

JUNE, 2019

TAX Bulletin



VOLUME - 41



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

MISSION STATEMENT

“The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.”

VISION STATEMENT

“The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.”

Objectives of Taxation Committee:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders.

JUNE, 2019

TAX Bulletin



VOLUME - 41



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

FROM TAX RESEARCH DEPARTMENT

The Tax Research Department has been constantly focusing on bringing out and highlighting the areas of contributions which may be made by cost accountants. In this effort, the department has submitted representation in various Govt departments and Ministries.

A representation on “Inclusion of Cost Accountants for authorizing the various certifications under Customs Act and Foreign Trade Policy” was submitted on 23.05.2019. Three other representations on ‘Request for inclusion of “Cost Accountants (CMA)” on the labels of Forms under point no. C of GSTR-10 (Final Return)’, ‘Suggestions from The Institute of Cost Accountants of India for Budget 2019-20 regarding changes in Direct Taxes’ and ‘Suggestions from The Institute of Cost Accountants of India for Budget 2019-20 regarding changes in Indirect Taxes’ were submitted on various dates.

Among the courses ‘Certificate Course on GST’ 4th Batch has commenced in 9 locations through offline Mode and PAN India through online mode.

Two courses Certificate Course on TDS (which commenced on 16th April, 2019) and Certificate Course on Returns Filing and Filing (which commenced on 26th April, 2019) are also being successfully conducted. The courses have been gladly and cordially accepted by the masses.

The classes for the Advanced course on GST is also undergoing. The GST practitioners and experts are benefitted from the take-aways of the course. The department has planned and prepared for a Crash Course on GST for Students of College & Universities and it has been launched successfully in a reputed college in Bangalore. The examination for the same is going to be held by this month.

In the regular activities, the 39th & 40th Tax Bulletins have also been published.

In accomplishing all the above activities we have been supported by our resource pool. We are grateful for the support and guidance of our resource contributors and mentors. The department is indebted to all of them. We solicit support in serving our members, learner and students better and further.

Thank You

Regards

Tax Research Department

3rd June 2019

TEAM - TAX RESEARCH DEPARTMENT

CMA Rajat Kumar Basu	-	Additional Director - Tax Research
CA Neelesh Jain	-	Deputy Director - Tax Research
CMA Priyanka Roy	-	Assistant Director - Tax Research
Ms. Mukulika Poddar	-	Officer - Tax Research
CMA Debasmita Jana	-	Associate - Tax Research

SPECIAL ACKNOWLEDGEMENT

Mr. Dipayan Roy Chaudhuri	-	Graphics & Web Designer
---------------------------	---	-------------------------

CONTENTS

ARTICLES		
INDIRECT TAX		
01	ANTI – PROFITEERING MECHANISM IN GST	
	CMA Manmohan Daga	Page - 1
02	BLOCKED CREDIT – GST	
	CMA Amit Dey	Page - 6
GST – NEW RETURN PROTOTYPE		
	Team TRD	Page - 11
TAX UPDATES, NOTIFICATIONS AND CIRCULARS		
	Indirect Tax	Page - 12
	Direct Tax	Page - 15
PRESS RELEASE		
	Direct Tax	Page - 19
JUDGEMENTS		
	Indirect Tax	Page - 21
	Direct Tax	Page - 24
TAX COMPLIANCE CALENDAR AT A GLANCE		
	Indirect Tax	Page - 27
	Direct Tax	Page - 28

Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original. Please send the articles to

trd@icmai.in /trd.ad1@icmai.in

ANTI – PROFITEERING MECHANISM IN GST

CMA Manmohan Daga
Practicing Cost Accountant

Is profits bad?

'Profit is fine, profiteering is not'. The basic premise on which Anti-profiteering mechanism under GST laws rest is 'Don't let someone profiteer at your expense'.

What is Anti-profiteering?

Profiteering is a term for the act of making profits by methods considered unethical. Hence, under GST laws, reasons provisions and mechanism have been incorporated to curb profiteering. The aim of the legislation is to prevent entities from making excessive profits *due to GST*. An Authority has been set to check that the benefit of GST is passed on to the ultimate consumer and that channel is not hiking rates inordinately citing GST as a reason.

Need for such a law?

Examples around the world have shown that the introduction of GST has led to inflation, with traders trying to keep their profit margins constant and the ultimate benefit not being passed on to the ultimate consumer.

A report of CAG named 'Implementation of VAT in India - Lessons for Transition into Goods and Services Tax' in dealing with the impact of the introduction of VAT in India stated that the introduction VAT led to an increase in prices of products, higher tax evasion, profiteering by manufacturers and dealers due to not passing benefits due to tax rate reduction.

Legal perspective

Sec. 171(1) of CGST Act, 2017 - Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

Sec 171(2) of CGST Act, 2017 - The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

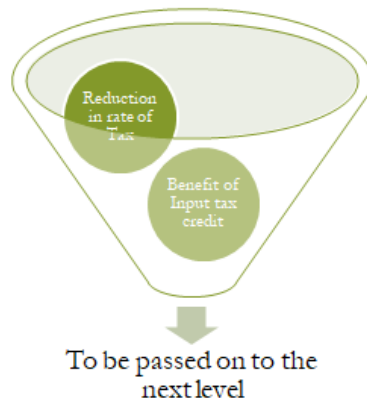
Sec 171(3) of CGST Act, 2017 - The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

Chapter XV of the CGST Rules, 2017 (Rules 122 to Rule 137) details the constitution of the Authority, its roles and responsibilities, powers and conduct of such Authority.

Anti-profiteering mechanism – The what and how?

