



Indirect Tax

November, 2024

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01

Judgements

Tribunal held that discount/ incentives received as trade discount are not taxable as consideration of any service.

Brief Facts

- Dunac Automobiles Pvt. Ltd ('Appellant'), an authorized dealer of Tata Motors Ltd. ('TML') is engaged in providing Repair, Reconditioning, Restoration/Decoration or other similar services of motor vehicle, Business Auxiliary Service and Business Support Service;
- It had received discounts and incentives from TML for achieving sales targets as per their dealership agreement. The said amounts were treated by the Service Tax Department as consideration towards "business auxiliary services" and were subjected to Service Tax. Show Cause Notice ('SCN') was subsequently issued, demanding service tax on these discounts/incentives basis records for the period 2014-2015 to 2017-2018. The Department contended that these payments were taxable as consideration for services provided to TML;
- Appellant challenged the order issued pursuant to the SCN, contending that the amounts received were trade discounts, not payments for any taxable service. Further, it was also contended that the SCN issued was time-barred and invoked the extended period of limitation.

Observations

- Tribunal observed that the relationship between Appellant and TML was governed by a dealership agreement. The Tribunal reviewed clauses from the agreement that clarified that the dealership was operating on a principal-to-principal basis and not as an agent of TML;

- Tribunal relied on the judgements passed in ***Sai Service Pvt. Ltd. (2014 (35) S.T.R. 625 (Tri.-Bom)***, wherein it was held that sales/ target incentives were in the nature of trade discounts. Further, the Tribunal also relied upon its recent judgement in ***Rohan Motors Ltd. (2021 (45) G.S.T.L. 315 (Tri.-Del)***, wherein it was held that the discounts and incentives received for achieving sales targets were trade discounts, not consideration for services. These incentives were part of the sales activity between the dealer and manufacturer, aimed at encouraging higher sales volumes.

Decision

- The Tribunal held that the discounts and incentives received from TML were trade discounts and not taxable as consideration for any service.

Further, invocation of the extended period of limitation was improper as there was no evidence of suppression or concealment of facts.

[**Dunac Automobiles Pvt. Ltd. Vs Commissioner of CGST & Central Excise (2024) 23 Centax 379 (Tri.-Del)**]

Delhi High Court quashes SCNs/Order demanding GST on Expat Salaries (paid by Indian related parties)

Brief Facts

- M/s. Metal One Corporation India Pvt. Ltd ('Petitioner'), entered into individual employment agreements with the employees of Metal One Corporation Japan, its parent entity, who subsequently also became employees of the Petitioner;
- Petitioner was issued SCN by its jurisdictional GST Authority demanding GST on reverse charge basis on import of 'manpower supply services', received from their Overseas company. The jurisdictional GST authorities following the Supreme Court's ruling in the **CCE & Service Tax vs. Northern Operating Systems (P) Ltd.** ('NOS Judgment'), contended that placement of expatriates from overseas related entities constituted a "manpower supply" service by the overseas entity to domestic entity;
- Aggrieved, the Petitioner sought relief by way of writ before the Hon'ble Delhi High Court.

Observations

- Hon'ble High court observed that Petitioner had entered into employment agreements with their overseas parent companies for the secondment of employees, and no invoices were raised for manpower supply services by the parent entities;
- The Court observed that in terms of Circular No. 210/4/2024-GST, in case where no invoice is raised by the related domestic entity for the services rendered by a foreign affiliate, the value of such services would be deemed to be declared as "Nil".

Decision

- The High Court quashed the SCN issued to Metal One Corporation and other petitioners on the basis that in the absence of invoices and considering the explicit terms of the Circular, the value of the service rendered would have to be treated as “Nil”. Thus, no tax liability would arise.

[Metal One Corporation India Pvt. Ltd. vs. Union of India & Ors (Delhi) W.P.(C) 14945/2023 dated 22 October 2024]

02

GST Notifications, Clarifications and Updates

Key notifications related to change in GST rates on Goods

- Notification No. 05/2024 - Integrated Tax (Rate) has been issued which notifies several significant recommendations that were brought forward in 54th GST Council meeting held on 9 September 2024:
 - The GST rate on Cancer Drugs (Trastuzumab Deruxtecan, Osimertinib and Durvalumab) has been reduced from 12% to 5%;
 - The GST rate of extruded or expanded products, savoury or salted (other than un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion) has been reduced from 18% to 12% prospectively;
 - GST Rate on seats of a kind used for motor vehicles has been increased from 18% to 28%.
- Notification No. 09/2024 - Central Tax (Rate) has been issued which notifies applicability of GST under RCM in case any commercial property is rented to a registered person by any unregistered person.

