
Darda
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DA TAX ALERT
INDIRECT TAX
AN E-TAX ALERT FROM
Darda Advisors LLP
February 2024
Issue: 45
GST COMPLIANCE CALENDER
GOODS AND SERVICE TAX
CUSTOMS AND OTHER
DA NEWS

PREFACE

We are pleased to present to you the Forty fifth 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 January 2024.

During the month of January 2024, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as Refund for zero-rated exports does not disentitle claim of unutilized ITC under IDS and Order cannot transcend scope of show cause notice

In the Forty fifth 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 January 2024.

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

www.dardaadvisors.com

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GST COMPLIANCE CALENDAR

February 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

- HC Upholds Anti-profiteering Provisions
- Interest demand quashed as GST gets credited upon payment in ECL and not when GSTR-3B is filed – HC
- Refund for zero-rated exports does not disentitle claim of unutilized ITC under IDS – HC
- Recovery from employees towards canteen-service a supply; GST charged by CSP not creditable – AAR
- Bunching of SCNs for different FYs, impermissible; Directs splitting of notices for each year – HC
- Recovery of GST on non-payment to creditors within 180 days based on Consolidated Financial is unjustifiable – HC
- Appeal limitation expiry on Sunday leading to delay not dilatory, within limitation – HC
- Proceedings by SGST Department to keep in abeyance given parallel proceedings pending before CGST authority – HC
- Other Notifications/Circulars/Guidelines/instructions/Portal changes

HC Upholds Anti-profiteering Provisions

DA Insights:

The Delhi High Court has effectively given one more opportunity to petitioner entities to highlight the arbitrariness or unreasonableness in the individual orders they are aggrieved by, to get the same quashed, even though the law is declared constitutional.

Issue:

The writ petitions have been filed challenging the constitutional validity of Section 171 of the CGST Act, 2017 and Rules 122, 124, 126, 127, 129, 133 and 134 of the CGST Rules, 2017 as well as legality of the notices proposing imposition or orders imposing penalty issued by the National Anti-Profiteering Authority ('NAA') under Section 122 of the Act, 2017 read with Rule 133(3)(d) of the Rules, 2017 and the final orders passed by NAA, whereby the petitioners, who are companies running diverse businesses ranging from hospitality, Fast-Moving Consumer Goods ('FMCG') to real estate, have been directed in accordance with Section 171 of Act, 2017, to pass on the commensurate benefit of reduction in the rate of tax or the Input Tax Credit to its consumers / recipients along with interest.

Legal Provisions:

Section 171 of the CGST Act, 2017 and Rules 122, 124, 126, 127, 129, 133 and 134 of the CGST Rules, 2017

Observation and Comments:

The Honorable High Court observed and held that:

When GST rates get reduced or the benefit of input tax credit becomes available as a necessary consequence, the final price paid by the recipient is required to be reduced. In the absence of anti-profiteering provisions, there would be no legal obligation to pass on the benefits of the GST regime and consequently the intended objective of reducing overall tax rates and mitigating the cascading effect would not be achieved.

The judgment rejected the argument that the anti-profiteering law acts as a price control measure. The judgment harped on the fact that Section 171 of the CGST Act has been enacted in public interest, with the consumer welfare objective and such law is made in exercise of Parliament's power to legislate on ancillary and necessary aspects/ matters of GST conferred under Article 246-A of the Constitution. It extends from the concept of barring persons to undertake the exercise of collecting monies from consumer by false representation.

Section 171 of the CGST Act is a complete code in itself and does not suffer from ambiguity or arbitrariness. Section 171 of the CGST Act lays out a clear legislative policy. The judgment holds that necessary navigational tools, guidelines as well as checks and balances have been

Reckitt Benckiser India Private Limited and Ors. Vs. Union of India and Ors. [TS-24-HC(DEL)-2024-GST]

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incorporated in the provision itself to guide any authority tasked with ensuring its workability. Accordingly, Section 171 of the CGST Act neither delegates any essential legislative function nor violates Article 14 of the Constitution. Where a power exists to prescribe a procedure and such power has not been exercised, the implementing authorities are at liberty to determine and adopt such procedure as they may deem fit subject to the same being fair and reasonable. No fixed/uniform method or mathematical formula can be laid down for determining profiteering as the facts of each case and each industry may be different. The determination of the profiteered amount has to be computed by taking into account the relevant and peculiar facts of each case.

On a conjoint reading of Sections 171(2) and Section 171(3) of the Act, it is evident that the powers conferred on NAA by the Central Government under Rule 126 of the Rules were intended by the legislature to be exercised by the NAA itself.

Reckitt Benckiser India Private Limited and Ors. Vs. Union of India and Ors. [TS-24-HC(DEL)-2024-GST]

Interest demand quashed as GST gets credited upon payment in ECL and not when GSTR-3B is filed - HC

DA Insights:

The GSTR-3B return can be filed once the payment is made and in the said case, the assessee made the transfer to ECL which is equally considered as the payment of tax pending return filing and thus interest is not applicable.

Issue:

The petitioner could not file the monthly return in Form GSTR-3B for July 2017 within the due date i.e., 28.08.2023. Such non-filing of Form GSTR-3B for July 2017 had a domino effect and the petitioner was unable to file the GSTR-3B for subsequent months from August, 2017 to December, 2017, since Section 39(10) of CGST Act disables an assessee from filing returns for the subsequent period if the returns for the previous tax period are not furnished. Though the petitioner was disabled from filing the returns, the petitioner had ensured that the tax dues are fully paid within the due dates without any delay and accordingly, the petitioner had discharged GST liability for the period from July, 2017 to December, 2017 by depositing the tax amounts in the Electronic Cash Ledger under the appropriate heads as CGST, SGST, IGST into the Government account within the due date for each month.

Since the return for July, 2017 was filed after the issue resolved related to transition credit, the GST portal permitted the petitioner to file the returns for the subsequent months as well. After a lapse of around 6 years, the petitioner was visited with a Recovery notice demanding the payment of interest for alleged belated payment of GST from July, 2017 to December, 2017. The said recovery proceedings were initiated directly even without the issuance of show cause notice. Even after the filing of a detailed response by the petitioner vide their letter, the recovery proceedings were not withdrawn by the Department and hence, the petitioner challenged the said Recovery notice.