The provisions of GST Act states that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

Which essentially means, anti-profiteering mechanism is based on 2 broad pillars



Benefit due to reduction in rate of tax – It is clear and natural that any reduction in rate of tax is to be passed on to the next level of supply chain. Since most of the invoicing happens on Cost + Tax basis i.e. supplies are exclusive of tax there are not much of an issue. The complication arrives when prices are inclusive of tax. Back calculating the tax component and then reworking the new retail price becomes a complicated exercise.

Benefit due to input tax credit - Almost all industries and sectors benefitted due to implementation of from GST due to i) Seamless flow of input tax credit and ii) Allowing input tax credit on goods or services or both which were not allowed in the erstwhile tax regime. To ensure the benefit is passed on to the next level and the benefit of GST implementation actually reaches the end consumer, it was required that the same is passed on.

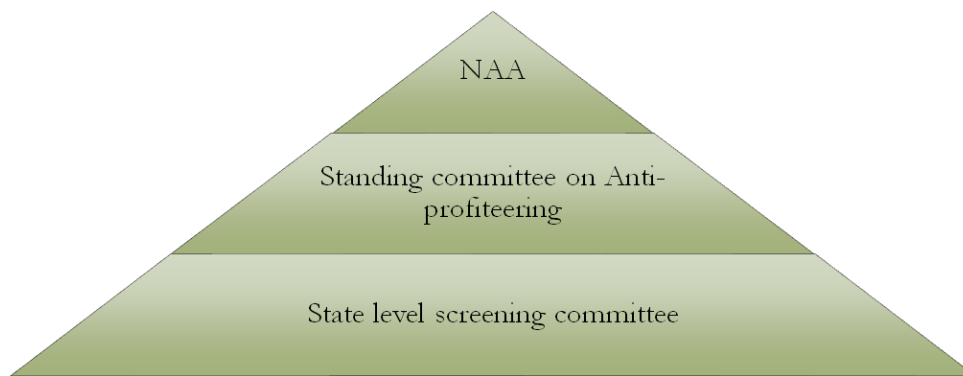
Let's understand this with an example.

Description	Pre GST	Post GST (price constant)	Post GST (Adjusted)
Purchase price of goods	1,00,000	1,00,000	1,00,000
Excise Duty @ 12.5%	12,500	-	-
VAT @ 5.5%	6,188	-	-
GST @ 18%	-	18,000	18,000
Landed Cost	1,18,688	1,18,000	1,18,000
Operations Expenses	5,000	5,000	5,000
Tax on above (15%/ 18%)	750	900	900
Total Cost	1,24,438	1,23,900	1,23,900
Sale Price	1,25,000	1,25,000	1,11,750
VAT @ 5.5%	6,875	-	-
GST @ 18%	-	22,500	20,115
Total Invoice Value	1,31,875	1,47,500	1,31,865
Profit to dealer	6,750	20,000	6,750
Tax to Government	20,125	22,500	20,115

The Government's endeavour, as clearly evident, is to have the benefit of lower tax passed on to the next level and to the end consumer.

The Authority

The authority dealing with Anti-profiteering is a three-tier structure involving State level screening committee, Standing Committee on anti-profiteering and National Anti-profiteering Authority (NAA).



State Level Screening Committee

- The Committee shall be constituted by the respective State Government
- The Committee shall have one officer each of the State Government and of the Central Government, as nominated.
- First point of contact for any application under the anti-profiteering regulations concerning the State.
- Primary role is to examine all application received and, if deem okay, forwarded with recommendation to the Standing committee

Standing Committee

- The Committee shall be constituted by as many representatives as may be nominated by the respective State Government and Central Government
- This is the next level to the State screening committee. It also has jurisdiction over matters relating to National levels.
- Within a period of 2 months from the receipt of written application (received from an interested party or from the Commissioner), examine the accuracy and adequacy and determine whether there is prima-facie evidence to support the claim.
- If the Standing Committee is satisfied, it shall refer the matter to the Director General of Anti-profiteering (working under National Authority) for a detailed investigation.

National Anti-profiteering Authority

- Constitution of the Authority
 - A Chairman, equivalent to the rank of Secretary under Government of India
 - Four technical members, equivalent to tax commissioners, to be nominated by the Council
- Duties
 - To determine whether tax rate reduction or input tax benefit has been passed on
 - To identify those who have not complied to the provision of the law
 - To order, as appropriate, within 3 months of receiving report
- Decision of the Authority
 - A minimum of 3 members of the Authority shall constitute a quorum
 - Majority rules. In case of equality of votes, the Chairman shall have the Casting vote
- Orders Passed by the Authority
 - The Authority may order – i) Reduction in prices, ii) Return to the buyer, the benefit amount not passed on along with 18% interest, iii) Payment of penalty and iv) Cancellation of registration
 - The Authority will pass order within 3 months from the date of the receipt of the report from the Director General of Anti-profiteering.
- Authority shall furnish performance report to the GST Council by the 10th of the month following the quarter
- The Authority may require any authority of Central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.
- The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Procedure under Anti-profiteering mechanism

Process Workflow



Power of National Anti-profiteering Authority



How to file complaint with the Authority

Online: www.naa.gov.in

Helpline: 011-21400643

Email: State committee: http://www.naa.gov.in/docs/SCREENING%20COMMITTEES_UPDATED.xlsx
Standing Committee: sc.antiprofitteering@gov.in (for National level complaints)
secretary.naa@gov.in (For grievance redressal)

Physical: Directorate General of Anti-profiteering, Dept. of Revenue, Ministry of Finance, New Delhi

Some practical consideration

Whilst Anti-profiteering provisions are a welcome step to ensure curbing unwanted profiteering at the cost of the consumers, there are certain practical considerations which needs to be kept in mind.

