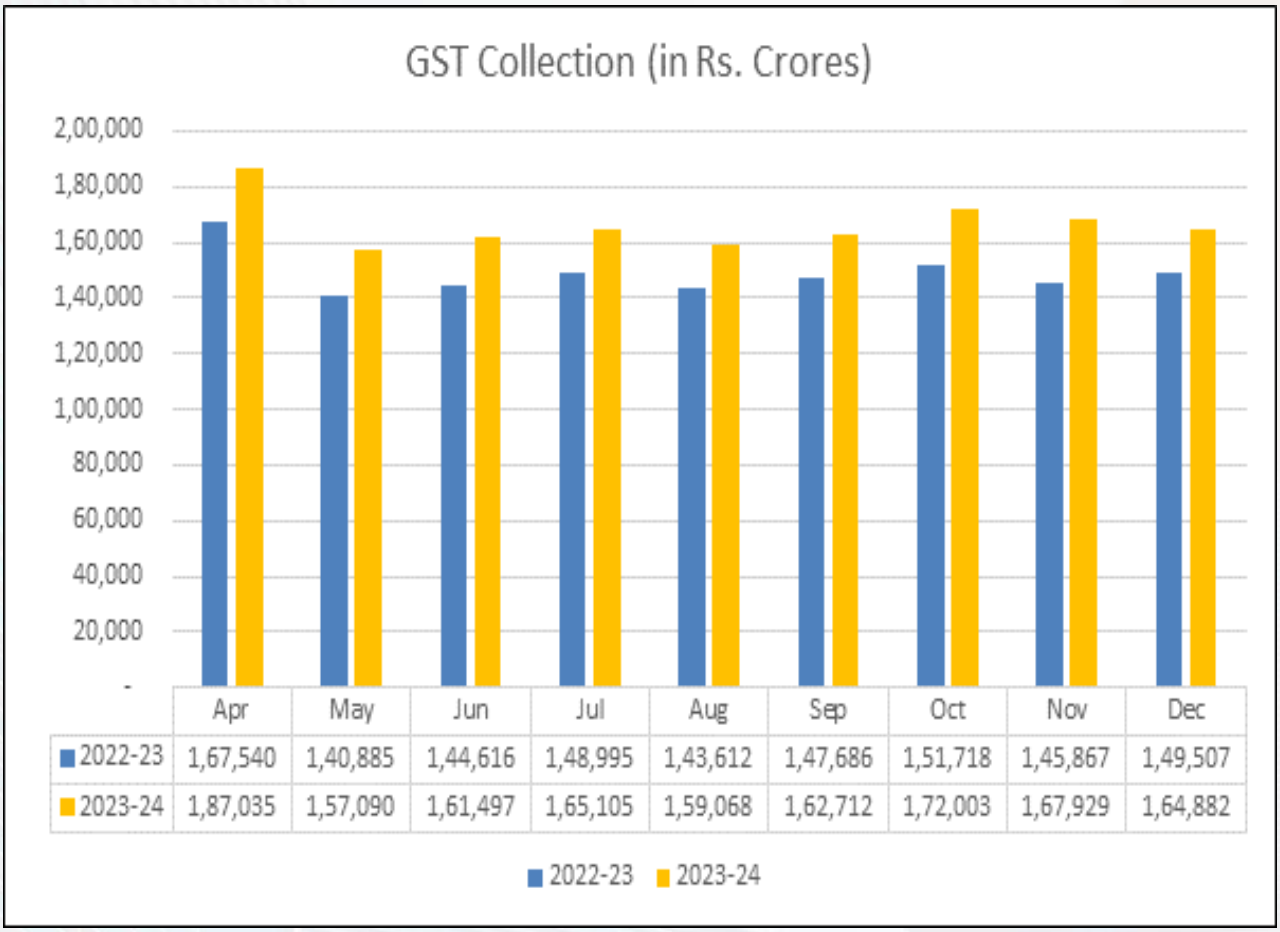
Advisory: Date extension for reporting opening balance for ITC reversal

The Electronic Credit and Re-claimed Statement has been introduced on the GST portal to assist taxpayers in accurately reporting ITC reversal and reclaim, avoiding clerical mistakes. The statement allows taxpayers to track their ITC reversed in Table 4B(2) and reclaimed in Table 4D(1) and 4A(5). The opportunity to declare the opening balance for ITC reversal has been extended until 31st January 2024, with only three amendment opportunities available post-declaration. The facility to amend the opening balance will be available until 29th February 2024.