[Notification No. 05/2024 - Integrated Tax (Rate) and Notification No. 09/2024 - Integrated Tax (Rate) dated 8 October 2024]

Time limit for issuance of self-invoice

- Through Notification No. 20/2024-Central Tax dated 8 October 2024, Rule 47A has been inserted in relation to the manner of issuance of self-invoice in respect of procurements made from an unregistered person attracting GST under the reverse charge mechanism ('RCM').
- It has been notified that self-invoice shall be issued within a period of 30 days from the date of receipt of goods or services or both with effect from 1 November 2024.

[Notification No. 20/2024 - Central Tax dated 8 October 2024]

Clarifications in respect to Section 128A of CGST Act,2017

- CBIC has notified 31 March 2025 as the date upto which payment for the tax payable can be made as per the notice or statement or the order referred in section 128A(1)(a) or (b) or (c) of the CGST Act 2017; and
- For Registered persons, who have received a notice under Section 74(1) for the period mentioned in Section 128A (1) and the proper officer re-determined tax under section 73 of the said Act, due date for payment of tax is the date ending on completion of six months from the date of issuance of the order by the proper officer re-determining tax under section 73 of the said Act.

[Notification No. 21/2024 - Central Tax dated 8 October 2024]

Late Fee payable under Section 47

- It has been notified by the CBIC that the total amount of late fee payable under section 47 of the CGST Act by such registered person for failure to furnish the return in FORM GSTR-7 for the month of June, 2021 onwards, by the due date, shall stand waived which is in excess of an amount of one thousand rupees.
- However, if the total central tax deducted at source in a month is nil, the total late fee payable will be waived.

[Notification No. 23/2024 - Central Tax dated 8 October 2024]

Clarifications regarding applicability of GST on certain services

- Circular No. 234/28/2024-GST has been issued which provides clarification on several significant recommendations that were brought forward in 54th GST Council meeting held on 9 September 2024:
 - Transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis is taxable @ 5% w.e.f. 10 October 2024. However, transport of passengers by helicopter on other than seat share basis i.e., for charter operations will continue to attract GST @ 18%;
 - Incidental/ Ancillary services like loading/unloading, packing/unpacking, trans-shipment, temporary warehousing etc. provided by GTA in the course of transportation of goods by road would constitute a 'composite supply'.
 - The location charges or Preferential Location Charges ('PLC') paid along with the consideration for the construction services of residential/commercial/industrial complex before issuance of completion certificate forms part of composite supply and would be eligible for same tax treatment as the main supply, i.e. construction service.

[Circular No. 234/28/2024 - GST dated 11 October 2024]

Clarifications in respect to implementation of provisions of Section 16(4) & 16(5) retrospectively from 1 July 2017 relating to Input Tax Credit ('ITC')

The following clarifications have been provided by the Government vide the circular No. 237/31/2024-GST:

- No refund will be granted for taxes already paid or ITC already reversed, even if the ITC is now eligible due to the retrospective amendments in Section 16(5) and 16(6) of CGST Act;
- In situations where proceedings in respect of wrong availment of ITC were initiated but no demand notice was issued under Sections 73 or 74 of the CGST Act, GST Authorities are now required to consider the amended Sections 16(5) and 16(6). This allows taxpayers to benefit from the extended period for claiming ITC even if FORM DRC-01A were previously issued;
- For cases where demand notices were issued but no order under section 73 or section 74 of CGST Act was passed by the Adjudicating Authority, retrospective amendments to Sections 16(5) and 16(6) should be taken into account when issuing the final order;
- In cases where orders have already been passed under Sections 73 or 74 and an appeal has been filed under Section 107, but no appellate order has been issued, the Appellate Authority must now consider the retrospective extension of ITC claims;
- If revisional proceedings were initiated under Section 108 of CGST Act but no order has been issued, the Revisional Authority is required to factor in the said amendments;

- Where order under section 73 or 74 have already been issued but no appeal against the said order has been filed with the Appellate Authority, or where the order under section 107 or section 108 of the CGST Act has been issued by the Appellate Authority or the Revisional Authority but no appeal against the said order has been filed with the Appellate Tribunal, taxpayers may still apply for rectification under the special procedure laid out in Notification No. 22/2024 – Central tax dated 8 October 2024 within six months of the date of instant notification.
- Also, the proper officer carrying out the rectification shall issue a new order within three months from the date of said application. The said officer is required to upload a summary of rectified order electronically,
 - in FORM GST DRC-08, in cases where rectification of an order issued under section 73 or section 74 of the CGST Act is made, or
 - in FORM GST APL-04, in cases where rectification of an order issued under section 107 or section 108 of the CGST Act is made.
 - Where such rectification adversely affects the said person, the principles of natural justice shall be followed by the authority carrying out such rectification.