- ✓ How much we try, it is very difficult to establish one-to-one correlation between input tax credit on inward supplies and tax payable on outward supplies. So, ultimately, it will come to the margins. How it will be determined? Absolute number, % of Cost price, % of sale price?? It becomes a very subjective matter.
- ✓ Benefits in inward supplies negated with increase in operational costs. How this will be viewed from an anti-profiteering perspective. The Law is clear, benefit of lower input tax credit needs to be passed on. But it is not clear what happens if there is increase elsewhere.
- ✓ There are no detailed rules relating to computation mechanism, documents to be maintained, limitation period etc. This keeps the door ajar for the authority to exercise its discretionary powers!!

- ✓ With no room for any deviation prescribed, the law may be viewed as straightjacketing and may lead to unwanted harassment by the authorities.
- ✓ Determining price of a product is one of the most complex process in the product life cycle. Prices are not solely dependent on internal factors. There are many external factors are at play. If the price or margin is frozen due to anti-profiteering measures, it may be disastrous.
- ✓ Confidentiality of cost of production and the margins is key to an organization's survival and working in cut-throat competition. Organization may not be willing to share information with the authorities for fear of the information getting leaked.
- ✓ Article 301 of our Constitution provides freedom of trade and commerce. Can putting restrictions on the profits of trade be seen as violation of our fundamental rights?
- ✓ The appointment of NAA lies with the Central Government. Due to the concurrent nature of the tax laws, some taxpayers are under State jurisdiction. How will the jurisdiction of State Tax be determined by the Central Government?

Summing Up

All said and done, anti-profiteering mechanism has been a path-breaking regulation as far as indirect taxation is concerned. The regulations have met with reasonable success, with the Authorities having cracked down on many cases where, post implementation of GST, benefits were not passed on to the consumers. Till date, there are over 100 cases of anti-profiteering which have been referred to the authority. Some of the prominent ones are *Domino's Pizza, Hindustan Unilever, Proctor & Gamble*.

In terms of Rule 137 of the CGST Rules, 2017, the Anti-profiteering Authority shall cease to exist after the expiry of two years from the date on which the Chairman of the Authority enters upon his office unless the GST Council recommends otherwise. So, unless the GST council recommends for an extension or a higher/ better version of the current Authority, the anti-profiteering mechanism shall cease to exist soon. With the GST system entering into stabilising phase, an extension is warranted. Many companies may be thinking otherwise and will be hoping that this deadline is taken seriously. Only time will tell....

BLOCKED CREDIT – GST

(Detailed discussion with Illustration)

CMA Amit Dey
Tax Consultant

Credit in respect of input tax incurred on certain acquisitions is specifically prohibited. Such GST is added to cost of inward supplies and this is known as blocked credit

Blocked credit is in conflict with the fundamental characteristics of GST. But denial of credit can be justified on following grounds:

- 1) To avoid the administrative burden of controlling the actual use of such goods/services, which may be easily used for dual purposes (business/private) due to their nature,
- 2) It is way of reducing the risk of fraud, and
- 3) Such supplies are supposed to contain an element of consumption in the real life sense of the term, e.g. entertainment in restaurant.

Section 17(5) Notwithstanding anything contained in sub section (1) of section 16 and sub section (1) of section 18 **input tax credit shall not be available** in respect of the following namely

- a) **Motor vehicles and other conveyances** except when they are used
 - i) For making the following taxable supplies namely
 - A) Further supply of such vehicles are conveyance, or
 - B) Transportation of passengers, or
 - C) Imparting training and driving flying, navigating such vehicles or conveyances,
 - ii) **For transportations of goods**

Motor vehicle	Sec 2(76)	Motor vehicles shall have meaning as has been assigned to it under motor vehicle act 1988
Conveyance	Sec 2 (34)	Conveyance includes a vessel an aircraft and a vehicle

Illustration:

Supplier	Outward supply	Inward supply	Admissibility of ITC
Dealer of car	Sale of car	Purchase of car	yes
Radio taxi operator	Passenger transportation Service	Purchase of car	yes
Airline	Passenger transportation Service	Purchase of aircraft	yes
Motor driving school	Training on Driving	Purchase of car	yes
Aviation training institute	Navigation training	Purchase of aircraft	yes
Call centre	Business support Service	Purchase of car	No
Coaching institute	Chemical coaching Service	Purchase of car	No
Dealer of truck	Sale of truck	Purchase of truck	yes
Driving school	Training on driving	Purchase of truck	yes
GTA	Goods transportation Service	Purchase of truck	yes
Courier agency	Goods transportation Service	Purchase of truck	yes
Cement Manufacturer	Supply of cement	Purchase of truck	yes
Builder/contractor	Construction Service	Purchase of truck	yes

- b) **The following supply of goods or services or both**
 - i) **Food and beverages, outdoor catering, beauty treatment, help services, cosmetic and plastic surgery** except where an inward supply of goods or services or both of a particular category is used by a registered person (for making an outward taxable

supply
of the same category of goods or services or both (i.e. his outward supply is of same category)
 Or
 (as an element of a taxable composite or mixed supply (i.e. making bundle with his outward supply of different category))

Illustration:

Supplier	Outward Supply	Inward Supply	Admissibility of ITC
Dealer of beverages	Sale of beverages	Purchase of beverages	Yes
Restaurant	Restaurant Service	Purchase of beverages supply as part of restaurant Service	Yes
Airlines	Passenger transportation Service	Outdoor catering services supply as part of air travel price	Yes
Hospital	Health care Service	Outdoor catering services supply as part of healthcare service to patients	Yes
Coaching Institute	Coaching Service	Purchase of beverages for consumption by employees or visitors in office	No
		Outdoor catering Service for giving farewell to students	
Hospital	Health care Service	Health care Service by doctor	Yes
Actress	Acting Service Brand Ambassador Service	Beauty treatment services	No
		Plastic Surgery Service	

(ii) Membership of a club, health and fitness Centres:

Illustration:

Supplier	Outward Supply	Inward Supply	Admissibility of ITC
A Ltd.	Supplier of Mobile	Club membership for its directors	No
Mr. Jain (Gym Trainer)	Gym Training / Coaching	Health & Fitness Centre Service	No

(iii) Rent A Cab, life insurance and health and insurance Except where-
(A) The government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
(B) Such inward supply of goods or services or both of a particular category is used by a registered person (for making an outward taxable supply ... of the same category of goods or services or both) or ... (as part of a taxable composite or mixed supply) and

Illustration:

Supplier	Outward Supply	Inward supply	Admissibility of ITC
Fab Cab	Rent – A – Cab Service	Rent – A – Cab Service (Sub-Contracting)	Yes
DJ Hotel	Accommodation Service	Rent – A – Cab Service (for pickup of visitor from airport)	Yes

EduDelight	Coaching Service	Rent – A – Cab Service (for intra city travel of its outstation faculties)	No
Jhinuk Garments	Supplier of garments	Insurance of trading stock	Yes
		Insurance of factory building	Yes
		Insurance of motor vehicle	No
GIC	General insurance Service	ICICI Prudential (Re-Insurance of health insurance policies)	Yes
Jain Crackers	Suppliers of Crackers	Life insurance of Workers (Mandatory under Law)	No

(iv) **Travel benefits extended to employees on vacation** such as leave or home travel concession

(C) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

Explanation :- for the purpose of clauses (c) and (d)

..... the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property

Illustration:

Supplier	Outward supply	Inward supply	Admissibility of ITC
Builder contractor	Construction Service (Construction of big project for reliance)	Construction Service (Works contract) (Sub-contracting)	Yes – ITC is admissible when work contract service is input service for further supply of works contract Service
Debjani Academy	Coaching Service	Construction Service (Works contract) (Construction of an additional floor of its GST registered officer)	No- ITC is blocked for works contract service supplied for construction of immovable property
Priyanka Foundation	Coaching Service	Works contract (repairs of toilets costing 20,000)	Yes-minor repairs are not be treated as construction of immovable property and hence, its ITC is admissible
Lytton Hotel	Accommodation Service	Renovation (30 years old structure now renovated at cost of 3,00,000)	No-heavy renovation (capitalised in books) is to be treated as construction of IP, and hence its ITC is blocked

(d) Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business

Illustration:

Supplier	Outward supply	Inward supply	Admissible of ITC
Builder contractor	Construction Service (Works Contract) (Construction of big project for reliance)	Purchase of building material architect service procurement of labour from labour contractor	Yes
Builder	Construction Service	Purchase of building	No-as it is case of

contractor	(Works contract) (Constructing its new head office)	material Architect service Procurement of labour from labour contractor	goods/services used for construction of an immovable property on his own account (self-use)
Debasmita Tutorial	Coaching Service	Purchase of building material architect service construction Service (pure labour contract)	No-as it is case of goods/services used for construction of an immovable property on his own account (self-use)

(e) Goods or service or both on which tax has been paid under section 10:

Tax paid under sec 10 = GST under composition scheme

Supplier working under composition scheme is not entitled to collect any GST from recipient. Thus, recipient is not entitled to any ITC

(f) Goods or services or both received by a non-resident taxable person except on goods imported by him

NRTP = Person who occasionally undertakes supply but no fixed place of business or residence in India. He is not allowed any ITC except that of goods imported by him and supplied here.

(g) Goods or service or both used for personal consumption:

A runs a proprietary firm registered under GST law. Stationary is purchased in bulk by the firm ostensibly for use in the business, however 60% of the stationary is actually used by the family of A for personal use. No ITC is available with respect to the stationary used for personal consumption.

(h) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples:
and

ITC is not allowed in such cases as the destruction or writing off of goods or giving them as gift/sample takes them out of the supply chain and it is event which is functionally equivalent to consumption

Illustration:

Supplier	Outward supply	Inward supply	Admissibility to ITC
EduDelight Academy	Coaching Service	Purchase of bed sheets (for gifting to franchises/business partners on Diwali)	No- ITC is not admissible of goods disposed of by way of gifts
Jhunuk Ltd	Garment Manufacturer	Distribution as free sample of garments manufactured by it	No- ITC is not admissible of goods disposed of by way of free sample
NM Ltd of Bhubaneswar	Supplier of toys/goods	Lost of stock in flood	No- ITC is not admissible in respect of goods lost (even if it is natural calamity)
RB Ltd of West Bengal	Supplier of bed sheets/goods	Loss of stock due to fire Loss due to theft	No- ITC is not admissible in respect of goods lost/stolen
Rij electronics	Supplier of electronic items	1000 pieces of USB 2.0 pen drives (of value 500 each) written of this year	No- ITC is not admissible in respect of goods written of in the books of account

(i) Any tax paid in accordance with the provisions of sections 74, 129 and 130

Section 74	It deals with recovery of tax not paid or short paid by reason fraud wilful misstatement or suppression of facts	Tax paid is not eligible as ITC
Section 129	It deals with detention seizure and release of goods in transit which had been removed in contravention of legal provisions	Tax paid is not eligible as ITC
Section 130	It deals with confiscation of goods in certain circumstances	Tax paid is not eligible as ITC

Illustration:

M/s DAD ltd, supplied taxable goods from the factory after manufacture in the month of October 2018 for sale to a distributor for Rs. 8,00,000 M/s DAD ltd as suppressed this transaction, however he deposited the GST @ 12% and those goods on 10-01-2009 against show cause notice and demand order passed under section 74 (when there is fraud) of the CGST Act 2017 by the control tax officer and passed the order accordingly.

Whether distributor namely recipient of those goods is eligible to take input tax credit?