Advisory on the functionalities available on the portal for the GTA taxpayers

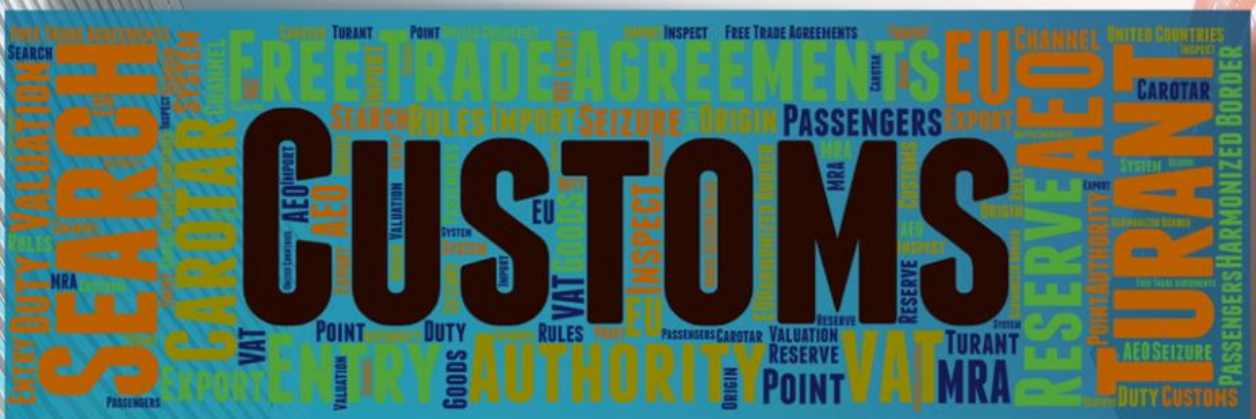
The portal introduces functionalities for Goods Transport Agency (GTA) taxpayers related to GST payment mechanisms. Existing GTAs can file online declarations in Annexure V and Annexure VI for the upcoming financial year, exercising options for Forward Charge or Reverse Charge mechanisms. Newly registered GTAs can also declare their payment options within the specified due date. Additionally, there is a provision to manually upload Annexure V forms filed for the FY 2023-24. The system considers the option exercised by GTAs for the next financial years unless a declaration in Annexure VI is filed to revert under the reverse charge mechanism. GTAs who filed declarations for FY 2024-25 between 27.07.2023 and 22-08-2023 are considered valid and need not file Annexure V for subsequent years to continue the Forward Charge mechanism.

GST Revenue Collection in November - Rs. 1,64,882 Cr.



	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2022-23	1,67,540	1,40,885	1,44,616	1,48,995	1,43,612	1,47,686	1,51,718	1,45,867	1,49,507
2023-24	1,87,035	1,57,090	1,61,497	1,65,105	1,59,068	1,62,712	1,72,003	1,67,929	1,64,882

Source: PIB



- Clean Energy/Environment Cess (CEC) not leviable on Closing Stock of Coal as on 30 June 2017 [Transition Date] – CESTAT
- Advance ruling is binding on authorities in absence of any change in law – HC
- HC Directs Customs to Compensate Seized Goods Value to Assessee
- Section 114A of Customs Act Prescribes Penalty Equivalent to Duty or Interest, as Applicable – CESTAT
- Excise duty demand cannot be demanded merely based on entries in private registers – CESTAT
- Open Market Raw Material Purchases Not Permitted with DFIA for Exports. HC
- Refund to be granted as order amending Bill of Entry had attained finality
- Other Notifications/Circulars/Instructions

Clean Energy/Environment Cess (CEC) not leviable on Closing Stock of Coal as on 30 June 2017 [Transition Date] - CESTAT

DA Insights:

There are various judicial precedents which held that as there was no levy of special excise duty at that time the goods were manufactured, no duty could be levied on removal which is rightly following in the said judgment to decide non applicability of CEC levy on stocks held on 30 June 2017..