[Circular No. 237/31/2024 - GST dated 15 October 2024]

Procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73

- CBIC Rule 164 of CGST Rules 2024 has been inserted vide Notification No. 20/2024-Central Tax dated 8 October 2024 which provides the procedure and conditions for availment of benefit of waiver of interest or penalty or both, relating to tax demands under section 73 of CGST Act, pertaining to F.Y. 2017-18 to 2019-20 under section 128A of CGST Act, 2017.;
- Any person eligible for waiver of interest, or penalty, or both in respect of a notice or a statement mentioned in section 128A(1)(a), may file an application electronically in FORM GST SPL-01 on the common portal, providing the details of the said notice or the statement along with the details of the payments made in FORM GST DRC-03 towards the tax demanded;
- In respect of orders mentioned in Section 128A(1)(b) & 128A(1)(c), any person eligible for waiver of interest, or penalty, or both may file an application electronically in FORM GST SPL-02 on the common portal;
- Demand of tax, partially on account of erroneous refund and partially for other reasons or related to period other than that mentioned in Section 128A, the application may be filed only after payment of full amount of tax demanded in the said notice or statement or order;
- An application may be filed within a period of 3 months from the date notified under Section 128A (1) of the CGST Act;
- The application shall be accompanied by the documents evidencing withdrawal of appeal or writ petition to establish that the applicant is eligible for waiver of interest or penalty or both under Section 128A. If the applicant has filed an application for withdrawal of appeal or writ petition but the order for withdrawal has not been issued till the date of filing of application, the applicant shall upload the copy of the said withdrawal application and must file the copy of the order within one month of the issuance of the said order;

- Where the proper officer is of the view that the application made liable to be rejected, he shall issue a notice on the common portal to the applicant in FORM GST SPL-03 within three months from the date of receipt of the said application and shall also give the applicant an opportunity of being heard. The applicant may file his reply in FORM GST SPL-04, electronically on the common portal, within a period of one month from the date of receipt of the notice;
- The proper officer shall issue an order in FORM GST SPL-05, accepting the said application, if he is satisfied that the applicant is eligible for a waiver of interest or penalty or both under Section 128A. However, if the proper officer, based on the application and the reply in FORM GST SPL-04 received from the taxpayer, is of the view that the applicant is not eligible for a waiver of interest or penalty or both under Section 128A, he shall issue an order in FORM GST SPL-07, rejecting the said application;
- In cases where notice in FORM GST SPL-03 has not been issued, the proper officer shall issue the order under sub-rule (10) within a period of three months from the date of receipt of the application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be;
- If the notice in FORM GST SPL-03 has been issued, the proper officer shall issue the order within a period of three months from the date of receipt of reply of the applicant in FORM GST SPL-04, or within a period of four months from the date of issuance of notice in FORM GST SPL-03 where no reply is received from the applicant;
- If no order is issued by the proper officer within three months, then the application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, shall be deemed to be approved and the proceedings shall be deemed to be concluded; and
- In cases where the applicant is liable to pay an additional amount as per section 128A(1) of the CGST Act, and such additional amount is not paid within the prescribed time limits, the waiver of interest or penalty as per the order in Form GST SPL-05 / GST SPL-06 (if any) shall become void.
- Further, various issues with respect to availing the benefit of waiver of interest or penalty or both provided under Section 128A has been clarified vide Circular No. 238/32/2024-GST dated 15 October 2024.

[Circular No. 238/32/2024 - GST dated 15 October 2024 and Notification No. 20/2024 - Central Tax dated 8 October 2024]

Invoice Management System ('IMS')- New Functionality on GST Portal

- The GSTN has released a draft manual on the newly introduced Invoice Management System (IMS), designed to help taxpayers efficiently manage invoice reconciliation. Available from 14 October 2024, the IMS allows taxpayers to accept, reject, or keep invoices pending, improving the accuracy of ITC claims and enhancing GST compliance. While accepting or rejecting invoices in the IMS dashboard is optional, any non-action will be treated as acceptance, and a draft GSTR-2B will be generated automatically on the 14th of each month.