Legal Provisions:

Section 49(1) of CGST Act, 2017 read with RBI FAQ

Observation and Comments:

The Honorable High Court observed and held that:

Merely, for the default on the part of a registered person in filing the GSTR-3B, the utilisation of tax amount, which was already deposited into the account of Government, cannot be postponed.

Further, the GST collections made by the registered person, have been made on behalf of Government and once the said collections were deposited to the Government account and the same is made available to the Government for its

Eicher Motors Ltd. vs. The Superintendent of GST and Central Excise [TS-19-HC(MAD)-2024-GST]

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use at once, otherwise the rights of the exchequers in utilising the GST collections in time for welfare measures of public will be deprived, which is not permissible under the Act.

Section 39 (1) of the CGST Act relating to 'Furnishing of returns' noting that in GSTR-3B it is mandatory to provide the details about the tax paid, which means that prior to filing Form GSTR-3B, the tax should have been paid by the registered person as provided in Section 39(1).

Prior to the filing of GSTR-3B, the tax should have been paid by using GST PMT-06 and that is the reason why the details of the payment of tax is required to be furnished in the said form irrespective of time of filing the GSTR-3B, whether it is before or after the due date for filing the returns. When GST is paid by using Form GST PMT-06 gets credited opined it is immaterial whether GSTR-3B is filed within due date or not for remittance of tax to the account of Government.

The said amount shall be credited to the Electronic Cash Ledger of the person, on whose behalf the deposit has been made, which means, as stated in Explanation (a) to Section 49(11), initially the amount is credited to the Government and thereafter, it will deemed to be credited to the Electronic Cash Ledger, which is an automatic process, i.e., once GSTR-3B is filed, automatically, it will appear in the electronic cash ledger, which is only for the accounting purpose and nothing more than that.

Referring to Vishnu Aroma Pouching Pvt. Ltd. [TS-543-HC-2020(GUJ)-NT] clarified that interest is not payable since the tax amount has already been credited to the Government within the prescribed time limit, i.e. before due date. HC quashed and set aside the recovery notice as well as order.

Eicher Motors Ltd. vs. The Superintendent of GST and Central Excise [TS-19-HC(MAD)-2024-GST]

Refund for zero-rated exports does not disentitle claim of unutilized ITC under IDS – HC

DA Insights:

The Honorable High Court rightly held that under section 54 of the CGST Act, refund may be claimed either for unutilized ITC on account of an inverted duty structure or in respect of zero-rated exports therefore, the refund claim for zero rated exports does not disentitle the assessee from claiming a refund for unutilized ITC.

Issue:

The petitioner is a textile manufacturing company, which uses viscose yarn as a raw material for the manufacturer of viscose fabrics. Since the tax paid on viscose yarn exceeds the tax payable on supplies by the petitioner, the petitioner asserts that there is unutilized Input Tax Credit (ITC) as a result of the inverted duty structure. In addition to the above, the petitioner states that it undertook export sales and that it is entitled to refund of IGST since such sales are zero rated. Earlier, the petitioner applied for and received refund as regards IGST. When the petitioner applied for refund with regard to unutilized ITC arising from the inverted duty structure, the application was rejected by the impugned deficiency memos. The present writ petitions were filed in the said facts and circumstances.

Legal Provisions:

Section 54 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The deficiency memos record three reasons for rejecting the refund claim for the relevant period, turning to the first reason, it was observed that the refund claimed earlier pertained to zero rated supplies and not unutilized ITC.

Under section 54 of the CGST Act, refund may be claimed either for unutilized ITC on account of an inverted duty structure or in respect of zero-rated exports therefore, the refund claim for zero rated exports does not disentitle the Assessee from claiming a refund for unutilized ITC hence, the first reason for rejection was untenable.

As regards the second reason that debit entries of the refund claim were not made, for which it was held that when the statute provides for a refund subject to fulfillment of conditions, as long as such conditions are fulfilled, a refund claim cannot be rejected on the ground that debit entries were not made.

VSM Weavess India Private Limited vs. The Assistant Commissioner (ST) [TS-20-HC(MAD)-2024-GST]

Refund for zero-rated exports does not disentitle claim of unutilized ITC under IDS – HC

DA Insights:

The Honorable High Court rightly held that under section 54 of the CGST Act, refund may be claimed either for unutilized ITC on account of an inverted duty structure or in respect of zero-rated exports therefore, the refund claim for zero rated exports does not disentitle the assessee from claiming a refund for unutilized ITC.

Further, the last reason mentioned in the deficiency memos related to non submission of supporting documents, in this regard, determined that in Para 10 of the Affidavit, the Assessee had set out the supporting documents that were taken into account by the refund processing officer.

It is possible that ITC may accumulate both in respect of input goods that are not affected by an inverted duty structure and by the purchase of input goods that are so affected therefore, it is necessary for the Assessee to submit all necessary documents to establish that its claim for refund is confined to input goods that are affected by an inverted duty structure. The impugned deficiency memos is quashed and remanded the matter for reconsideration.

VSM Weavess India Private Limited vs. The Assistant Commissioner (ST) [TS-20-HC(MAD)-2024-GST]

Recovery from employees towards canteen-service a supply; GST charged by CSP not creditable – AAR

DA Insights:

Even after clarification issued by the CBIC on employee recovery, AAR uphold the applicability of GST on recovery of canteen charges from the employees.

Issue:

The advance ruling is sought from AAR on the applicability of GST on recovery of canteen charges from employee considering CBIC circular No. 172/04/2022- GST dated July 06, 2022and whether ITC can be availed on GST charged by CSP [Canteen Service Provider].

Legal Provisions:

Section 17(5) of CGST Act, 2017

Observation and Comments:

The AAR observed and ruled that:

The provision of food in the canteen for a nominal cost is a composite supply of food held as 'Supply of service' for the purposes of GST as per clause 6 of Schedule II to CGST Act, 2017 as "same is not a part of the employment contract and the canteen facility is provided as mandated under Factories Act".

Present proceedings is pursuant to remand order by Appellate Authority which while deciding the appeal held that AAR order suffers from "fatal flaws" and consequently asked to consider applicability of Circular No. 172/04/2022- GST dated July 06, 2022; In that vein, AAR noted that Circular mandates that perks provided in terms of contractual agreement are not supply under GST, which in effect would mean if any perk is provided to the employee, in terms of contractual agreement, then such perks are outside the purview of GST.