Issue:

The appellant is engaged in the business of mining and selling of coal. The Assessee Appellant contended that the liability of Clean Environment Cess Rules, 2010 [Clean Energy Cess was renamed as Clean Environment Cess by the 2016 Finance Act.] (CEC) did not crystallize till the date of repeal of the CEC and, therefore, the question of it being saved by the Savings Clause is misconceived. The appeal is filed to Honorable CESTAT against the impugned order of first appellate authority.

Legal Provisions:

Clean Environment Cess Rules, 2010

Observation and Comments:

The Honorable CESTAT observed and held that:

The decision of the Delhi High Court in Caltex Oil Refining (India) Limited vs. Union of India and others [1979 (4) E.L.T. (J 581) (Del.)] was relied upon which held that the liability of cess occurs only on removal of the goods and not when the goods are produced.

It, therefore, transpires that though cess may be attracted when the article is produced, but removal is the essence of the crystallization of the charge. There has to be removal from the specified place to attract the payment of cess and if there is no removal, there would be no question of payment of cess.

In the present case, as the goods were removed on or after 01.07.2017, liability had not accrued or incurred for the simple reason that when CEC itself did not crystallize/accrue, there is no question of it being saved by the savings clause. The provisions contained in the savings clause are relevant to enforce the recovery of the cess amount which had already accrued, but had not been paid.

The aforesaid discussion leads to the conclusion that the appellant was not required to pay CEC on repeal of the 2010 Finance Act on goods removed on or after 01.07.2017 even though they were lying in stock as on 30.06.2017.

South Eastern Coalfields Limited vs Comnr (Audit) [EXCISE APPEAL NO. 51557 OF 2022 – CESTAT New Delhi]

Advance ruling is binding on authorities in absence of any change in law – HC

DA Insights:

The Honorable High Court rightly held that when the authority did not challenge the ruling of AAR, the same is applicable to them also and need to be followed.

Issue:

The petitioner is primarily engaged in the business of import of various edible products including products of betel nut (processed supari). The petitioner filed advance ruling before AAR in relation to classification wherein the AAR has given a ruling that 'unflavoured supari' is to be classified under CTH 21069030 which has also been upheld by the Honorable High Court in its judgment reported in 2018 (13) GSTL 273 against the seizure memo. However, the customs officer passed an OIO rejecting the classification of the goods imported under CTH 21069030 and ordered the same to be classified under heading 0802 on the ground that the CESTAT Chennai Bench in the case of S.T. Enterprises vs. Commissioner of Customs [2021 (378) E.L.T. 514 (Tri. - Chennai)] has taken a view that the betel nuts imported by these parties fall under Chapter 8 and not under Chapter 21 of CTH. Accordingly, the writ petition is filed.

Legal Provisions:

Customs Classification under Customs Tariff Act, 1975

Observation and Comments:

The Honorable High Court observed and held that:

It is a well settled in law that the assessee can invoke writ jurisdiction under Article 226 of the Constitution of India, despite an alternate statutory remedy of an appeal interalia on the ground that there is a breach of fundamental rights, breach of natural justice, order passed is without jurisdiction or there is a challenge to the vires of the statute. In these circumstances, the Court can exercise writ jurisdiction inspite of appeal remedy being available to the petitioner.

Section 28J (1) provides that the advance ruling pronounced by the authority shall be binding not only on the applicant who had sought it but also on the Principal Commissioner of Customs or Commissioner of Customs and the customs authorities subordinate to him, in respect of the applicant. However, Section 28J (2) provides that the advance ruling shall be binding unless there is a change of law or facts on the basis of which the advance ruling has been pronounced.

Isha Exim vs UOI and Others [Writ Petition No.10512 OF 2023]

Advance ruling is binding on authorities in absence of any change in law – HC

DA Insights:

The Honorable High Court rightly held that when the authority did not challenge the ruling of AAR, the same is applicable to them also and need to be followed.