Advisory for GSTR-9 and GSTR-9C

- The Goods and Services Tax Network (GSTN) has issued an Advisory dated 15 October 2024, relating to Annual return in Form GSTR-9 and GSTR-9C. GST system will auto-populate eligible ITC for domestic supplies (excluding reverse charge and imports ITC) from table 3(I) of GSTR-2B to table 8A of GSTR-9 starting FY 2023-24; and
- The said changes would be available on GST portal from 15 October 2024 onwards. Further, a validation utility will be executed progressively to complete the auto population of GSTR-9 from GSTR-2B for tax period April 2023 to March 2024.

Updates on Monthly and Annual compliances

- The taxpayers will not be allowed to file their GST returns after the expiry of a period of three years from the due date of furnishing of said return under section 37, section 39, section 44 and section 52.
- The said changes are going to be implemented from early next year i.e. 2025.

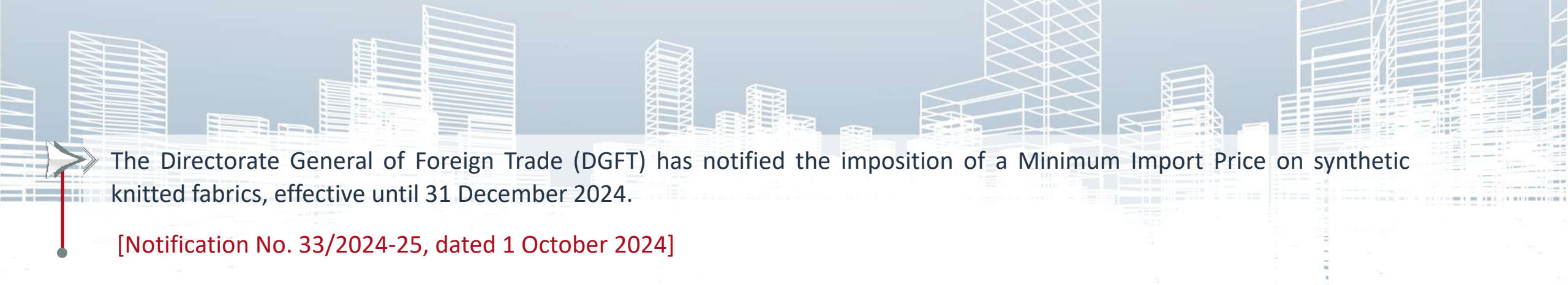
Updates regarding liability declared in GSTR-3B

- As through Invoice Management System (IMS), taxpayers can now make informed choices on their inward supplies by selecting **accept, reject, or pending** resulting in more functionality and better compliance.
- However, The GST Portal is going to restrict changes to auto-populated liabilities in pre-filled GSTR-3B tentatively from Tax Period January 2025.
- Any necessary adjustments to these auto-populated liabilities shall be made through **GSTR-1A**.
- Additionally, locking of Auto-populated ITC IN GSTR-3B, after the roll out of IMS, will be implemented from a later date. For the same a separate advisory would be issued after addressing all the issues related to IMS, raised by the trade.

03

Foreign Trade Policy Updates





➤ The Directorate General of Foreign Trade (DGFT) has notified the imposition of a Minimum Import Price on synthetic knitted fabrics, effective until 31 December 2024.

[Notification No. 33/2024-25, dated 1 October 2024]

➤ DGFT in continuation of the Notification No. 06/2023, dated 22 May 2023, has made Amendment in Export Policy condition of Cough Syrup related to HSN 3004, as specified in Chapter 30 Schedule-II (Export Policy) Of ITC(HS) 2022

[Notification No. 35/2024-25, dated 1 October 2024]

➤ DGFT has amended the Customs Tariff Act, 1975. As a result, the Remission of Duties and Taxes on Export Products (RoDTEP) Schedule (Appendix 4R and Appendix 4RE) will be subject to certain changes to align with the First Schedule of the Customs Tariff Act, effective from 1 October 2024.

[Notification No. 39/2024-25, dated 28 October 2024]

➤ DGFT has provided Clarification on RCMC Requirements regarding Remission-based schemes, including Duty Drawback, Rebate of State and Central Taxes and Levies (RoSCTL), and RoDTEP.