AAR rejects Appellant's stance that it only collects employee costs and pays the third-party vendor and such employee cost is only a recovery stating "Provision of canteen facility and bearing certain costs in running of canteen are mandated on the part of the employer as per the Factories Act"; Thus, ruling on GST liability on canteen recovery, AAR rejects the contention that activity of supply of food for a nominal charge by them is neither a supply of goods nor a supply of service.

As for admissibility of ITC, explains that "though the Section 17(5) of the CGST Act, 2017, does not debar availment of ITC in entirety, but in the present case availment of ITC is debarred in terms of provisions of Notification…."; Thus, clarifies that applicant is 'recipient of service' as per section 2 (93) (a) of the CGST Act notes that CSP are providing Restaurant Service at a non-specified premises at the rate 5% to the applicant and as per the condition the service providers are not eligible to avail the ITC in terms of Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017, as amended vide Notification No. 20/2019-C.T. (Rate) dated September 30, 2019.

In the matter of Tube Investment of India Ltd. [TS-709-AAR(UTT)-2023-GST]

Bunching of SCNs for different FYs, impermissible; Directs splitting of notices for each year – HC

DA Insights:

The Honorable High Court rightly held that the law was laid down keeping in mind that each and every Assessment Year will have a separate period of limitation and the limitation will start independently. Further, each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods.

Issue:

The writ petition is filed against the issuance of bunch of SCNs for five Assessment Years starting from 2017-18 to 2021-22. According to Section 73 of CGST Act, 2017, bunching of SCNs is not permissible and it only provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or willful misstatement or suppression of facts.

Legal Provisions:

Section 73 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

If the law states that a particular action has to be completed within a particular year, the same has to be carried out accordingly. The limitation period of three years would be separately applicable for every assessment year and it would vary from one assessment year to another. It is not that it would be carried over or that the limitation would be continuing in nature and the same can be clubbed. The limitation period of three years ends from the date of furnishing of the annual return for the particular financial year.

Therefore, issuing bunching of show cause notices is against the spirit of provisions of Section 73 of the Act and the Constitution Bench of the Hon'ble Apex Court in the decision reported in AIR 1966 SC 1350, State of Jammu and Kashmir and Others v. Caltex (India) Ltd has held that where an assessment encompasses different assessment years, each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods.

Titan Company Ltd vs. The Joint Commissioner of GST & Central Excise and Ors [TS-707-HC(MAD)-2023-GST]

Recovery of GST on non-payment to creditors within 180 days based on Consolidated Financial is unjustifiable – HC

DA Insights:

There is urgent need of adjudication discipline for handling such matters by the jurisdictional officers as the same is creating mammoth of litigations, harassment to tax payers and time and money cost to all including exchequer.

Issue:

The SCN was issued with regard to non-payment to the suppliers for a period exceeding 180 days. In spite of the petitioner replying thereto and providing all supporting documents, including the Chartered Accountant's certificate, the impugned order came to be issued on the basis of the total trade payables of the Company. Against the same, the writ petition is filed.

Legal Provisions:

Section 16 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

Under the Companies Act, 2013, every company is required to file financial statements in respect of its entire operations and there is no provision for filing State-specific financial statements. However, the petitioner has submitted a certificate from a Chartered Accountant stating that the trade payables attributable to the State of Tamil Nadu are Rs.1816.48 millions.

The assessing authority has clearly not applied its mind before drawing the conclusions extracted above. Therefore, the impugned order is liable to be and is hereby quashed. Consequently, the matter is remanded for reconsideration by the assessing authority. The assessing authority is directed to take into consideration all relevant documents produced by the petitioner, provide a reasonable opportunity to the petitioner and issue a fresh order.

Ingram Micro India Pvt. Ltd., vs STO [Writ Petition No.594 of 2024 – Madras High Court]

Appeal limitation expiry on Sunday leading to delay not dilatory, within limitation – HC

DA Insights:

It is rightly held by the Honorable High Court that it is the duty of the Authority to examine the matter as to whether the same is within limitation and as the appeals were within limitation.

Issue:

The petitioners preferred appeals questioning the validity of the orders. The limitation for filing the appeal under Section 107 of the CGST Act is 3 months from the date of communication of the order. When the appeals came up before the Appellate Authority, the Appellate Authority by its impugned orders came to the conclusion that the appeals were barred by one day and as no prayer has been made seeking condonation of delay by the appellants the appeals were dismissed.

Legal Provisions:

Section 107 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

Section 4 of the Limitation Act, 1963 ('the Act of 1963'), where the prescribed period for filing of the appeal expires on the date when the Court is closed, the same can be preferred on the day when the Court reopens and as in the present case, on 12.03.2023 it was Sunday, filing of the appeal on 13.03.2023, the day the office of the Appellate Authority reopened, the same was within limitation and dismissal by the respondents in this regard is not justified.

Under provisions of Section 3 of the Act of 1963, it is the duty of the Authority to examine the matter as to whether the same is within limitation and as the appeals were within limitation, there was no question of the petitioners seeking condonation and/ or indicating any clarification pertaining to the appeals being in limitation. In that view of the matter, the orders impugned cannot be sustained and remanded back to the appellate authority.

Tirupati Marble & Anr. vs. Deputy Commissioner & Anr. [TS-08-HC(RAJ)-2024-GST]

Proceedings by SGST Department to keep in abeyance given parallel proceedings pending before CGST authority – HC

DA Insights:

Multiple proceedings on the same issue by both authorities is leading to confusion and unnecessary financial and operational challenges to tax payers and under the said judgment, the Honorable High Court has rightly instructed SGST authority to keep the said proceedings in abeyance.

Issue:

The writ petition is filed against the additional proceedings initiated by SGST authority when CGST authority has already initiated the proceedings and issued the SCN.

Legal Provisions:

Section 73 and 74 of CGST Act, 2017

Observation and Comments:

The Honorable High Court observed and held that:

The audit authority has failed to take note of the submission made by the assessee and the subject matter is pending adjudication by the CGST Authority, who has issued the show cause notice which reply has been submitted by the appellant/assessee. Therefore, the audit wing of the State GST Authority ought to keep the matter abeyance so far as the discrepancy note is concerned. The authority now has issued a show cause notice since the discrepancy note pointed out by the Audit Wing of the State GST authority is the subject matter of adjudication of CGST Authority.