It is also important to note that the decision of the AAR dated 31st March 2017 in the case of petitioner's own case has not been challenged by the respondents before the higher forum. The respondents did make an attempt for review of the said ruling by filing an application before the AAR which came to be dismissed on 30th March 2022 wherein the respondents have once again raised an issue of classification. The said rejection by the AAR dated 30th March 2022 is also not challenged before the higher forum. It is also important to note that this rejection was on 30th March 2022 which is post the decision of the CESTAT Chennai Bench in case of S.T. Enterprises (supra) and also dismissal of the appeal by the Supreme Court in case of Ayush Business Overseas (supra), both being dated 26th February 2021 and 19th March 2021 respectively. Therefore, the respondents have accepted the ruling in the case of the petitioner dated 31st March 2017 now they cannot be heard to contend that the ruling is not binding.

In view of the above discussion that the impugned order is passed without jurisdiction, writ petition is maintainable.

The petitioner hence ought not to be relegated to take recourse to an appellate remedy

Isha Exim vs UOI and Others [Writ Petition No.10512 OF 2023]

HC Directs Customs to Compensate Seized Goods Value to Assessee

DA Insights:

The Honorable High Court rightly asked to pay for seized goods which are seized arbitrary and illegally. However, the interest cost would also have been imposed so that the Customs authority diligently take such drastic steps of seizure with adequate evidence.

Issue:

The writ petition was filed by the petitioner for direction upon the respondent customs authority concerned to pay to the petitioner value of goods in question as on the date of seizure which was seized on the ground of foreign origin and that it was smuggled nature of the goods as held by the order of the adjudicating authority which was set aside by the Commissioner of Customs (Appeals).

Legal Provisions:

Section 111(b) & (d) of the Customs Act, 1962

Observation and Comments:

The Honorable High Court held that:

Considering the facts and circumstances of the case and submission of the parties and in view of the order of the appellate authority dated 1st March, 2021 holding that the adjudication order confiscating the goods in question and imposition of penalty not sustainable in law, action of respondents customs authority neither returning the seized goods in question to the petitioner nor paying the value of goods as on the date of the seizure is arbitrary and illegal and accordingly the respondent customs authority concerned is directed to pay to the petitioner the value of goods in question as on the date of seizure within a period of four weeks from the date of communication of this order. However, I am not inclined to grant any interest to the petitioner in the facts and circumstances of the case.

Kefco Exim Pvt. Ltd. & Anr. Vs ADC [WPA 116 of 2022]

Section 114A of Customs Act Prescribes Penalty Equivalent to Duty or Interest, as Applicable – CESTAT

DA Insights:

It is settled principal that 'or' cannot be interpreted as 'and' which has also been followed in the said judgment.

Issue:

The appellant have imported parts and accessories of computers in respect of the bills of entry providing the description of the goods and classifying the same under the respective Tariff Headings. Also, they have availed the benefit of Notification No. 06/2006-CE dated 01.03.2006. Later, the classifications declared by the appellant are disputed by the Revenue and the products were re-classified denying the benefit of Notification No. 06/2006-CE dated 01.03.2006. Consequently, differential duty was confirmed along with interest and penalty of imposed under 114A of the Customs Act, 1962. The appellant paid the entire amount of duty, interest and penalty. The Revenue filed the appeal before the ld. Commissioner (Appeals) disputing the determination of the quantum of penalty. The ld. Commissioner (Appeals) allowed the Revenue's appeal observing that the quantum penalty under Section 114A of the Customs Act, 1962 be equivalent to the amount of duty plus interest payable. Hence, the present appeal.

Legal Provisions:

Section 114A of the Customs Act, 1962

Observation and Comments:

The Honorable CESTAT observed and held that:

This issue has considered by the Hon'ble Karnataka High Court in the case of CC & ST, Bangalore vs. Sony Sales Corporation (supra).

