

DA TAX ALERT INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

May 2024

Issue: 48

**GST COMPLIANCE
CALENDER**

**GOODS AND
SERVICE TAX**

**CUSTOMS AND
OTHER**

DA NEWS

PREFACE

We are pleased to present to you the Forty Eight 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 April 2024.

During the month of April 2024, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as SEZ Units Exempted from GST under RCM for Specified Services from DTA, Clarifies AAR Ruling and Permissibility of Multiple Re-assessments under Customs Act, Clarifies Provisional Assessment Post Re-assessment

In the Forty Eight 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 April 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

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GST COMPLIANCE CALENDAR

May
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



ITC related Case laws:

- HC Orders Interest on Unutilized ITC Refund, Emphasizes Adherence to Procedural Fairness and Statutory Provisions

Other Case laws:

- HC Overturns GST Tax Demand of Rs. 160 Crores; Errors in Assessment of Sundry Creditors and Income Received
- HC Upholds Automatic Interest Liability on Delayed GST Returns, Clarifies Payment Occurrence under Section 50(1) CGST Act
- SEZ Units Exempted from GST under RCM for Specified Services from DTA, Clarifies AAR Ruling
- Calcutta HC Clarifies Pre-Deposit Requirement for GST Appeals, Excludes Disputed Interest Amounts
- Delhi HC Rules in Favor of Assessee on Refund Claim Rejection Due to Double Deposit, Emphasizes Consideration of Relevant Circulars
- HC Sets Aside Demand Order Under TNGST Act, Emphasizes Procedural Fairness and Opportunity of Hearing
- Other Notifications/Circulars/Guidelines/instructions/Portal changes

HC Overturns GST Tax Demand of Rs. 160 Crores; Errors in Assessment of Sundry Creditors and Income Received

DA Insights:

The case highlights the importance of proper assessment procedures and adherence to statutory provisions in GST proceedings. It underscores the significance of providing accurate documentation and conducting assessments based on sound reasoning to avoid erroneous tax demands

Issue:

The issue revolves around the imposition of tax demand against TMF Business Services Ltd for alleged ITC availed on sundry creditors and the alleged value of "income received" based on the values derived from the Audited Financial Statement, due to the failure to provide State-specific Trial Balance.

Legal Provisions:

Section 44(2) of CGST Act, 2017

Observation and Comments:

The Madras High Court (HC) set aside the order confirming the tax demand against TMF Business Services Ltd, amounting to approximately Rs. 160 crores. The HC noted errors in the assessment, particularly concerning the treatment of sundry creditors and income received.

Regarding sundry creditors, the HC observed that the tax authority erroneously imposed tax on the value of "trade receivables" instead of "trade payables," which had already been dropped while dealing with another issue in the same proceeding. The HC emphasized that only

trade payables should have been considered, even if dues to sundry creditors were not discharged. Concerning income received, the HC noted that the tax was erroneously quantified at a 36% rate instead of the alleged 18% rate. Additionally, the reconciliation statement in GSTR-9C indicated a minuscule turnover, making the demand unsustainable solely due to the non-production of the trial balance.

The HC set aside the order confirming the tax demand and remanded the matter to the Assessing Authority for fresh consideration within two months.

TMF Business Services Ltd vs. UOI & Others [TS-211-HC(MAD)-2024-GST]

HC Upholds Automatic Interest Liability on Delayed GST Returns, Clarifies Payment Occurrence under Section 50(1) CGST Act

DA Insights:

The importance of timely filing of GST returns and the consequent payment of taxes to avoid interest liabilities. It clarifies the mechanism of interest calculation and emphasizes the significance of complying with statutory provisions, particularly regarding the filing of returns and payment of taxes.

Issue:

The issue pertains to the imposition of interest liability on delayed GST returns filed by Sincon Infrastructure Pvt. Ltd., particularly focusing on whether the interest liability is automatic and when the payment of tax is considered to occur under Section 50(1) of the CGST Act.

Legal Provisions:

Section 50(1) of CGST Act, 2017

Observation and Comments:

The Patna High Court ruled that interest liability on delayed GST returns is automatic, irrespective of whether the payment is made from the Electronic Credit Ledger or Electronic Cash Ledger, as per the provisions of Section 50(1). The court dismissed the writ petition challenging the recovery order passed by the Proper Officer.

Regarding the issue of furnishing delayed returns and interest liability, the court held that the deposit made in the Electronic Cash Ledger is akin to a current account, from which debits are made for tax

payments. However, the payment to the state occurs only when a return is furnished. The court emphasized that the input tax credit accrues to the assessee's benefit only upon filing the return.

The court clarified that interest liability arises automatically upon delayed furnishing of returns, irrespective of the ledger from which the payment is made. It rejected the contention that the proviso of Section 50(1) prohibits interest levy only when there is a delayed furnishing of returns and debit from the Electronic Cash Ledger.

Additionally, the court highlighted that instructions or directions issued by a Monitoring Committee cannot bind the Proper Officer, citing the principle of 'delegatus non potest delegari.'

Sincon Infrastructure Pvt. Ltd. vs. UOI & Ors. [TS-216-HC(PAT)-2024-GST]

SEZ Units Exempted from GST under RCM for Specified Services from DTA, Clarifies AAR Ruling

DA Insights:

The ruling provides clarity for SEZ units regarding their GST liability under RCM for services imported from the DTA. It underscores the importance of complying with the provisions of Notification No. 37/2017-CT and furnishing the required documentation, such as an LUT or bond, to avail of the exemption.