Pursuant to the show cause notice the audit wing of the SGST Authority should not proceed. Accordingly, the appeal along with the connected application and the writ petition are disposed of by directing the audit wing of the SGST Authority to keep in abeyance all proceedings in respect of the discrepancy alone including the show cause notice and abide by the adjudication order to be passed by the CGST Authority.

Sanjay Casting & Eng. Co. Vs The Assistant Commissioner of State Tax [TS-09-HC(CAL)-2024-GST]

GSTN Portal Changes

Advisory on introduction of new Tables 14 & 15 in GSTR-1

Notification No. 26/2022 – Central Tax, dated December 26, 2022, introduced two new tables, Table 14 and Table 15, in the GSTR-1 form to record details of supplies made through e-commerce operators (ECO). These tables are for capturing transactions where ECOs are responsible for tax collection under section 52 of the Act or liable to pay tax under section 9(5). These tables are now active on the GST common portal and will be applicable for GSTR-1/IFF filings starting from the January 2024 tax periods. For more details, refer to the complete advisory.

Advisory on Payment through Credit Card (CC)/Debit Card (DC) and Unified Payments Interface (UPI)

GST registered taxpayers now have more options for making payments through the e-payment system. In addition to net-banking, two new methods have been introduced: Cards and Unified Payments Interface (UPI). The Cards facility covers Credit Cards (CC) and Debit Cards (DC), specifically Mastercard, Visa, RuPay, and Diners Club (Credit Card only), issued by any Indian bank

GSTN Portal Changes

Advisory on Payment through Credit Card (CC)/Debit Card (DC) and Unified Payments Interface (UPI)

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Advisory for furnishing bank account details by registered taxpayers under Rule 10A of the Central Goods and Services Tax Rules, 2017

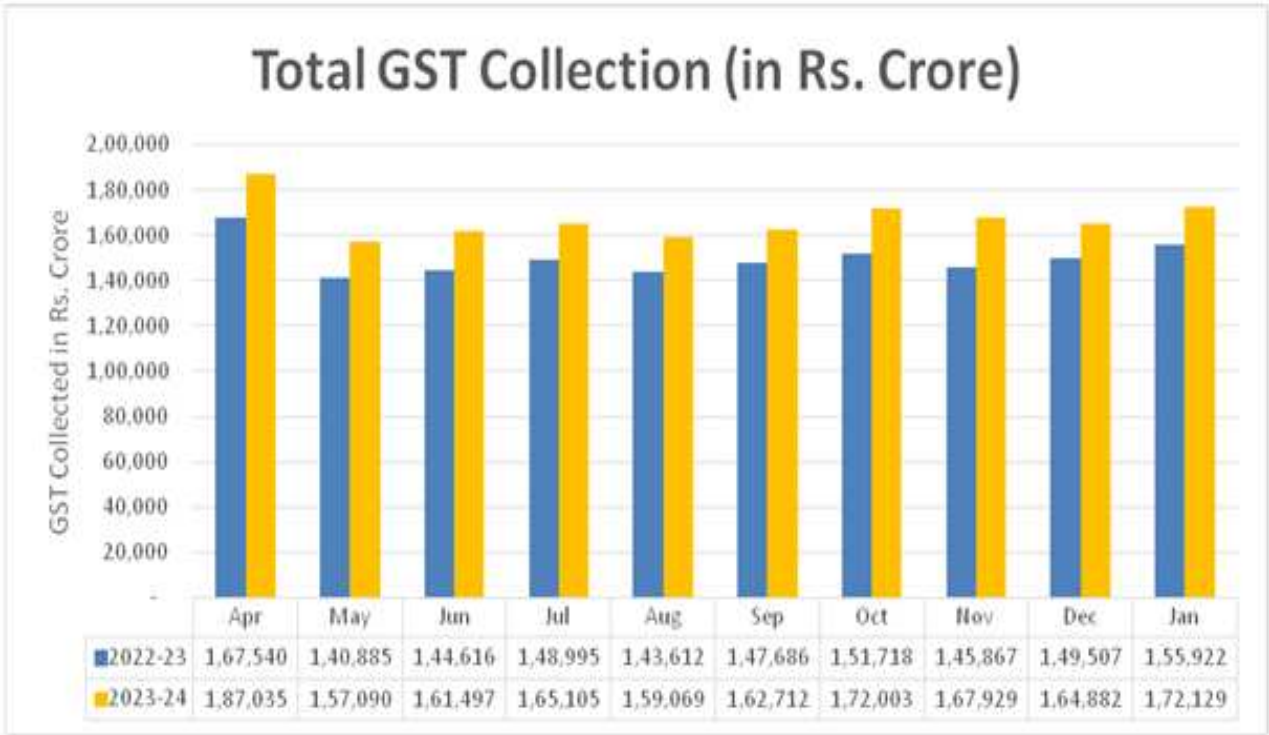
Under the CGST Act, 2017 and corresponding Rules, registered taxpayers must submit their bank account details within 30 days of registration or before the due date of filing GSTR-1/IFF, whichever is earlier. Failure to comply may lead to suspension of GSTIN and prohibition from filing GSTR-1/IFF. A new functionality is being developed to address this:

Failure to provide bank account details: a) Taxpayer's registration will be suspended after 30 days, and an intimation in FORM REG-31 will be issued. b) The taxpayer will be barred from filing further GSTR-1/IFF.

Revocation of Suspension: If the taxpayer updates their bank account details in response to FORM REG-31, the suspension will be automatically lifted.