From perusal of the relevant extract of Section 114A, it is evident that the language employed by the Legislature is plain and unambiguous and the provision contains a positive condition with regard to levy of penalty equal to duty or interest and does not contain any negative condition. The expression used is „or" which is disjunctive between duty or interest and further use of expression as the case may be clearly suggest that aforesaid provision refers to two different persons and two different situations viz., one in which a person will be liable to duty and in other he may be liable to pay interest only and provisions that in both the situations the person liable to duty would be liable to penalty equal to duty and person liable to interest would be liable to penalty equal to interest. Therefore, in view of law laid down by Constitution Bench of Supreme Court, the word „or" cannot be interpreted as "and".

IBM India Pvt Ltd vs CCE [Customs Appeal No. 26697 of 2013 – CESTAT Bangalore]

Excise duty demand cannot be demanded merely based on entries in private registers - CESTAT

DA Insights:

The Honorable High Court rightly held that the investigation has not brought in any corroborative evidence to substantiate the allegation of clandestine removal and further held that the investigation has failed to establish the alleged clandestine clearance of goods by the Appellants and hence the demands confirmed in the impugned order are not sustainable.

Issue:

During the course of search by DGCEI, documents related to procurement of unaccounted raw materials, suppression of production, clandestine removal of finished goods, receipt of sale proceeds from such clandestine clearances, invoices with under valuation, parallel invoices etc. were recovered and accordingly confirmed Central Excise duty on the clandestinely removed M.S.Rods without payment of duty, during the periods 2004-2005, 2005-2006 (up to 02-03-2006) and 2006-2007 (up to 18-08-2006) and imposed penalty under Section 11AC of the Central Excise Act, on the Appellant Company and accordingly the appeal filed against the said order to CESTAT.

Legal Provisions:

Section 36B of Centra Excise Act, 1944

Observation and Comments:

The Honorable CESTAT observed and held that:

Authorizing the computer print outs by a Telephone operator who has nothing to do with the data entry would not satisfy the requirement of Section 36B.The question of genuineness or otherwise of computer printout will arise only if conditions of Section 36B are satisfied.

Section 65B of Evidence Act is parimateria with Section 36B of the Central Excise Act, 1944. From the above observation of the Hon'ble Apex Court, we find that unless the conditions of Section 65B(2) of the Evidence Act, which is parimateria with Section 36B(4) of the Central Excise Act are complied with, no reliance can be placed on any computer printouts . Admittedly, the procedure set out in Section 36B has not been followed in this case. Thus, following the judgement of the Hon'ble Apex Court and the other decisions cited above,we hold that the data resumed from the computer print out alone cannot be relied upon to demand duty, without any corroborating evidence.

Had the adjudicating authority followed the provisions of Section 9D and examined the witnesses who have given the statements, the truth in this statement could have come out. Thus, we hold that the statements recorded in this case has lost its evidentiary value by not following

M/s Prinik Steels (P) Ltd., and others vs CCE [Excise Appeal Nos. 533-536 of 2010 - CESTAT]

Excise duty demand cannot be demanded merely based on entries in private registers - CESTAT

DA Insights:

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the provisions of Section 9D. Thus, we find that Procedure set out in Section 9D has not been followed in this case.

However, we find that evidences brought on record has not established that they are involved in clandestine manufacture and clearance of the goods. As the evidence available on record does not establish the clandestine manufacture and clearance, we hold that the penalty imposed on the above said persons is not sustainable. Accordingly, we set aside the same.

M/s Prinik Steels (P) Ltd., and others vs CCE [Excise Appeal Nos. 533-536 of 2010 - CESTAT]

Open Market Raw Material Purchases Not Permitted with DFIA for Exports. HC

DA Insights:

Even though the request made to procure raw material to fulfil the AA obligation is declined as not allowed under para 4.03 of FTP, the Ministry of Commerce should look into for ease of doing business.

Issue:

The petitioner sought following relief from the Honorable High Court:

- Extension of export obligation period for AA licenses
- To fill up the shortage of raw material (copper), by purchasing the same from the domestic market under AA license

Legal Provisions:

Para 4.03 of Foreign Trade Policy 2015-2020

Observation and Comments:

The Honorable High Court observed and held that:

Since the para 4.03 Foreign Trade Policy specifically insists that in case advance authorization is issued to allow duty free import which is physically incorporated in the export product, the request to allow the Petitioner to purchase the raw material from open market for these exports could not be permitted.