Issue:

The issue revolves around whether a Special Economic Zone (SEZ) unit is liable to pay Goods and Services Tax (GST) under the reverse charge mechanism (RCM) on specified services imported from the Domestic Tariff Area (DTA).

Legal Provisions:

Notification No. 37/2017-CT

Observation and Comments:

The Gujarat Authority for Advance Ruling (AAR) held that SEZ units are not required to pay GST under RCM on specified services imported from the DTA, including services from a Goods Transport Agency, legal services from an Advocate, Security services, and hiring buses for employees. This exemption is provided they furnish a Letter of Undertaking (LUT) or bond in accordance with condition (i) of paragraph 1 of Notification No. 37/2017-CT.

The AAR referenced a clarification issued by the Tax Research Unit, CBIC, which stated that SEZ units can procure input services without paying GST by submitting

an LUT. The AAR found no prohibition in borrowing the rationale of this clarification.

The applicant, an SEZ unit engaged in the manufacture of solar modules, argued that RCM notifications are not applicable to them under the overriding provisions of the SEZ Act. Alternatively, they claimed the option to furnish an LUT for supplies made from DTA to SEZ.

The AAR observed that while the FAQ on GST suggests that the SEZ unit, as the recipient deemed supplier, has to pay GST, Notification No. 37/2017-CT exempts DTA units from IGST payment subject to furnishing an LUT. Applying the TRU clarification and considering the SEZ Act, the AAR concluded that SEZ units can procure specified services without payment of IGST by furnishing an LUT or bond.

Calcutta HC Clarifies Pre-Deposit Requirement for GST Appeals, Excludes Disputed Interest Amounts

DA Insights:

The decision clarifies GST appeals' pre-deposit requirement, promoting fairness and consistency with legislative intent. It limits the obligation to the disputed tax amount, alleviating financial burdens and encouraging appellants to challenge assessments without obstacles. This framework enhances efficiency and integrity in tax dispute resolution.

Issue:

The issue pertained to the pre-deposit requirement for filing appeals under Section 112(8)(b) of the CGST Act and whether it includes disputed interest amounts.

Based on these observations, the court set aside the portion of the order requiring the appellant to pay 20% of the remaining interest amount as a pre-deposit. It directed the revenue authorities not to initiate any recovery proceedings until the writ petition is heard and disposed of.

Legal Provisions:

Section 112(8)(b) of the CGST Act

Observation and Comments:

The Calcutta High Court examined the legislative intent behind Section 112(8)(b) and concluded that the pre-deposit requirement is limited to the remaining tax amount in dispute and does not encompass interest. The court emphasized the distinction drawn in the provision, which specifies that the pre-deposit is based on the tax amount alone.

The court further clarified that the absence of any reference to disputed interest in the provision indicates that the legislature intended to restrict the pre-deposit obligation to the disputed tax quantum. Additionally, the court cited previous judicial interpretations and affirmed that the statutory language should be interpreted as per its clear intent.

Evergreen Construction vs. The Commissioner of Commercial Taxes of West Bengal [TS-220-HC(CAL)-2024-GST]

Delhi HC Rules in Favor of Assessee on Refund Claim Rejection Due to Double Deposit, Emphasizes Consideration of Relevant Circulars

DA Insights:

Assesseees should stay updated with circulars issued by tax authorities to avail themselves of any benefits or extensions provided. It also underscores the need for authorities to apply legal provisions accurately to avoid unjust outcomes for taxpayers.

Issue:

The issue involved the rejection of the assessee's refund claim due to a double deposit scenario arising from the deposit of tax under the incorrect head (IGST initially and then CGST), solely based on the ground of limitation.

Legal Provisions:

Circular no. 162/18/2021-GST dated September 25, 2021, and Notification No. 35/2021-CT dated September 24, 2021.

Observation and Comments:

The Delhi High Court found that the Appellate Authority committed an error by not considering Circular no. 162/18/2021-GST, which extended the limitation period for filing refunds in cases where tax was paid under the correct head. The assessee had mistakenly deposited IGST instead of CGST and SGST, which was later corrected.

The court elucidated that according to the circular, the "Relevant Date" for refund applications would be the date when tax is paid under the correct head. If the correct payment is made after the issuance of Notification No. 35/2021-CT, the relevant

date would be the date of payment under the correct head. Similarly, if the correct payment is made before the issuance of the notification, the relevant date would be the date of notification.

The court emphasized that the circular clarified the interpretation of the "Relevant Date" where tax was initially deposited under the wrong head. It noted that the assessee's refund applications were rejected without considering the circular.

HC Sets Aside Demand Order Under TNGST Act, Emphasizes Procedural Fairness and Opportunity of Hearing

DA Insights:

This case underscores the importance of procedural fairness and proper consideration of facts before issuing demands or orders under GST law. It highlights the necessity for revenue authorities to provide taxpayers with an opportunity to explain their position before taking adverse actions

Issue:

The writ appeal challenges the order of the Writ Court dated 21.06.2023, arising from W.P(MD)No.27647 of 2022, wherein the petitioner sought to set aside the order of the respondent passed under TIN.33636424248/2016-17, directing the petitioner, a dealer in cardamom and pepper, to pay a wrongly carried forward credit amount along with interest without providing a personal opportunity of hearing.

Legal Provisions:

Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act)

Observation and Comments:

The appellant contended that the net tax payable for the previous year was shown in minus, indicating excess tax paid, which should be refunded or carried forward as Input Tax Credit (ITC). However, the revenue authorities demanded payment based on a perceived incorrect entry.