Solution:

As per section 17(5) of the CGST Act 2017, no credit on payment of Tax due to fraud, wilful-misstatement or suppression of Fact etc. shall be allowed.

In the given case no Input Tax Credit was available to Registered Person if the supplier has paid Tax in pursuance of order where any demand has been confirmed on account of any fraud, wilful-misstatement or suppression of Fact and so on under section 74 of the CGST Act 2017.

Hence, ITC is not allowed to recipient of these goods (i.e. Distributer in the given case).

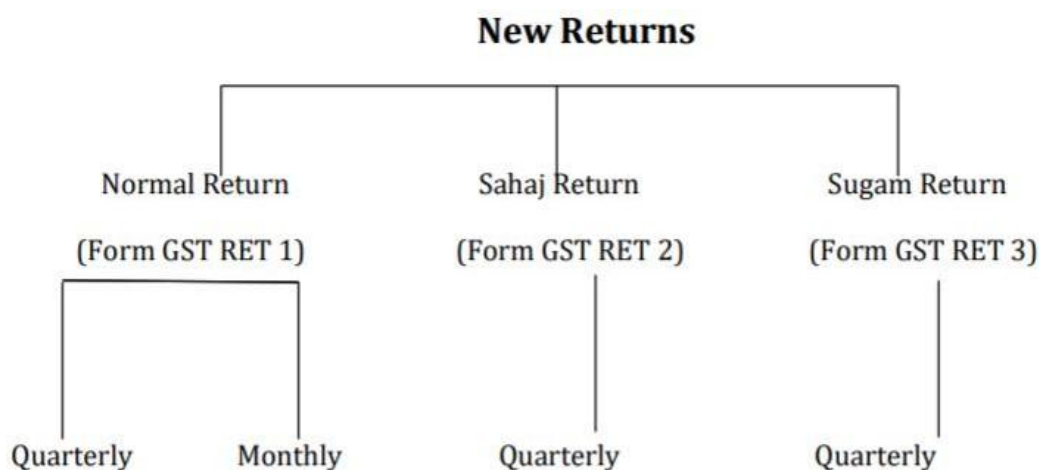
GST – NEW RETURN PROTOTYPE

TEAM TRD

Goods and Services Tax Network (GSTN) has released a web-based prototype of the offline tool of new return system. These new GST Returns will replace GSTR-3B, GSTR-1.

These newly proposed prototype are user-friendly and will provide all details such as invoice upload, upload of purchase register for matching with a system-created inward supplies.

Frequency of Filing Newly Proposed Returns



GST RET 2 and GST RET 3 are mainly for Smaller taxpayers.

Features of New Return Prototype

- Annexure of supplies (GST ANX-1) –
 - Details of the documents (invoice, credit/debit notes) can be uploaded any time during the month till filing of return.
 - Documents uploaded upto 10th of following month shall be made available to the recipient for claiming ITC.
 - Documents uploaded after 10th of following month shall be made available to the recipient in the next month.
- Annexure of Inward Supplies (GST ANX-2) –
 - Inward supplies auto-populated from the suppliers GST ANX-1).
 - There will be a facility to match ANX-2 with purchase register
 - It will also contain details auto-populated from Form GSTR-5 (Non-resident foreign taxpayer) and Form GSTR-6 (Return by Input Service Distributor).

Purpose of New Prototype

While the actual Offline Tool of ANX-1 and ANX-2 are being designed for taking feedback on use of Offline Tool of New returns and suggestions from users to provide matching facility with taxpayer's purchase register to find out mismatches of invoices not uploaded or incorrectly uploaded by suppliers, it was thought valuable to run it again as a Prototype to get feedback on user interface and functionalities to enable us to deliver the best suited product.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

CUSTOMS – TARIFF

Notification No. 15/2019-Customs

Date – 14.05.2019

Seeks to further amend notification No. 50/2017-customs dated 30th June 2017 to postpone the implementation of increased customs duty on specified imports originating in USA from 16th May, 2019 to 16th June, 2019

The Central Government has made amendments in the Notification No. 50/2017-Customs, dated the 30th June, 2017.

Amendments –

In the said notification, in the third proviso for the words and figures “16th day of May, 2019”, the words and figures “16th day of June, 2019” shall be substituted.

CUSTOMS – NON TARIFF

Notification No. 36/2019-Customs (N.T)

Date – 15.05.2019

Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver- Reg

CBIC has made amendments in the Notification No. 36/2001-Customs (N.T.), dated the 3rd August, 2001.

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

TABLE-1

Sl. No	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
1	1511 10 00	Crude Palm Oil	522
2	1511 90 10	RBD Palm Oil	551
3	1511 90 90	Others – Palm Oil	537
4	1511 10 00	Crude Palmolein	553
5	1511 90 20	RBD Palmolein	556
6	1511 90 90	Others – Palmolein	555
7	1507 10 00	Crude Soya bean Oil	689
8	7404 00 22	Brass Scrap (all grades)	3687
9	1207 91 00	Poppy seeds	3350

TABLE-2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 and	418 per 10 grams

		358 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 and 359 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	476 per kilogram

Notification No. 37/2019-Customs (N.T)
Date - 16.05.2019

Exchange Rates Notification No.37/2019-Custom (NT) dated 16.05.2019

CBIC has determined the rate of exchange of conversion of foreign currencies into Indian currency or vice versa, which has been effective from 17th May, 2019, relating to imported and export goods.