A perusal of the Order challenged in the present Writ Petition indicates that the DGFT has given a proper opportunity of hearing to the other sides and, therefore, this Court is of the opinion that the decision-making process is fair. Further, even on merits, the learned Counsel for the Petitioner has not been able to establish as to why the Order is contrary to the law or that any provisions of the Foreign Trade Policy or the handbook of procedures has been violated. Resultantly, this Court finds no reason to interfere with the present Writ Petition.

Rajesh Gupta & Ors. Vs DGFT [W.P.(C) 5756/2021 & CM APPL. 18076/2021]

Refund to be granted as order amending Bill of Entry had attained finality

DA Insights:

The CESTAT rightly held that the date of limitation starts from re-assessment date and refund application cannot be rejected if self-assessment is not challenged by the Revenue.

Issue:

The appellant imported mobile phones with standard accessories for home consumption which were self-assessed under Section 17 classifying the goods under CTH 85171290 of the First schedule to the Customs Tariff Act, 1975. Additional Customs Duty also called CVD at the rate of 6% / 12.50% as leviable under Section 3(1) of the Customs Tariff Act read with Notification No. 12/2012-CE dated 17.03.2012 was paid. The Respondent importer did not claim exemption under Sl. No. 263A of the notification and had self-assessed CVD @ 6% / 12.50%. However, based on a subsequent order of the Supreme Court in SRF Limited Vs. Commissioner of Customs, the Respondent importer filed the refund claim for differential CVD, along with manually reassessed Bills of Entry, wherein CVD was leviable @ 1%. The refund sanctioning authority sanctioned the claim noting that the Bills of Entry had been reassessed, and the claims were filed well within one year from the date of such reassessment. However, the revenue filed the appeal to first appellate authority which allowed OIO against which this appeal is filed.

Legal Provisions:

Section 149 of Customs Act, 1962

Observation and Comments:

The Honorable CESTAT observed and held that;

We note that the issue is no longer res integra. The Principal Bench of this Tribunal in the respondent importer's own case Principal Commissioner of Customs, ACC (Import), New Delhi Vs. Lava International Ltd. – [2023) 4 Centax 322 (Tri.-Del.) had considered these two issues and uphold the refund.In the present case, the order carrying out an amendment in the Bills of Entry under section 149 of the Customs Act attained finality, as the department did not challenge these orders in appeal. It is only during the course of refund applications that the department took a stand that since the order of the assessment was not assailed by the respondent in appeal under section 128 of the Customs Act, the refund applications could not be allowed. Such a stand could not have been taken by the Department. If the department felt aggrieved by the order seeking an amendment in the Bills of Entry under section 149 of the Customs Act, it

PCC vs M/s Lava International Limited [Customs Appeal No. 50262 of 2021and others – CESTAT New Delhi]

Refund to be granted as order amending Bill of Entry had attained finality

DA Insights:

The CESTAT rightly held that the date of limitation starts from re-assessment date and refund application cannot be rejected if self-assessment is not challenged by the Revenue.

was for the department to have assailed the order by filing an appeal under section 128 of the Customs Act. This plea could not have been taken by the department to contest the claim of the respondent while seeking refund filed as a consequence of the reassessment of the Bills of Entry or amendment in the Bills of Entry.

If section 149 of the Customs Act relating to amendment in the Bills of Entry is made applicable, the cause of action for claiming refund would arise only after the amendment is made and so the limitation for claiming refund would start from that date. In coming to this conclusion, the Commissioner (Appeals) placed reliance upon the decision of the Bombay High Court in Keshari Steels v. Commissioner of Customs, Bombay 2000 (115) E.L.T. 320 (Bom.), wherein what was examined was whether the rejection of the refund claim on the ground of limitation contemplated under section 27 of the Customs Act was justified. It was held by the Bombay High Court that the refund was within time from the date the rectification was carried out and limitation was not to be counted from the date of assessment.