The court observed that the demand was made without considering the possibility of excess tax payment and without giving the petitioner an opportunity to be heard. Therefore, the impugned order and the judgment of the Writ Court were deemed erroneous.

[Tvl. Devesh Spices vs. The Assistant Commissioner & Ors. \[TS-234-HC\(MAD\)-2024-GST\]](#)

HC Orders Interest on Unutilized ITC Refund, Emphasizes Adherence to Procedural Fairness and Statutory Provisions

DA Insights:

This case underscores the importance of adherence to procedural fairness and statutory provisions while determining refund claims under GST law. It highlights the need for clarity and consistency in the application of refund rules to avoid disputes and ensure taxpayer rights are upheld.

Issue:

The case revolves around the denial of interest by the State VAT authority on the refund of unutilized input tax credit (ITC) during the period when the amount of ITC was in the electronic credit ledger (ECrL) maintained under GST.

Legal Provisions:

Section 38 of the Gujarat Value Added Tax Act, 2003 (GVAT Act)

Observation and Comments:

The Gujarat High Court set aside the denial of interest by the State VAT authority, emphasizing that the date from which interest starts running is the date immediately following the accounting year (April 1, 2017), as per Section 38 of the GVAT Act.

The court highlighted that the transfer of the amount to the ECrL was merely a memorandum entry and the amount remained unutilized until it was reversed by the Assessee. Thus, the amount was never effectively utilized.

The Assessing Officer was reprimanded for suo-moto revision of the refund amount without reference to the revisional proceedings under section 75 of the VAT Act. The court directed the Revenue authorities to refund the balance amount within a specified timeframe.

[RN Laboratories vs. State of Gujarat & Ors. \[TS-231-HC\(GUJ\)-2024-GST\]](#)

GSTN Portal Changes

Enhancement in the GST Portal

GSTN announces the launch of an enhanced version of the GST portal on May 3, 2024, aiming to improve user experience and accessibility. Key enhancements include a dedicated News and Updates section with improved search functionality and module-wise drop-downs. Minor UI tweaks have been made for usability, and website policies, including data archival policies, have been updated. The changes will go live at midnight on May 3, 2024, with a screenshot provided for preview. Further updates will be communicated by GSTN.

Revamp of GST Portal: Home Page

www.gst.gov.in

Old Portal

Enhanced Portal

GSTN Portal Changes

Revamp of GST Portal: News & Updates

www.gst.gov.in

Old Portal

Enhanced Portal

Goods and Services Tax [Login]

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News and Updates

- 13/04/2024
Extension of Due date of GSTR-1 for the period March 24
- 12/04/2024
Extension of GSTR-1 due date to 12th April 2024
- 09/04/2024
Advisory: Auto-populate the HSN-wise summary from e-Invoices into Table 12 of GSTR-1
- 09/04/2024
Advisory on feast and file-filing of GSTR-3B of some taxpayers
- 03/04/2024
Advisory: Self Enablement For e-Invoicing
- 12/03/2024
Advisory on GSTR-1/3FF: Introduction of New 14A and 15A tables
- 09/03/2024
Advisory: Integration of E-Waybill system with New 3FP Portals
- 26/02/2024
Subject: Instances of Delay in registration reported by some Taxpayers despite successful Aadhar-Authentication in accordance with Rule 8 and 9 CGST, Rules, 2017-reg
- 21/02/2024
Advisory: Enhanced E-Invoicing Initiatives & Launch of Enhanced <https://einvoice.gst.gov.in> portal
- 13/01/2024
Advisory for furnishing bank account details by registered taxpayers under Rule 10A of the Central Goods and Services Tax Rules, 2017.
- 18/10/2023
Advisory on Payment through Credit Card (CC)/Debit Card (DC) and Unified Payments Interface (UPI)
- 15/01/2023
Advisory on introduction of new Tables 14 & 15 in GSTR-1
- 29/12/2023
Advisory: Date extension for reporting opening balance for ITC reversal
- 01/12/2023
Advisory: Two-factor Authentication for Taxpayers
- 04/12/2023
Advisory for Pilot Project of Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Andhra Pradesh
- 28/11/2023
Advisory for the procedures and provisions related to the amnesty for taxpayers who missed the appeal filing deadline for the orders passed on or before March 31, 2023
- 07/11/2023
Comprehensive Guide and Instructions for Direct API Integration with Any of the 6 3PPs for E-Invoice Reporting
- 16/11/2023
Advisory for Online Compliance Pertaining to ITC mismatch -GSTR DRC-01C
- 16/11/2023
ITC Reversal on Account of Rule 37(A)

Goods and Services Tax [REGISTER] [LOGIN]

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News and Updates

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View Archives >

October 2024

Advisory on the functionality available on the portal

Difference in Input Tax Credit (ITC) available in GSTR-2B & ITC claimed in the GSTR-R3B/Debit Taxpayers. 1. It is informed that GSTN has developed a functionality to generate automated intimation in Form GSTR DRC-01C which enables the taxpayer to explain the difference in Input tax credit available in GSTR-2B statement & ITC claimed in GSTR-3B return online as directed by the GST Council. This feature is now live on the GS...

Oct 17th, 2024 [PAYMENTS]

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

Mandatory Bank Account Details Submission as per law: All Registered Taxpayers are required under the provisions of CGST Act, 2017 and the corresponding Rules framed thereunder to furnish details of their bank accounts within 30 days of the grant of registration or before the due date of filing GSTR-1/3FF, whichever is earlier. Taxpayers are therefore advised to promptly furnish their bank account details, who have not provided it so...