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Exported Goods)
1.	Australian Dollar	49.8	47.55
2.	Bahraini Dinar	192.65	180.7
3.	Canadian Dollar	53.25	51.4
4.	Chinese Yuan	10.4	10.05
5.	Danish Kroner	10.75	10.35
6.	EURO	80.3	77.35
7.	Hong Kong Dollar	9.15	8.8
8.	Kuwaiti Dinar	238.75	223.9
9.	New Zealand Dollar	47.35	45.15
10.	Norwegian Kroner	8.2	7.9
11.	Pound Sterling	92	88.75
12.	Qatari Riyal	19.95	18.7
13.	Saudi Arabian Riyal	19.35	18.15
14.	Singapore Dollar	52.3	50.5
15.	South African Rand	5.1	4.8
16.	Swedish Kroner	7.45	7.2
17.	Swiss Franc	71.1	68.35
18.	Turkish Lira	12.05	11.3
19.	UAE Dirham	19.75	18.55
20.	US Dollar	71.15	69.5

SCHEDULE-II

Sl. No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	65.45	63
2.	Korean Won	6.1	5.75

Notification No. 38/2019-Customs (N.T)**Date - 31.05.2019****Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Sliver- Reg**

CBIC has made amendments in the Notification No. 36/2001-Customs (N.T.), dated the 3rd August, 2001.

TABLE-1

Chapter/ heading/ sub-heading/ tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
1511 10 00	Crude Palm Oil	514
1511 90 10	RBD Palm Oil	546
1511 90 90	Others - Palm Oil	530
1511 10 00	Crude Palmolein	552
1511 90 20	RBD Palmolein	555
1511 90 90	Others - Palmolein	554
1507 10 00	Crude Soya bean Oil	709
7404 00 22	Brass Scrap (all grades)	3560
1207 91 00	Poppy seeds	3350

TABLE-2

Chapter/ heading/ sub-heading/ tariff item	Description of goods	Tariff value (US \$)
71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 and 358 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	412 per 10 grams
71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 and 359 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	465 per kilogram

TABLE-3

Chapter/ heading/ sub-heading/ tariff item	Description of goods	Tariff value (US \$)
080280	Areca nuts	3932

Notification No. 39/2019-Customs (N.T)**Date - 31.05.2019****Exchange Rates Notification No.39/2019-Custom(NT) dated 31.05.2019**

CBIC has made amendments in Notification No.37/2019-CUSTOMS (N.T.), dated 16th May, 2019 with effect from 1st June, 2019.

In the SCHEDULE-I of the said Notification, for serial No.15 and the entries relating thereto, the following shall be substituted, namely: -

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Exported Goods)
15.	South African Rand	4.85	4.55

CUSTOMS – CIRCULARS

Circular No. 12/2019

Date – 24.05.2019

Customs regarding Guidelines for launching of Prosecution in relation to offences punishable under the Customs Act, 1962--foreign currency, foreign nationals

There has been a steep rise in the cases of outright of gold and foreign currency by foreign nationals and these accused persons have no interest /asset in India and once released on bail, they are not available to face trial.. Therefore service of Show Cause Notice to these foreigners also becomes difficult. Accordingly, it was suggested that “foreign currency” may be added in the list of items mentioned in para 6 of the circular dated 23.10.2015 as amended and where the case relates to foreign nationals , it may be allowed to launch prosecution within 60 days.

It has been decided to substitute Para 6 of the aforesaid circular with the following, namely-

6. Stage for launching of prosecution: Normally prosecution may be launched immediately on completion of adjudication proceedings. However, in respect of cases involving offences relating to items, viz Gold, Foreign Currency, Fake Indian Currency Notes, Arms, Ammunitions and explosive, antiques, art treasures, wild life items and endangered species of flora and fauna, prosecution may preferably be launched immediately after issuance of Show Cause Notice under the Customs Act, 1962. Further in cases involving Foreign Nationals prosecution may be launched at the earliest even before issuance of Show Cause Notice.

DIRECT TAX

Notification No. 40/2019

Date – 21.05.2019

Notifies the provisions of agreement between Republic of India and Republic of the Marshall Islands

Whereas, the Agreement between the Government of the Republic of India and the Government of the Republic of the Marshall Islands for the exchange of Information with respect to taxes as set out in the Annexure to this notification, was signed at Majuro, the Republic of the Marshall Islands on the 18th day of March, 2016; And whereas, the said Agreement entered into force on the 6th December, 2018 being the date of the later of the notifications of the completion of the procedures required by the respective laws for the entry into force of the said Agreement, in accordance with Article 10 of the said Agreement; Now, therefore, in exercise of the powers conferred by sub-section(1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said Agreement shall be given effect to in the Union of India.

For more details, please follow –

https://www.incometaxindia.gov.in/communications/notification/notification40_2019.pdf

Notification No. 42/2019

Date – 23.05.2019

Notification regarding All India Council for Technical Education

Central Government has notified for the purposes of the clause, ‘All India Council for Technical Education’, New Delhi, a Council established by the Central Government, in respect of the following specified income arising to that council, namely:-

- (a) Grants/subsidies received from the Government/ Govt. bodies;
- (b) Regulatory Charges;

- (c) RTI fee and Examination fee;
- (d) CMAT/GPAT fee;
- (e) Receipts from sale of forms, materials and tender fee;
- (f) Receipts from disposal of scrap; and
- (g) Interest earned on (a) to (f) above.

This notification shall be effective subject to the conditions that All India Council for Technical Education, New Delhi-

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and
- (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

This notification shall apply with respect to the assessment year 2019-2020, 2020-2021, 2021-2022, 2022-2023 and 2023-2024.