PCC vs M/s Lava International Limited [Customs Appeal No. 50262 of 2021and others – CESTAT New Delhi]

Customs Notification / Circulars / Guidelines / Instructions

Provisional Collection of Taxes Bill, 2023

The Provisional Collection of Taxes Bill, 2023 (Bill No. 158), introduced in Lok Sabha on December 13, aims to confer immediate effect on customs and excise duty provisions for a defined duration. Key points include the Central Government's power to make declarations, the impact and duration of declared provisions, provisions for refunds, and the proposed repeal of the 1931 Act. The Bill signifies a strategic move to streamline tax imposition, emphasizing fiscal responsibility and modernizing tax legislation. As it progresses through Lok Sabha, its implications on fiscal policy and governance will be crucial for businesses and taxpayers.

Bill No. 158 of 2023, dated 13th December, 2023

DGFT Policy Circular: Clarification on Ad-hoc Norms Applicability

The Directorate General of Foreign Trade (DGFT) in India, clarifies the applicability of ad-hoc norms. It states that valid ad-hoc norms ratified after 01.04.2015 will apply to pending cases under the self-declaration scheme. The circular aims to streamline processes and ensure compliance with specified guidelines.

Policy Circular No. 08/2023 - DGFT, dated 27th December, 2023

Extension of Deadline for Electronic Filing of Non-Preferential Certificate of Origin:

The Indian government has extended the deadline for the mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform. Exporters and issuing agencies can choose between the online system and manual/paper mode until the end of 2024. The DGFT emphasizes the importance of using the online eCoO platform and provides guidance for registration and application submission.

Trade Notice No. 36/2023 - DGFT, dated 26th December, 2023

Clarification on the applicability of minimum value addition as provided under 4.09(v) of FTP,2023 in case of spices-reg:

The Circular providing clarity on the minimum value addition requirement for spices under Para 4.09 (v) of the FTP 2023. The circular specifies that the 25% value addition condition applies only when both export and import items are classified under Chapter 9 of the ITC HS Code. This focused clarification helps exporters and importers in the spice sector to precisely understand and comply with the FTP 2023 requirements, promoting transparency and smoother international trade practices.

Policy Circular No. 07/2023 - DGFT, dated 21st December, 2023

Customs Notification / Circulars / Guidelines / Instructions

CBIC Launches SAMAY: Revolutionizing Timelines in Legal Adherence

The Central Board of Indirect Taxes & Customs (CBIC) has introduced SAMAY (Systematic Adherence and Management of timelines for Yielding results in litigation), an online portal to enhance legal efficiency. SAMAY monitors Special Leave Petitions (SLP) and Civil Appeal (CA) proposals, ensuring systematic adherence to legal timelines. The platform captures real-time information on orders from Hon'ble CESTAT and Hon'ble High Courts, aiding in order management. The SAMAY application integrates with e-Office for streamlined communication and proposal submissions. A user manual is provided for guidance, and Deputy Commissioner Prashant Dalmia is available for assistance. The launch of SAMAY reflects CBIC's commitment to transparency and effectiveness in legal processes, anticipating a reduction in delays and an expedited resolution of legal matters.

Instruction No.275/15/2021-Central Excise, dated 13th December 2023

DA NEWS

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Goods and Services Tax

- GST Council can vet pleas on GST registration threshold: Finance minister
- Bill to ease setting up of GST tribunals
- Zomato gets Rs 402 crore unpaid GST notice on delivery charges collected from customers
- SC quashes GST department's plea against HC order on input tax credit