Oct 6th, 2024 [E-INVOICE]

September 2024

We have updated our website policy. As per this Scrapping of GST Site is strictly prohibited. For details please visit "Website Policy" link.

Dear Taxpayers: 1 GSTN is pleased to inform that the geocoding functionality for the "Additional Place of Business" address is now active across all States and Union Territories. This builds upon the geocoding functionality earlier implemented for the principal place of business, operational since February 2023.2 To date, over 2.85 crore addresses have been geocoded for both principal and additional places of business by GSTN...

Sep 5th, 2024 [REGISTRATION]

April 2024

We have updated our website policy. As per this Scrapping of GST Site is strictly prohibited. For details please visit "Website Policy" link.

Website-Terms of Use/User Agreement/Terms and Conditions: Use of GST Portal/Its User Agreement shall apply to all the Users of GST Portal. Definitions:GST portal: The term GST Portal includes <https://www.gst.gov.in> along with all its sub-domains, internal and external services serviced by this domain and mobile applications of the GST Portal Services: The term Services include all authorised services and/or facilities...

Apr 6th, 2024

March 2024

Advisory TO the Exporters filing FOR Refund

Refund application filing for multiple tax period is available for below grounds of refund: Export of Goods & Services-Without payment of Tax; Supplies made to SEZ/UnSEZ/Developer-Without payment of Tax;Refund application can be filed using refund application Form GSTR-RFD-01A & selecting a particular tax period.The multiple tax period application has following restrictions: Multiple tax period selection should be within financia...

Mar 22nd, 2024 [REFUNDS]

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GSTN Portal Changes

Revamp of GST Portal: News & Updates

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Goods and Services Tax

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News and Updates

News and Updates

- 13/03/2024 Extension of Due date of GSTN-1 for the period March 24
- 12/03/2024 Extension of GSTN-1 due date to 12th April 2024
- 09/03/2024 Advisory: Auto-populate the IGH-wise summary from e-Invoices into Table 12 of GSTN-1
- 08/03/2024 Advisory on Reset and Re-filing of GSTN-20 of some taxpayers
- 02/03/2024 Advisory: Self Enablement for e-Invoicing
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- 01/10/2023 Advisory for Pilot Project of Biometric-based Aadhaar Authentication and Document Verification for GST Registration Applicants of Andhra Pradesh
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- 11/11/2023 Comprehensive Guide and Instructions for Direct API Integration with Any of the 8 IIRPs for e-Invoice Reporting
- 16/11/2023 Advisory for Online Compliance Relating to ITC mismatch-GST DAC-DIC
- 11/11/2023 ITC Reversal on Amount of Rule 37(A)

Enhanced Portal

Goods and Services Tax
Government of India, States and Union Territories

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News and Updates [View Archives](#)

Archives

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2023

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Update on Archives Table

Dear Taxpayers, GSTN is pleased to inform that the geocoding functionality for the / Additional Place of Business address is now active across all States and Union Territories. This suite upon the geocoding functionality earlier implemented for the principal place of business, operational on...

Dec-4th, 2023 [REFRASH](#)

News on geocoding

HealthTaxpayer

Dec-1st, 2023 [REGISTRATION](#)

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Mar 22nd, 2024 [REFRASH](#)

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GSTN Portal Changes

Revamp of GST Portal: Website Policy

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Old Portal

Enhanced Portal

Home Website Policies

GSTN Website Policy

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These policies shall be governed by and construed in accordance with the Indian Laws. Any dispute arising in connection with this policy shall be subject to the exclusive jurisdiction of the Courts at Delhi only.

Privacy Policy

Goods and Services Tax Network (hereinafter 'GSTN') does not collect any personal information about a visitor to Goods and Services Tax Portal (hereinafter 'Website') unless that visitor explicitly and voluntarily provides it. If you choose to provide us with your personal information when you visit our website, we use it only to take necessary action on your request.

We do not sell or share any personally identifiable information volunteered on this site to any third party except as may be required in terms of any Government Order, Notification, Policy or request. Any information provided to this website will reasonably be protected from any misuse, unauthorized access or disclosure, alteration, or destruction in connection therewith.

We gather certain information about the User, such as Internet protocol (IP) address, domain name, browser type, operating system, the date and time of the visit and the pages visited, and if you reached this website from another website, the address of that referring website. We make no attempt to link these addresses with the identity of individuals visiting our site unless an attempt to damage the site has been detected.

GSTN may monitor statistics such as how many people visit our site, the user's IP address, the pages people may visit, domains our visitors use to come and which browsers people use etc. GSTN will use these statistics for aggregation purposes only and is not under an obligation to share such statistics with anyone.

Website-Terms of Use/User Agreement

Terms and Conditions: Use of GST Portal

This User Agreement shall apply to all the Users of GST Portal.

Definitions

GST Portal: The term GST Portal includes <https://www.gst.gov.in> along with all its sub-domains, internal and external services serviced by this domain and mobile applications of the GST Portal.

Services: The term Services include all authorised services and/or facilities and/or features as are available on the GST portal.

Unauthorized activities: The term Unauthorized activities includes any activity which is punishable under section 43 (for eg web scraping, altering source code, hacking, introducing viruses etc.)and Section 45 of the Information Technology Act, 2000 (hereinafter IT Act) or which have been defined as offence under Chapter XI of The IT Act and/or any other activity which is prohibited under any Act, rules, regulations having force of law in India and/or any activity which contravenes access controls/Service use limits set by GSTN on the GST Portal and/or any security feature developed by GSTN on the GST Portal and/or any activity which is contrary to any other policies of the GST Portal.