Notification No. 43/2019
Date - 23.05.2019

Notification regarding Tamil Nadu Real Estate Regulatory Authority

Central Government has notified for the purposes of the clause, 'Tamil Nadu Real Estate Regulatory Authority', an Authority constituted by the State Government of Tamil Nadu in exercise of powers conferred under sub-section (1) of Section 20 of The Real Estate (Regulation and Development) Act, 2016 (16 of 2016) and amends the notification No. S.O. 553(E) dated 30.01.2019 as follows:-

In the schedule to the notification, below the row (3), the following shall be inserted

S. No.	Name of the Real Estate Regulatory Authority	PAN
4	Tamil Nadu Real Estate Regulatory Authority	AAAGT0438E

Notification No. 44/2019
Date - 27.05.2019

In exercise of the powers conferred by section 68 read with sub-section (2) of section 9, subsection (1) of section 13 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988) (hereafter referred to as 'the Act'), the Central Government has made the following rules, namely:—

Method of recruitment.-

(1) The Member of the Adjudicating Authority shall be appointed by the Central Government, on the recommendation of the Search-cum-Selection Committee specified in sub-rule (4) in respect of the said members.

(2) The Search-cum-Selection Committee shall determine its procedure for making its recommendation.

(3) No appointment of Member of the Adjudicating Authority shall be invalid merely by reason of any vacancy or absence in the Search-cum-Selection Committee.

(4) The Search-cum-Selection Committee for the post of the Member of the Adjudicating Authority shall consist of,—

- (i) Secretary to the Government of India, Ministry of Finance, Department of Revenue — Chairperson;

- (ii) Secretary to the Government of India, Ministry of Law and Justice, Department of Legal Affairs — Member;
- (iii) Chairperson, Central Board of Direct Taxes — Member.

Resignation — The Member of the Adjudicating Authority may, by writing under his hand addressed to the Central Government, resign his office at any time:

Provided that he shall, unless permitted by the Central Government to relinquish his office from the date as specified in the resignation letter, continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government or until a person duly appointed as a successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

Procedure for inquiry for removal of Member of Adjudicating Authority —

(1) If a written complaint is received by the Central Government, alleging any charge as referred to in clause (d) or clause (e) of the sub-section (1) of section 14 of the Act, in respect of a Member of the Adjudicating Authority, the Board shall make a preliminary scrutiny of such complaint.

(2) If on preliminary scrutiny, the Board is of the opinion that there are reasonable grounds for making an inquiry into the truth of any charges in respect of the Member of the Adjudicating Authority, it, with the approval of Central Government, shall make a reference to the Committee constituted in this behalf to conduct the inquiry.

(3) The Committee shall complete the inquiry within such period, not exceeding the period of twelve months from the date of receipt of the reference, as may be specified by the Central Government. Provided that where it is not possible to complete the inquiry within the period specified by the Central Government, the Committee may record the reasons and seek extension of time from Central Government in writing, which may allow an additional time not exceeding the period of six months for completion of inquiry, at a time.

(4) After the conclusion of the inquiry, the Committee shall submit its report to the Central Government stating therein its findings and the reasons thereof on each of the charges separately along with such observations as it may deem fit.

(5) The Committee shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and shall regulate its own procedure, including the fixing of date, place and time of its inquiry.

Other conditions of service.—

(1) The other conditions of service of the Member of the Adjudicating Authority with respect to which no express provision has been made in these rules, shall be such as are admissible to a Central Government Officer of a corresponding status.

(2) The Member of the Adjudicating Authority shall not practice before the Adjudicating Authority after retirement from the service of the Adjudicating Authority.

(3) The Member of the Adjudicating Authority shall not undertake any arbitration work while functioning in these capacities in the Adjudicating Authority.

(4) The Member of the Adjudicating Authority shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Adjudicating Authority: Provided that nothing contained in this rule shall apply to any employment under the Central Government or a State Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

FORM-I
(See rule 14)

Form of Oath of Office for the Chairperson/Member of the Adjudicating Authority I, A. B., having been appointed as Chairperson/Member of Adjudicating Authority do solemnly affirm/do swear in the name of God that I will faithfully and conscientiously discharge my duties as the Chairperson/Member of Adjudicating Authority to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws of land.

FORM-II
(See rule 14)

Form of Oath of Secrecy for the Chairperson/Member of the Adjudicating Authority I, A. B., having been appointed as the as Chairperson/Member of Adjudicating Authority do solemnly affirm/do swear in the name of God that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as Chairperson/Member of Adjudicating Authority except as may be required for the due discharge of my duties as the Chairperson/Member of Adjudicating Authority.

For more details, please follow-

https://www.incometaxindia.gov.in/communications/notification/notification_44_2019.pdf

Circular No. 9/2019
Date - 14.05.2019

Order under section 119 of the Income-tax Act 1961

Section 44AB of the Income-tax Act, 1961 read with rule 6G of the Income-tax Rules, 1962 requires specified persons to furnish the Tax Audit Report along with the prescribed particulars in Form No. 3CD. The existing Form No. 3CD was amended vide notification no. GSR 666(E) dated 20th July, 2018 with effect from 20th August, 2018.

However, the reporting under clause 30C and clause 44 of the Tax Audit Report was kept in abeyance till 31st March, 2019 vide Circular No. 6/2018 dated 17.08.2018.

Representations were received by the Board that the implementation of reporting requirements under clause 30C (pertaining to General Anti-Avoidance Rules (GAAR) and clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Form No. 3CD may be deferred further.

The matter has been examined and it has been decided by the Board that the reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2020.

PRESS RELEASE

DIRECT TAX

CBDT issues draft notification for amendment of Form No 10B of the Income tax Rules, 1962

Date – 21.05.2019

Section 12A of the Income-tax Act, 1961 (the Act) provides for conditions for applicability of sections 11 and 12 of the Act. One such condition under clause (b) of sub-section (1) thereof is that where the total income of the trust or institution computed without giving effect to section 11 and 12 exceeds the maximum amount not chargeable to income-tax in any previous year, its accounts for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288.