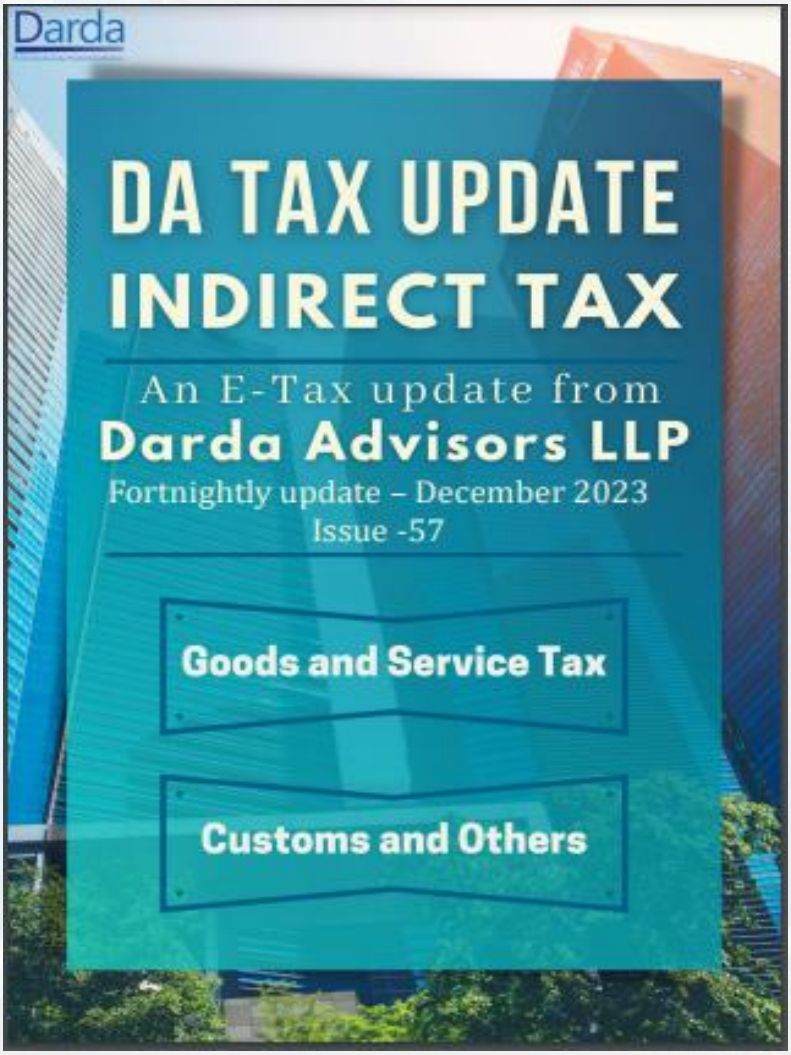
Customs and other

- Industry demand amnesty scheme for customs settlement
- New bills to replace law on customs, excise, age limits of GSTAT members
- Logjam in negotiations between India and EFTA on free trade deal
- India, Oman free trade agreement likely to be inked next month

DA Updates and Articles for the month of December 2023

DA - Indirect Tax Fortnightly Update – December 2023

https://dardaadvisors.com/wp-content/uploads/2023/12/DA-Indirect-Tax-Fortnightly-Update_December-2023-1.pdf



DA Updates and Articles for the month of December 2023

DA Newsflash (SEZ): IT/ITES SEZ allowed to convert unutilised processing area into DTA Zone

https://www.linkedin.com/pulse/da-newsflash-sez-itites-allowed-convert-unutilised ihaqc%3FtrackingId=qb4IDdev%252BOtOX8Oz3PXI0w%253D%253D/?trackingId=qb4IDdev%2BOtOX8Oz3PXI0w%3D%3D

DA Updates and Articles for the month of December 2023

DA Newsflash (SEZ): Second hand IT assets movement from SEZ to DTA (Amendment in FTP)

https://www.linkedin.com/pulse/da-newsflash-sez-second-hand-assets-movement-from-dta ixtvc%3FtrackingId=1mZ9pPQlX7NL4hXZ46sn5A%253D%253D/?trackingId=1mZ9pPQlX7NL4hXZ46sn5A%3D%3D

DA Updates and Articles for the month of December 2023

DA Newsflash (GST) : Haryana - One Time Settlement Scheme for Recovery of Outstanding Dues, 2023

https://www.linkedin.com/pulse/da-newsflash-gst-haryana-one-time-settlement-scheme-fetuc%3FtrackingId=fIxHUrZZNqJ8Yqkfz5RBFw%253D%253D/?trackingId=fIxHUrZZNqJ8Yqkfz5RBFw%3D%3D

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