User: The term User includes any person/company/organization/entities/body/association/group of persons' Authorised Service Provider and/or their affiliates accessing the GST Portal and/or using/accessing any Services provided by the GST Portal and/or conducting any activity authorised in writing by Goods and Services Tax Network (hereinafter GSTN).

Permitted Use

GST Portal shall not in any manner be used for any unauthorized activity (ies). The GST Portal shall be used only for purposes as authorised by GST

Home Website Policy

Website Policy

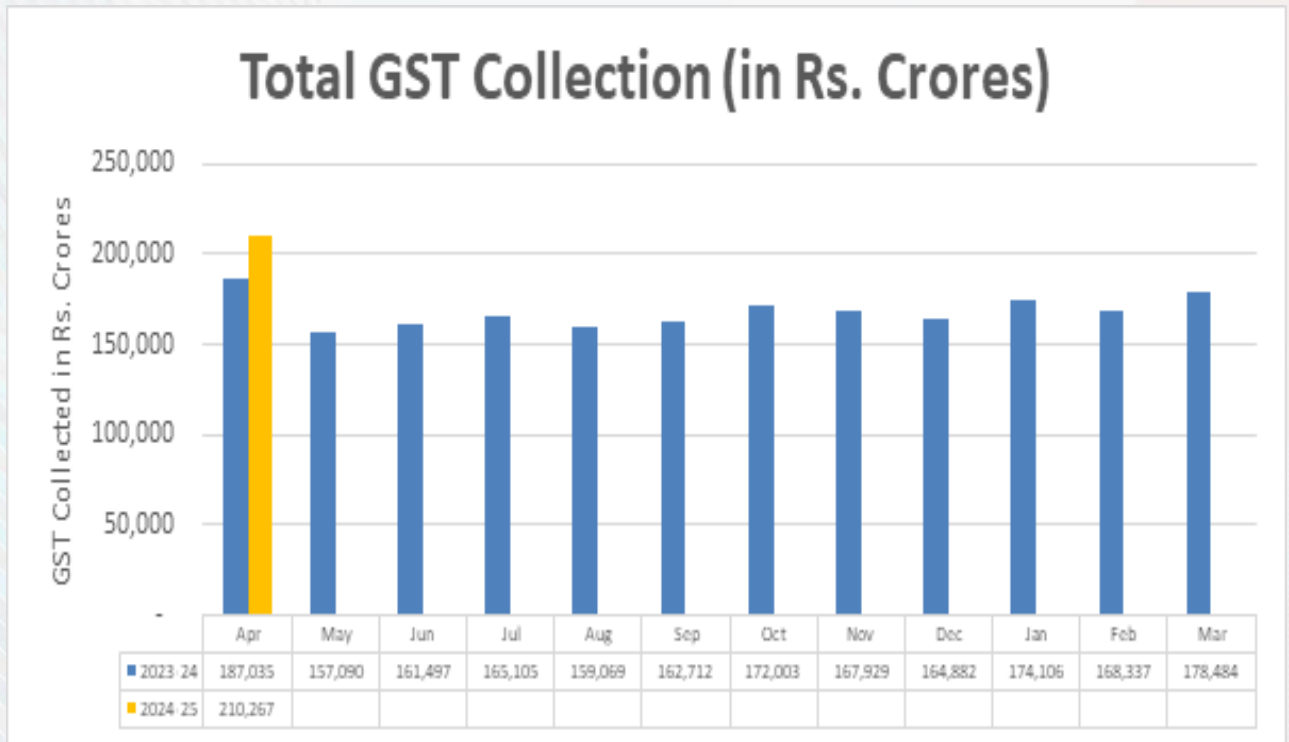
- Content Archival Policy (CAP)
- Content Moderation and Approval Policy (CMAP)
- Copyright Policy
- Content Review Policy (CRP)
- Privacy Policy
- Web Information Manager

Content Archival Policy (CAP)

The content components are created with metadata, source and validity date. Validity of some of the components may not be known at the time of creation. Such content is treated as perpetual and the validity date shall be ten years from the date of creation. The content shall not be displayed on this portal after the validity date unless a request has been raised by the Goods and Service Tax Network.

S.No	Content Element	Entry Policy	Archival Policy	Exit Policy
1	News and Updates	Immediate in case of an event	Only latest 2 or 3 News and updates are displayed in the main webpage. Remaining are classified by year of publication and archived for public view.	Displayed upto 10 years from the month of the publication
2	Contact Details	Immediate in case of an event	Not Required	Not Required
3	User Manuals	Immediate in case of an event	Not Required	Change in process will lead to substitution of old manual.
4	About Us	Immediate in case of an event	Not Required	Change in process will lead to substitution of old content.

GST Revenue Collection in April - Rs. 2,10,267 Cr.



Source: PIB



- CESTAT Delhi Upholds Amendment Right, Invalidates Time Limit Imposed by Circular, Reinforces Procedural Fairness
- Non-Hazardous Classification of Imported Medical Devices, Stresses Procedural Compliance
- HC Grants Stay on Interest Liability Pending Appeal, Emphasizes Procedural Fairness
- CENVAT Credit is allowed on Inputs for Electricity Generation Transferred to Sister Unit
- HC Affirms Pre-Deposit Requirement under CEA, Rejects Waiver in Writ Jurisdiction
- Permissibility of Multiple Re-assessments under Customs Act, Clarifies Provisional Assessment Post Re-assessment
- Other Notifications/Circulars/Instructions

CESTAT Delhi Upholds Amendment Right, Invalidates Time Limit Imposed by Circular, Reinforces Procedural Fairness

DA Insights:

It reaffirms the right of entities to seek corrections or amendments within a reasonable timeframe, especially in cases of genuine errors or scheme transitions.