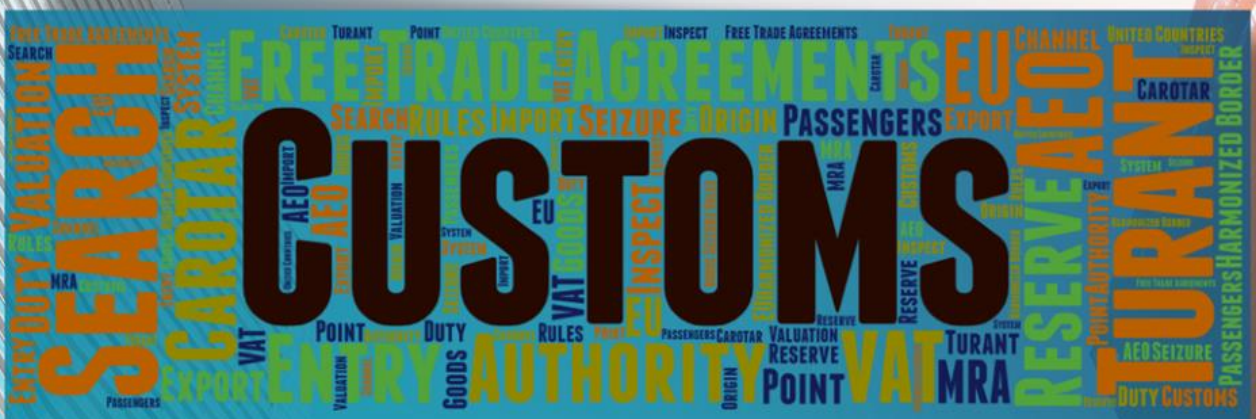
Cancellation of Registration: If bank account details are not updated even after issuance of FORM REG-31, registration may be considered for cancellation.

GST Revenue Collection in January - Rs. 1,72,129 Cr.



	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan
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	1,55,922
2023-24	1,87,035	1,57,090	1,61,497	1,65,105	1,59,069	1,62,712	1,72,003	1,67,929	1,64,882	1,72,129

Source: PIB



- Royalty on oil exploration not liable to Service Tax – CESTAT
- Delhi HC Orders DGFT to Issue Export Obligation Certificate
- Exclusion of Know-How Fees from Assessable Value in Customs Valuation Rules – CESTAT
- Penalty set aside as statement lacked corroboration – CESTAT
- CVD Refund allowed despite Minor Procedural Issues – CESTAT
- Reassessment Order in Customs Duty Refund Case allowed – CESTAT
- Order cannot transcend scope of show cause notice – CESTAT
- Other Notifications/Circulars/Instructions

Royalty on oil exploration not liable to Service Tax - CESTAT

DA Insights:

The Honorable CESTAT rightly held that the document is in the nature of 'Lease' and not 'assignment of right to use' and thus royalty paid on extraction of oil/natural gas is not liable to service tax under RCM.

Issue:

DGGST initiated the investigation that the appellant has not paid the appropriate service tax on the amount of consideration, in the form of Royalty, PEL/PML, dead rent and surface rent paid to Government of Tamil Nadu, for assignment of right to use for exploration and production of crude oil/natural gas and accordingly order is issued against which appeal is filed to CESTAT.

Legal Provisions:

Chapter V of Section 65B (44) of the Finance Act, 1994

Observation and Comments:

The Honorable CESTAT observed and held that:

In the present case, even though the liability to pay royalty is fixed by a statute, the royalty is paid on the basis of the quantity of oil/natural gas extracted. We, then have to say that 'royalty', in the present case, even if in the nature of regulatory fee or license fee contain a part which is compensatory nature. It thus acquires a hybrid nature. When regulatory part of the fee can be kept outside the purview of 'consideration', the compensatory part of the fee would have an element of quid pro quo, so as to fall within the purview of 'consideration' for service. The question then is how to carve out the element of compensatory part from the royalty paid. The Finance Act, 1994 does not provide for a mechanism to levy service tax on an amount which has the characters of both regulatory fee, as well as compensatory fee.

The provisions contained in the ORD Act, 1948 read with P & NG Rules, 1959 enables us to draw a strong inference that royalty is more of a regulatory fee than compensatory. Being dominantly in the nature of regulatory fee, royalty does not fit into the definition of consideration for services provided, as under the service tax law.

The document is in the nature of 'Lease' and not 'assignment of right to use'. Further, Rule 17 prohibits transfer of assignment. The said Rule would bring out that the underlying nature of the document issued by the Government to appellant is 'lease' and not 'assignment'. A right created under a lease agreement is different from an 'assignment' of right to use'. Sl.No.61 of the Mega Exemption notification uses the words 'assignment of right to use'. It appears that the SCN and the impugned order has attempted to fit in

M/s.Oil and Natural Gas Corporation Ltd. Vs CGSTCE [Service Tax Appeal No.41666 of 2018 – CESTAT Chennai]

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the impugned activity into sl.no.61 of Mega exemption, as introduced by the amendment notification no.22/2016-ST dt.13.4.2016. This transition of the document from 'lease' to 'assignment' acquires significance for the reason that, if the document is to be construed as lease, the activity is likely to fall under 'Renting of Immovable Property Services.'

The department does not have a case, that the activity falls within lease and that the royalty paid is rent. This is because, if so, the liability to discharge service tax would be on the government (being the service provider). The demand raised is indeed on the basis of Sl.No.61 of the exemption notification. Para 15 of the SCN also would show that the demand has been raised on the basis that the royalty which is paid periodically is not exempted from service tax. The argument put forward by the Ld. Counsel that the liability is derived on the basis of an exemption notification and not charging provision is not without substance.

M/s.Oil and Natural Gas Corporation Ltd. Vs CGSTCE [Service Tax Appeal No.41666 of 2018 – CESTAT Chennai]

Delhi HC Orders DGFT to Issue Export Obligation Certificate

DA Insights:

There is need to streamline the EODC process by DGFT as part of ease of doing business.

Issue:

The petitioner seeks a direction to the respondents to issue the Export Obligation Discharge Certificate to the petitioner and also impugns the show cause notices issued to the petitioner for nonfulfillment of the export obligation.

Legal Provisions:

Foreign Trade Policy

Observation and Comments:

The Honorable High Court observed and held that:

Pending this petition, petitioner had approached the Policy Relaxation Committee. We are informed that the Policy Relaxation Committee has partly acceded to the request of the petitioner and in its meeting held on 05.12.2023, issued certain directions in favour of the petitioner.

In view of the above, this petition is disposed of, directing the Director General of Foreign Trade to implement the directions of the Policy Relaxation Committee issued in its meeting dated 05.12.2023, preferably within a period of three months from today. Petitioner shall furnish such documents and clarifications as may be called for by the Director General Foreign Trade from time to time. Once the order of Director General Foreign Trade is passed, the custom authorities shall expeditiously process the case of the petitioner. Right of the petitioner to avail of further remedy in case aggrieved by any further action of the respondents is reserved.