[Trade Notice No. 19/2024-25, dated 4 October 2024]



DGFT has clarified that the import or re-import of "Exhibits and Samples" intended for demonstration, display, exhibition, or participation in fairs, whether in India or abroad, will be governed by Para 2.60 of the Handbook of Procedures (HBP) 2023. Such items will not be subject to the requirement of import authorization or registration under the Import Monitoring Systems.

[Trade Notice No. 20/2024-25, dated 7 October 2024]



DGFT has launched an online facility for on-boarding of Certifying Authorities (e.g., Chartered Accountants, Company Secretaries, Cost Accountants, Chartered Engineers, etc.). These authorities can now digitally sign and submit certificates using their online DGFT accounts, resulting in digitalization of the Appendix 4H certificate.

[Trade Notice No. 21/2024-25, dated 17 October 2024]



(DGFT) has amended Appendix 10M of Para 10.15 of the Foreign Trade Policy (FTP) 2023 to include additional items within the scope of the Global Authorization for Intra-Company Transfer (GAICT). Further, the range of items including software and technology under SCOMET Category 8 has been expanded and new items have been brought under the liberalised policy to facilitate the Intra Company Transfer of SCOMET items to only the countries listed in Table 1 of Para 10.15 of HBP 2023.

[Public Notice No. 26/2024-25, dated 7 October 2024]



- DGFT has notified a new Para 4.94 under Chapter 4 of the Handbook of Procedures 2023 (HBP) for exporters seeking RODTEP benefits must submit an Annual RODTEP Return (ARR) by March 31 of the following year (e.g., FY 2023-24 claims due by March 31, 2025) if total claims exceed ₹1 crore across all 8-digit HS Codes.

- Non-submission will result in denied benefits. A composition fee of ₹10,000 applies for delays until 30 June 2025, increasing to ₹20,000 thereafter. Records supporting duty remission claims must be maintained for five years.

[Public Notice No. 27/2024-25, dated 23 October 2024]



DGFT has issued a circular under Para 4.08 (ii) of the HBP, where when Advance Authorization Holders procure inputs from SEZ units, the Regional Authority must endorse a copy of the authorization to the relevant agencies. Additionally, the Regional Authority must ensure that a No Objection Certificate (NOC) is obtained from both the Drug Controller and the Narcotics Commissioner before imports are made.

[Circular No. 08/2024-2025, dated 11 October 2024]

04

Compliance Calendar

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in November 2024
1	Monthly Return Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11 th day of succeeding month	For Tax Period october 2024- 11 November 2024
2	Monthly Return Form GSTR-3B	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for QRMP Scheme	Monthly	20 th day of succeeding month	For Tax Period October 2024- 20 November 2024
3	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Quarterly	13 th of the succeeding month	For Tax Period October 2024- 13 November 2024

4	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source under GST	Monthly	10 th of the succeeding month	For Tax Period October 2024- 10th November 2024
5	Form GSTR-8 (Statement of Tax collection at source)	Return to be filed by e-commerce operators who are required to collect tax at source under GST.	Monthly	10 th of the succeeding month	For Tax Period October 2024- 10 November 2024
6	QRMP Scheme Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme	Monthly	13 th day of the Subsequent month following the end of quarter	For Tax Period October 2024- 13 November 2024

NOIDA

(Delhi NCR - Corporate Office) A-109, Sector - 136,
Noida - 201304, India
T: +91 120 2598000

GURUGRAM

001-005, Emaar Digital Greens Tower-A 10th Floor, Golf
Course Extension Road, Sector 61, Gurgaon-122102
T: +91 0124 430 1551

CHENNAI

Prestige Palladium Bayan,
Level 5, 129-140, Greams Road, Thousand
Lights, Chennai - 600006 T: +91 44 46549201

PUNE

3rd Floor, Park Plaza, CTS 1085,
Ganeshkhind Road, Next to Pune Central
Mall, Shivajinagar, Pune - 411005, India

www.nangia-andersen.com | query@nangia-andersen.com

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Follow us at :   

DELHI

(Registered Office) B-27, Soami Nagar, New Delhi -
110017, India T: +91 120 2598000

MUMBAI

4th Floor, Iconic Tower, URMI Estate, Ganpat Rao
Kadam Marg, Lower Parel, Mumbai - 400013, India
T : +91 22 4474 3400

BENGALURU

Prestige Obelisk, Level 4, No 3 Kasturba Road,
Bengaluru - 560 001, Karnataka, India
T: +91 80 2248 4555

DEHRADUN

1st Floor, "IDA" 46 E.C. Road, Dehradun - 248001,
Uttarakhand, India T: +91 135 271 6300