Issue:

The case revolves around the denial of benefits under the Drawback and ROSCTL Scheme due to a procedural lapse.

Legal Provisions:

Section 149 of the Customs Act, and Circular No. 36/2010-Cus

Observation and Comments:

Lovy International sought conversion of Shipping Bills from Drawback to Drawback and ROSCTL Scheme due to a clerical error by their Customs Broker. Despite indicating eligibility for the ROSCTL scheme, the Shipping Bills were filed under the Drawback Scheme. The Commissioner of Customs rejected the application, citing a three-month time limit set by CBEC Circular No. 36/2010-Cus.

CESTAT Delhi examined the case and noted the genuine error made during the transition from MEIS to ROSCTL. The delay in seeking conversion was insignificant, and supporting documents were promptly submitted upon discovery of the error. The Tribunal emphasized that Section 149 of the Customs Act supersedes circulars like CBEC Circular No. 36/2010-Cus,

which impose time limits. It upheld Lovy International's right to seek amendment within a reasonable period.

In its ruling, CESTAT Delhi favored Lovy International, overturning the rejection of their conversion application. The Tribunal emphasized the statutory provision under Section 149 of the Customs Act and invalidated the time limit imposed by CBEC Circular.

[M/s Lovy International Vs Commissioner of Customs \(Customs Appeal No. 52065 of 2021\)](#)

Non-Hazardous Classification of Imported Medical Devices, Stresses Procedural Compliance

DA Insights:

This ruling emphasizes the importance of proper classification and procedural adherence in customs matters. It underscores the need for thorough examination of evidence and adherence to due process, especially in cases involving the classification of goods and imposition of penalties.

Issue:

The classification of imported second-hand medical devices as hazardous waste under the Hazardous and Other Waste Management Rules, 2016.

Legal Provisions:

Hazardous and Other Waste Management Rules, 2016

Observation and Comments:

Nano Hospitals Pvt Ltd imported various medical devices, which customs authorities classified as hazardous waste under Basel No. B1110 of Schedule VI of the Hazardous and Other Waste Management Rules, 2016. This classification led to the confiscation of the goods and imposition of penalties by customs authorities.

The appellant argued that the imported devices, certified by a Chartered Engineer, had a residual life of 5 years or more, making them non-hazardous waste. They contended that the goods were intended for use within their hospital and were in good working condition.

Additionally, the appellant raised procedural irregularities, particularly the absence of a Show

Cause Notice (SCN) as required by the Customs Act.

CESTAT Hyderabad ruled in favor of the appellant, concluding that the imported medical devices did not meet the criteria for classification as hazardous waste. The tribunal also highlighted the absence of an SCN as a fundamental flaw, depriving the adjudicating authority of jurisdiction.

[Nano Hospitals Pvt Ltd Vs Principal Commissioner of Customs \(Customs Appeal No. 30218 of 2023\)](#)

HC Grants Stay on Interest Liability Pending Appeal, Emphasizes Procedural Fairness

DA Insights:

The significance of procedural fairness and the right to appeal in matters concerning excise duties. The court's decision to stay the interest liability pending the appeal ensures that the petitioner has a fair opportunity to contest the claim before any further actions are taken.

Issue:

The writ petition challenges a show cause notice dated 15.12.2023, initiated under the Central Excise Act, 1944 against Eicher Motors Limited, concerning the liability for interest in light of pending appeals

Legal Provisions:

Section 11AB of the Central Excise Act

Observation and Comments:

Proceedings were initiated against Eicher Motors under the Central Excise Act, resulting in an order issued on 22.06.2009. This order was appealed, and the matter was disposed of by the Customs Central Excise and Service Tax Appellate Tribunal (CESTAT) on 07.03.2023, ruling in favor of the respondents regarding a claim of Rs.49,00,000/- with interest.

Eicher Motors filed a civil miscellaneous appeal against this order, disputing the liability to pay interest on the sum of Rs.49,00,000/-. However, the appeal is pending due to an application for condonation of delay.

The petitioner argued against the applicability of Section 11AB of the Central Excise Act to the interest claim, citing its enactment date. They

contended that they would have no meaningful opportunity to contest the claim due to the CESTAT order.

The Madras High Court directed a stay on the interest liability until the appeal is considered. It restrained the first respondent from issuing any orders or appropriating interest liability from the sum of Rs.1.28 crores, while allowing the appropriation of the principal sum of Rs.49,00,000/-.

[Eicher Motors Limited Vs Assistant Commissioner of Central Tax and Central Excise \(Madras High Court\) \(Appeal Number : W.P. No.9231 of 2024\)](#)

CENVAT Credit is allowed on Inputs for Electricity Generation Transferred to Sister Unit

DA Insights:

This case provides clarity on the admissibility of CENVAT credit on inputs and input services used for electricity generation when transferred to a sister unit. It underscores the importance of proper valuation and adherence to Cenvat Credit Rules.

Issue:

The dispute revolves around the admissibility of CENVAT credit on inputs and input services used for electricity generation transferred to Finolex Industries Ltd's sister unit.