M/S Gold Plus Glass Industry Ltd. Vs UOI & Others [W.P.(C) 2903/2023 & CM. APPL. 11332/2023 – New Delhi High Court]

Exclusion of Know-How Fees from Assessable Value in Customs Valuation Rules – CESTAT

DA Insights:

The value loading under Customs Valuation Rules is allowed based on any payment related to condition of sale of imported goods into India. In the present case, technical know how is not in relation to condition of sale.

Issue:

The appellant have filed the present appeal assailing the order in appeal passed by the learned Commissioner (Appeals). The question in the present appeal, revolves around enhancement of transaction/assessable value, at the time of finalization of provisional assessment by inclusion of lumpsum payments under know how agreement, as being related to the imports made, as a condition of sale of equipments, imported under the supply agreement and whether the license fee and designing charges were a part thereof and whether charges of knowhow agreement were required to be added to the assessable value of the imported goods in terms of Customs Valuation Rules, 1988 – Rule 9(1)(c) and Rule 9(1)(e).

Legal Provisions:

Rule 9(1)(c) and Rule 9(1)(e) of Customs Valuation Rules, 1988

Observation and Comments:

The Honorable CESTAT observed and held that:

Viewed in the backdrop of the law as propounded by the Hon'ble apex court in the case of JK Corporation, supra, we find that the contract, as entered into by the appellant with their overseas buyers are on identical terms. There was no obligation to bind the appellants to any post import act/activity and thus render it as a condition of sale for procurement of the imported goods. We also note that there is no technical know-how fees attributable towards post import related/associated acts and activities. Thereby no case arises for scaling up the assessable value with the inclusion of the royalty charges. In fact the preamble clause of the Confidentiality Agreement supra clearly brings to fore its purpose, completely unrelatable to any post import functioning.

For reasons aforesaid and our findings that there is nothing in the contract entered into by the two sides, to impute the additional costs as discussed in earlier paras, towards the sale of imported goods or as a condition of sale, we are of the opinion that the order of the learned Commissioner (Appeals), is without merits and is therefore liable to be quashed. We therefore set aside the order under challange and allow the appeal filed by the appellant with consequential relief if any in law.

M/s. Indian Oil Corporation Ltd. Vs CC [Customs Appeal No. 242 of 2007 – CESTAT Kolkata]

Penalty set aside as statement lacked corroboration – CESTAT

DA Insights:

The Honorable CESTAT rightly set aside the penalty in the case of confiscation of foreign currency as the statement lacked corroboration and was insufficient to sustain penalty.

Issue:

The Air Intelligence Unit intercepted a passenger and on examination, various countries foreign currency were found concealed by him. The currency was concealed inside white cloth pouches tied around the waist, thighs and calf of the pax and also found piece of paper containing "ALMAS EXCHANGE DUBAI". After detailed investigations, the Original Authority confiscated the foreign currency and imposed penalty on all the 21 noticees relevant to the case. The appeal filed to Comm (A) and then to CESTAT and based on remand order, the Comm (A) passed penalty order against which the appellant is in appeal.

Legal Provisions:

Section 114 of the Customs Act, 1962

Observation and Comments:

The Honorable CESTAT observed and held that:

As seen from the show-cause notice it had proposed confiscation of the foreign currency under Section 113 of the Customs Act, 1962 along with the material objects used for concealing under Section 119 of the Customs Act, 1962 in addition to the penalty imposed on all the persons involved in the above offence. As rightly argued by the Revenue, the Order-in-Original passed by the Deputy Commissioner was set aside by CESTAT and therefore, the Order in- Original had become null and void. Accordingly, the Commissioner in the impugned order should have dealt with all the issues that were part of the original show-cause notice in as much as the entire order was set aside by the Tribunal. Accordingly, the appeal of the Revenue has to be allowed as Commissioner has not dealt on the question of confiscation of foreign currency and other materials involved in the alleged offence. The matter is remanded to the Commissioner to decide the issue of confiscation of foreign currency and vehicle having as proposed in the show cause notice.

The impugned order is set aside only to the extent of penalty imposed on the appellant under Section 114 of the Customs Act, 1962.

Shri C. M. Abdul Razak vs CC [Customs Appeal No. 862 of 2011 – CESTAT Bangalore]

CVD Refund allowed despite Minor Procedural Issues – CESTAT

DA Insights:

The Honorable CESTAT rightly held that the appellant is eligible for refund and it would be improper to deny the same on minor procedural grounds which are otherwise verifiable.

Issue:

The appellant filed the refund applications of the CVD duty in terms of Notification No. 102/2007-Cus dated 14.9.2007 as amended. After examining the records, the original authority sanctioned the refund. The department preferred an appeal before Commissioner of Customs (Appeals) who vide the order impugned herein allowed the appeal of the Revenue and set aside the order of the original authority who had sanctioned the refund on the ground that the declaration of endorsement/stamping made on the invoices are not as per the Circular issued by the Board. The appellate authority further held that the sale invoices do not mention the name of the appellant herein. Hence the appellant is before the Tribunal.

Legal Provisions:

Notification No. 102/2007-Cus dated 14.9.2007

Observation and Comments:

The CESTAT has observed and held that:

The refund claim is sought to be denied on technical grounds that the wordings of the endorsement made in the sales invoice are not strictly as per the Circular issued by the Board and that the sale invoices do not mention the name of the appellant on the invoice.

The minor non-compliance of procedure pointed out in the impugned order could otherwise have been verified with contemporary documents and on physical enquiry should not have led to the denial of substantial benefit especially in this era of trade facilitation. I find that the Larger Bench of the Tribunal in Chowgule & Company Pvt. Ltd. (supra) has examined the similar issue and held that in respect of a commercial invoice, which shows no details of the duty paid, the question of taking of any credit would not arise at all. Therefore, non-declaration of the duty in the invoice issued itself is an affirmation that no credit would be available and would satisfy the conditions prescribed under Notification No. 102/2007-cus.

M/s. Petrotech Products India Pvt. Ltd. Vs CC [Customs Appeal No.41019 of 2014 – CESTAT Chennai]

Reassessment Order in Customs Duty Refund Case allowed – CESTAT

DA Insights:

The re-assessment of Bill of Entry to be considered in case it is requested by the importer which is rightly held by CESTAT.