Legal Provisions:

Rule 6(3)(ii) of Cenvat Credit Rules, 2004

Observation and Comments:

Finolex Industries Ltd, engaged in manufacturing PVC products, availed CENVAT credit on inputs used for electricity generation, later transferred to its sister unit. Initially, they reversed credit as per Rule 6(3)(ii) of Cenvat Credit Rules, 2004. However, following a tribunal decision, they ceased the reversal from January 2015.

The department contested, issuing show cause notices for improper calculation under Rule 6(3)(ii). Though two notices were upheld, the appellant argued against valuation based on electricity sale to MSEDCL, which didn't occur.

The CESTAT Mumbai examined precedents and observed no electricity sale during the disputed period. Referring to the Maruti Suzuki Ltd case, it emphasized that electricity must be cleared for a price to disallow CENVAT credit. As electricity was transferred free of cost, the demand valuation

was deemed improper. Referencing decisions like Shree Cement Ltd and Hira Ferro Alloys Ltd, the tribunal reiterated that CENVAT credit for inputs used in electricity generation, transferred free of cost to a sister unit, is permissible.

In conclusion, the CESTAT Mumbai ruled in favor of Finolex Industries Ltd, allowing CENVAT credit on inputs and input services used for electricity generation transferred to their sister unit.

[Finolex Industries Ltd Vs Commissioner of Central Tax \(Excise Appeal No. 85925 of 2021\)](#)

HC Affirms Pre-Deposit Requirement under CEA, Rejects Waiver in Writ Jurisdiction

DA Insights:

It clarifies that the pre-deposit condition cannot be waived or altered in the writ jurisdiction, emphasizing the need for compliance with established legal principles.

Issue:

The issue revolved around whether the mandatory pre-deposit condition under Section 35F of the Central Excise Act (CEA) could be waived in the writ jurisdiction.

Legal Provisions:

Section 35F of the Central Excise Act

Observation and Comments:

The Allahabad High Court emphasized the availability of an alternative efficacious remedy, as the petitioner had already filed an appeal before the CESTAT. The court highlighted that the petitioner's attempt to circumvent the pre-deposit requirement through the writ petition was untenable. Citing various judgments, including *Shri Subhash Jain v. Commissioner of Central Goods and Service Tax*, the court elucidated that the condition of pre-deposit cannot be waived or modified in the writ jurisdiction.

The judgment emphasized that judicial discretion exercised by the High Court must align with statutory provisions. The court ruled that any deviation from the pre-deposit requirement would render the statutory provision meaningless. Notably, the court rejected arguments based on past judgments predating legislative amendments, affirming the current legal stance on pre-deposit conditions.

[Ram Kishan Bairwa Vs Central Excise Service Tax Appellate Tribunal and 2 Others \(Allahabad High Court\), Writ Tax No. 416 of 2024.](#)

Permissibility of Multiple Re-assessments under Customs Act, Clarifies Provisional Assessment Post Re-assessment

DA Insights:

The ruling allows multiple re-assessments under Section 17 until goods are cleared for home consumption, highlighting the dynamic nature of assessments and the authority of officers to revise them.

Issue:

Whether multiple re-assessments under Section 17 of the Customs Act, 1962 are permissible until clearance for home consumption, and if an order of provisional assessment after re-assessment is correct.

Legal Provisions:

Section 17 (Assessment), Section 47 (Clearance of goods for home consumption), Customs Act, 1962.

Observation and Comments:

The CESTAT New Delhi rejected the argument that a second re-assessment is impermissible after re-assessment by the Customs officer under Section 17 of the Customs Act, 1962. The Tribunal noted that Section 17 does not limit the officer to re-assess only once, implying that multiple re-assessments are allowable.

It emphasized that assessments are not always final and may require revision based on new information or intelligence received by the proper officer. However, once the proper officer issues a home consumption order under Section 47, the goods cease to be 'imported goods,' and no further changes in assessment are possible except through appeal or issuance of a show cause notice. Additionally, the Tribunal dismissed the contention that once re-assessment is conducted under Section 17 by the officer, it precludes them from issuing an order of provisional assessment.

[Human Health Distribution v. Commissioner - 2024 VIL 375 CESTAT DEL CUI](#)

Customs Notification / Circulars / Guidelines / Instructions

Acceptance of Electronic Certificates of Origin (e-CoO) under India-Korea CEPA

India's customs authority clarified that electronic Certificates of Origin (e-CoO) issued by South Korea's Issuing Authority are valid under the India-Korea CEPA. These e-CoOs must meet specific criteria, including format, QR code inclusion, and adherence to notification No. 187/2009-Customs (N.T.). They hold equal validity as manually issued CoOs. Importers must upload e-CoOs on e-Sanchit for preferential benefits, and a system in ICES verifies their details against exporting country Customs data. Physical defacement of printed e-CoOs is no longer required. Further procedural guidance is available in Advisory No. 31/2023 from DG (Systems), urging Customs formations to implement these procedures.