Issue:

The appellant imported polymers of ethlin and cleared the same by paying appropriate duty and thereafter submitted an application for refund of excess amount on the ground that due to an inadvertent mistake, they have failed to claim the benefit of notification No. 01/05 dated 01/05/2018. The refund claim was rejected by the adjudication authority on the ground that importer has not challenged the assessed bill of entry. Further held that the Respondent is not eligible since duty was not paid under protest. Aggrieved by said order, Respondent filed appeal before Commissioner (Appeals) which rejected the appeal on the ground that onus to avail the exemption notification is always on the importer and such exemption is subject to fulfilment of certain laid down conditions. Aggrieved by the said order, an appeal was filed to CESTAT which remanded the matter to Commissioner (Appeal).

As directed by this Tribunal, matter was taken for de novo adjudication and the Adjudicating Authority rejected the refund application on the ground that self-assessed bill of entry is as order of assessment as per Section 2(2) of Custom Act, 1962. Aggrieved by the said order, appeal was filed before the Ld. Commissioner Appeals on the ground that the original authority has not rightly followed the direction of this Tribunal for re-assessment. Considering the same, Ld. Commissioner Appeals allowed the appeal with an observation that the adjudicating authority has in defiance of the final order of this Tribunal rejected the request for re-assessment. Aggrieved by the said order present appeal is filed by the revenue.

Legal Provisions:

Section 2(2) of Customs Act, 1962

Observation and Comments:

The Honorable CESTAT observed and held that:

It is an admitted fact that this Tribunal has issued a specific direction to the adjudication authority to first decide the request for re-assessment of Bill of Entry on merit and thereafter decide the refund application. However by rejecting the claim of the respondent on the same ground that there is an omission on the part of respondent to challenge the initial assessment amounts to reviewing the order of this Tribunal and it is perse illegal and unsustainable.

CC vs M/s. Rajhans Enterprises [Customs Appeal No. 20270 of 2022 – CESTAT Bangalore]

Reassessment Order in Customs Duty Refund Case allowed – CESTAT

DA Insights:

The re-assessment of Bill of Entry to be considered in case it is requested by the importer which is rightly held by CESTAT.

Moreover if appellant was aggrieved by above final order of this Tribunal, Appellant ought to have challenged it before any high forum. In the absence of any appeal challenging the ibid final order, Appellant is bound to follow the direction of this Tribunal and consider the request for re-assessment on merit.

CC vs M/s. Rajhans Enterprises [Customs Appeal No. 20270 of 2022 – CESTAT Bangalore]

Order cannot transcend scope of show cause notice – CESTAT

DA Insights:

The Honorable CESTAT rightly held that , it is a settled law that then adjudication order cannot travel beyond the scope of show cause notice.

Issue:

The brief facts of the case are that on the basis of the investigation and recording of the statements of the employees of the appellant, a SCN was issued to the Appellant inter-alia demanding being 10% of the clearance value of exempted product under Rule 6 (3) of CCR and pertaining to credit availed on capital goods allegedly used exclusively in manufacture of exempted product and lying in balance along with interest and penalties. The said notice also proposed to impose personal penalty on other two appellants under Rule 26 of Central Excise Rules,2002.

The one relevant fact is also that earlier a SCN was issued to the appellant demanding cenvat credit attributable to inputs and input services used in manufacture of exempted product along with interest and penalty. After remand by the Tribunal the Adjudicating Authority confirmed the demand along with interest and equal penalty which the appellant has accepted and proceeding related to the cenvat credit attributable to the exempted goods was concluded. It is his submission that it is a completely different issue which was not raised in the show cause notice, therefore, order which is traveled beyond the show cause notice, irrespective of any fact and legal issue, will not sustain on this ground alone.

Legal Provisions:

Central Excise Act, 1944 and Rules

Observation and Comments:

The Honorable CESTAT observed and held that:

Thus the adjudication order has clearly travelled beyond the scope of show cause notice. It is a settled law in various judgments that when with regard to any charge/allegation the noticee is not put to notice that issue cannot be decided in the adjudication order. This view is supported by the various judgments cited by the appellant.

In view of the above judgments, it is a settled law that then adjudication order cannot travel beyond the scope of show cause notice, therefore, we hold that the demand is not sustainable on the ground that the adjudication order is beyond the scope of show cause notice.

Since the appellant had already reversed the amount final confirmed of Rs. 9,48,034/-, accordingly, the entire cenvat credit attributed to the input and input services used in exempted goods was reversed and the same attained finality.

Faze Three Limited and Others vs C.C.E & S.T.-Silvasa

Order cannot transcend scope of show cause notice – CESTAT

DA Insights:

The Honorable CESTAT rightly held that , it is a settled law that then adjudication order cannot travel beyond the scope of show cause notice.

Therefore, the entire basis for demanding 10% of the value of exempted goods under Rule 6 (3) (b) does not exist. Accordingly, the demand of 10% of the value of exempted goods which was proposed in the show cause notice is also not sustainable.

In view of the above, the demands proposed in the show cause notice is not sustainable on multiple counts as discussed above. Accordingly, the impugned order is set aside. Appeal is allowed with consequential relief, if any, in accordance with law.

Faze Three Limited and Others vs C.C.E & S.T.-Silvasa

Customs Notification / Circulars / Guidelines / Instructions

Authorization of Booking Post Offices and their corresponding Foreign Post Offices in terms of the Postal Export (Electronic Declaration and Processing) Regulations, 2022 - Reg.

Authorization of Booking Post Offices: The Circular announces the authorization of 14 more Booking Post Offices by the Department of Posts to accept consignments for export electronically, in addition to the 1001 Booking Post Offices already authorized.

Circular No. 01/2024 - Customs, dated 1st February, 2024

Enlistment of chambers /agencies under Appendix 2E of FTP, 2023

The public notice issued by the Directorate General of Foreign Trade (DGFT) reinstates four chambers/agencies under Appendix 2E of the Foreign Trade Policy 2023, allowing them to issue Certificate of Origin (Non Preferential) [COO (NP)]. It discusses the previous delisting of these chambers/agencies due to non-compliance with onboarding instructions on the Common Digital Platform (CDP) for COO (NP) issuance. The notice provides details of the reinstated chambers/agencies from Karnataka, Gujarat, Jammu and Kashmir, and Uttar Pradesh. It highlights the implications of the reinstatement for trade facilitation and compliance with digital platforms.

Policy Notice No. 38/2023 - DGFT, dated 31st January, 2024

Import restrictions not apply to Desktop Computers falling under tariff head 8471: DGFT

The Circular aimed at clarifying import policy provisions for specific IT hardware items under HSN 8471. The circular states that the import of laptops, tablets, all-in-one personal computers, ultra-small form factor computers, and servers is deemed 'Restricted'. Importers must obtain a valid import authorization to import these items. The circular emphasizes the need for adherence to these guidelines and encourages importers to seek necessary authorization before proceeding with the import of these restricted items.

Policy Circular No. 09/2023-24 - DGFT, dated 12th January, 2024


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Goods and Services Tax

- 'New GST burden may make biz unsustainable'
- Reckless issuance of GST notices may lead to litigations, CBIC urges caution
- Tata Motors warns against lower GST for hybrid vehicles
- Setback for HUL, Nestle, Patanjali and others as HC upholds anti-profiteering provisions under GST

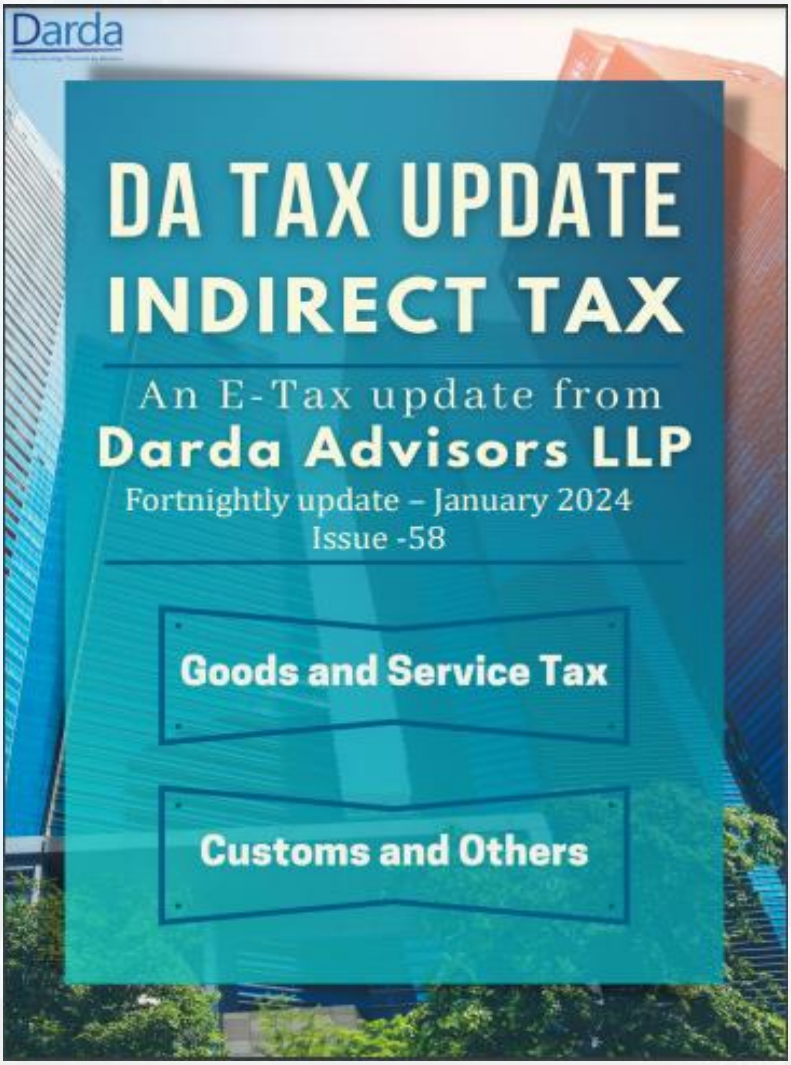
Customs and other

- India should not cut customs duty on auto sector in any free trade pact: GTRI
- EU moving towards paperless customs system from June; Indian exporters must prepare to comply
- Customs 2.0 in offing; to provide fully automated stakeholder service: Revenue Secretary
- India imposes anti-dumping duty on 3 Chinese products for 5 years

DA Updates and Articles for the month of January 2024

DA - Indirect Tax Fortnightly Update – January 2024

https://dardaadvisors.com/wp-content/uploads/2024/01/DA-Indirect-Tax-Fortnightly-Update_January-2024-F.pdf



DA Updates and Articles for the month of January 2024

DA Update: Cabinet Greenlights Rs.8,500 Crore Scheme for Coal/Lignite Gasification Projects!

https://www.linkedin.com/feed/update/urn:li:activity:7156153045205110785

DA Updates and Articles for the month of January 2024

DA Newsflash: MHI Initiates Global Tender for Giga-Scale ACC Manufacturing Facilities under PLI Scheme

https://www.linkedin.com/feed/update/urn:li:activity:7156202192587182082

DA Updates and Articles for the month of January 2024

DA Newsflash (DGFT) - SCOMET - Key insights from National Conference on Strategic Trade Controls

https://www.linkedin.com/pulse/da-newsflash-dgft-scomet-key-insights-from-national-rxlae/?trackingId=vRQl5erZkWqe6QdQU%2FbR%2Bw%3D%3D

DA Updates and Articles for the month of January 2024

DA Update - Union Interim Budget 2024 - Key Indirect Tax Proposals

https://www.linkedin.com/pulse/da-update-union-interim-budget-2024-key-indirect-mgyqc/?trackingId=aVA3duLsBBJQkey8GnmzIw%3D%3D

DA Updates and Articles for the month of January 2024

DA Webinar - Analysis of Union Budget 2024

https://www.youtube.com/live/Pl4TcAXyfWU?si=nsZgLS-pnEL5vclo

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www.dardaadvisors.com

da@dardaadvisors.com

Our Locations

Hyderabad

6-3-1086,5th Floor, Vista Grand Towers, Raj Bhavan Road, Somajiguda, Hyderabad – 500082, TS

Chennai

13, T.K. Mudali Street, Choolai, Chennai - 600112, Tamil Nadu

Delhi-NCR

N 93, Ground floor, Mayfield garden, Sector 51, Gurgaon, Haryana - 122018

Bhilwara

Moti Chambers, 62&63, Sancheti Colony, Pur Road. Bhilwara – 311001, Rajasthan