[Instruction No. 10/2024 - Customs, dated 1st May, 2024](#)

Verification of Certificate of Origin (CoO) by UAE Authority

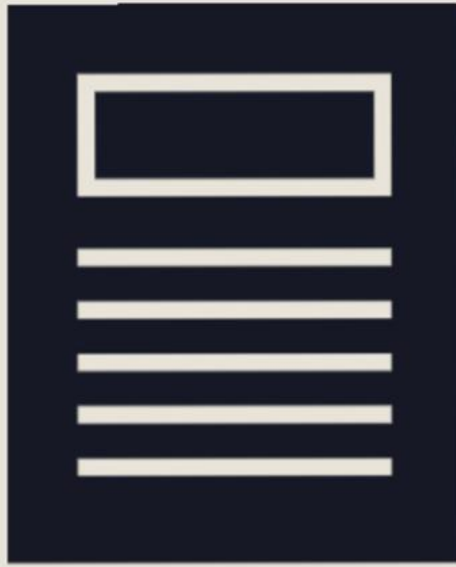
UAE has introduced an additional security feature, a password, to their Certificate of Origin (CoO) format for verification purposes under the India-UAE Comprehensive Economic Partnership Agreement (CEPA). The format remains the same, but now includes a QR code and a specified password. All CoOs will have a unique serial number. This change aligns with the Operational Certificate Procedures (OCPs) agreed upon in the India-UAE CEPA. Customs formations are instructed to implement this new verification procedure in accordance with the OCPs.

[Instruction No. 11/2024 - Customs, dated 1st May, 2024](#)

Clarification on Export Obligation Discharge for Advance Authorisation

This directive addresses queries regarding the discharge of export obligations for Advance Authorisation (AA) under specific customs notifications. For AA issued on or after April 1, 2015, exporters have the choice to fulfill obligations via physical exports or domestic supplies. For AA issued after January 10, 2019, options include the above methods and supplying goods to specific entities or supplying capital goods against EPCG authorization. Similarly, holders of AA for deemed exports have the same options. This policy circular is issued with DGFT approval.

[Policy Circular No. 01/2024 -DGFT, dated 12th April, 2024](#)



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Goods and Services Tax

- Biometric-Based Registration Helps to Reduce Fake GST Registration in Gujarat
- Gaming Firms To Approach New Govt After General Elections For GST Reduction
- 'Can't harass people': SC seeks data on notices and arrests under GST Act
- Hero MotoCorp slapped with GST fine of Rs 605 cr; to contest order in appellate court
- Broaden GST net, cut cesses to reduce tax burden

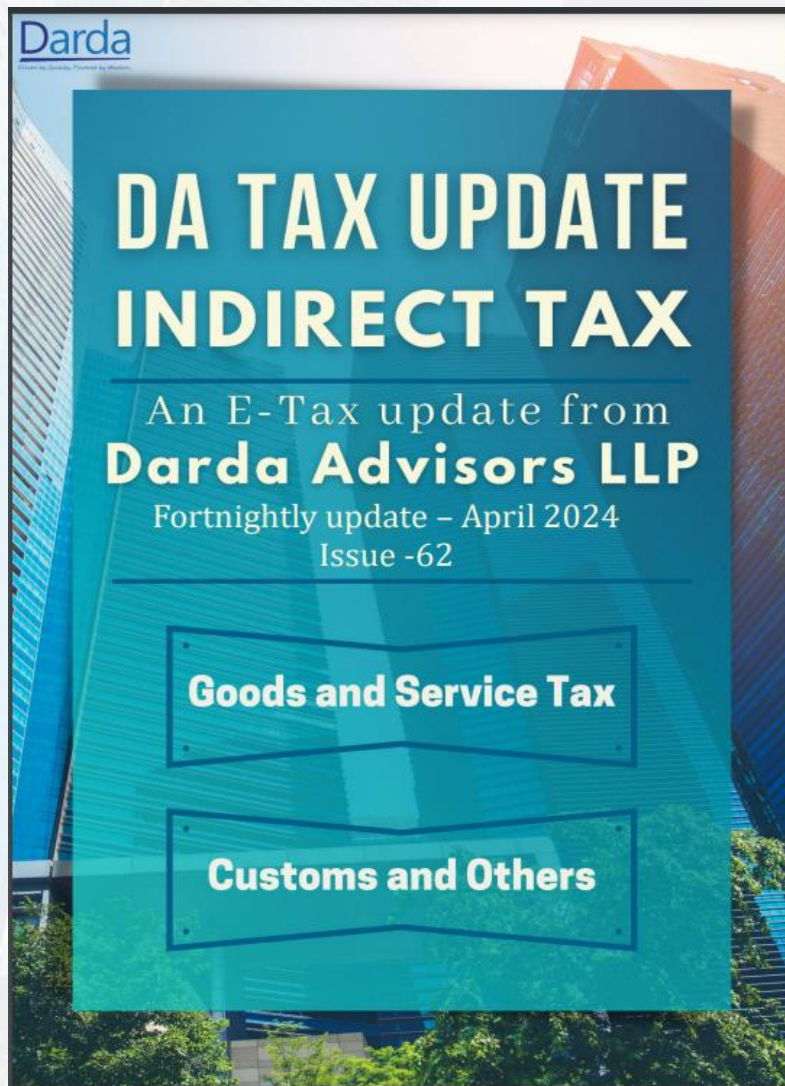
Customs and other

- Bengaluru man loses ₹2.24 crore to fraudsters posing as Delhi Customs officials
- Government imposes port restrictions for exporting essential commodities to Maldives
- MDH faces scrutiny in US after HK & Singapore; 31% of spice exports rejected by customs over salmonella contamination
- APSEZ's Vizhinjam Port gets nod to run as India's first transshipment hub
- Centre accords AEO status to gem and jewellery sector

DA Updates and Articles for the month of April 2024

DA - Indirect Tax Fortnightly Update – April 2024

<https://dardaadvisors.com/wp-content/uploads/2024/04/DA-Indirect-Tax-Fortnightly-Update-April-2024..pdf>



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