It further provides that the person in receipt of the said income, furnishes along with the return of income for the relevant assessment year, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Accordingly, vide Income-tax (2nd Amendment) Rules, 1973 wef April 1, 1973 Rule 17B and Form 10B were inserted in the Income-tax Rules, 1962 (the Rules) for this purpose. Rule 17B of the Rules provide that said report of audit of the accounts of a trust or institution shall be in Form No. 10B. The Form No 10B besides providing the Audit Report also provides for filing of "Statement of particulars" as Annexure.

As the rule and form were notified long ago, there is a need to rationalise them to align with the requirements of the present times.

In view of the above, the rule and form are proposed to be amended by way of substituting,-

- (a) Rule 17B with a new Rule 17B; and
- (b) Form No 10B with a new Form No 10B.

The draft notification proposing the above amendments has been formulated and uploaded on www.incometaxindia.gov.in for inputs from stakeholders and general public. The inputs on the draft rules may be sent electronically at the email address, niraj.kumar82@nic.in, latest by June 5, 2019.

CBDT extends due dates of TDS compliance in respect of deductors in the State of Odisha

Date – 24.05.2019

With a view to redress genuine hardship faced by the deductors due to the severe disruption of normal life and breakdown of communication systems caused by cyclone "Fani" hitting the State of Odisha on 3rd of May, 2019, CBDT has provided the following relief in TDS compliance to the deductors in the State of Odisha. CBDT has:

- (i) Extended the due date of depositing tax deducted at source (TDS) for the month of April, 2019 from 7th of May, 2019 to the 20th of May, 2019;
 - (ii) Extended the due date of filing of Quarterly Statement of TDS for the last quarter of Financial Year 2018-19 from 31st of May, 2019 to the 30th of June, 2019; and
 - (iii) Extended the due date for issue of TDS certificates in Form 16 and 16A from 15th of June, 2019 to 15th of July, 2019.
- Order dated 24.05.2019 issued under section 119 of the Income-tax Act, 1961 to this effect is available on www.incometaxindia.gov.in.

CBDT issues notification for amendment of Form No. 15H of the Income-tax Rules, 1962

Date – 24.05.2019

Sub-section (1C) of section 197A of the Income-tax Act, 1961 (the Act) read with rule 29C of the Rules, inter alia, provides that no deduction of tax shall be made in case of a resident individual, who is of the age of sixty years or more, if he furnishes a declaration in Form 15H to the person responsible for paying any income of the nature referred to in section 192A, 193, 194, 194A, 194D, 194DA, 194EE, 194-I or 194K, to the effect that the tax on his estimated total income will be nil.

Further, Note 10 to Form No 15H provides for non-acceptance of declaration if the amount of income of the nature referred to in section 197A(1C) or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the maximum amount which is not chargeable to tax after allowing for deduction(s) under Chapter VIA, if any, set off of loss, if any, under the head “income from house property” for which the declarant is eligible.

Section 87A of the Act has been amended vide Finance Act, 2019 which provides that a resident individual, having total income up to Rs. 5 lakh, shall be entitled to a rebate of an amount being the amount of tax chargeable or Rs. 12,500/-, whichever is less.

However, at present, the note 10 of Form 15H does not take into account the maximum allowable rebate of Rs 12,500/- provided under section 87A as above, which is available to the assessee in respect of the tax calculated on income, there could be cases, where, though income of the assessee would be above the minimum amount chargeable to income-tax, tax liability may be nil after taking into account the rebate available under section 87A. Deduction of tax in such cases may cause undue hardship to senior citizens.

Accordingly, Income-tax Rules, 1962 have been amended by way of insertion of proviso in Note 10 of Form No 15H and have already been notified vide Notification No G.S.R. 375(E) dated 22nd May, 2019, so as to provide that the person responsible for paying the income referred to in column 15 of Part I shall accept the declaration in the case of the assessee, being a senior citizen, who is eligible for rebate of income-tax under section 87A, and his/her tax liability is nil after taking into account this rebate.

This notification is available on www.incometaxindia.gov.in.

JUDGEMENTS

INDIRECT TAX

NAA penalizes VTWO Ventures for Profiteering, Issuing Incorrect Invoices

M/S VTWO Ventures vs. Kerala State Screening Committee of Anti Profiteering

Case No. – 31/2019

Date – 10.05.2019

Fact of the Case

- In the present case M/S VTWO ventures is the respondent who is guilty of anti-profiteering and Kerala state screening committee of Anti profiteering is the applicant.
- The VTWO ventures deals in supply of luggage trolley bag /suitcases”, namely “Tropic 45 Weekender Black” and “Neolite Strolly 53 360(VIP) FIR.
- It was submitted by VTWO ventures that he had not increased the prices of his products post implementation of GST, since he was hopeful of a reduction in the tax rate and that the reduction in GST rate from 28% to 18%, which came into effect from 15.11.2017, had only corrected the excessive tax burden which was being borne by him.

Decision of the Case

- Further, the DGAP reported that the investigation revealed that the Respondent had actually increased the base price of the products when GST rate on the said products was reduced which implied that the commensurate benefit of rate reduction was not passed on to the recipients by the Respondent.
- The honourable bench held that methodology and the profiteered amount calculated by the DGAP is correct and hence a direction to reduce the prices of the products with a reduction in the tax rate is given with a view to pass on the benefit to the recipients.
- The recipient is further directed to deposit the profiteered amount along

with interest from the date when the amount was collected by him from the recipients till the above amount is deposited within a period of 3 months from the date of receipt of order.

- The respondent is further penalized under Section 122(1)(i) for deliberately and consciously acting in contravention of the provisions of the CGST Act, 2017 by issuing incorrect tax invoices.

GST paid on Construction of Immovable Property intending to Let Out eligible for Input Tax Credit: Odisha HC

Safari Retreats Pvt. Ltd. vs. Chief Commissioner of Central Goods & Services Tax

Case No. – 20463 of 2018

Fact of the Case

- The assessee/petitioner constructed an immovable property intending to let out the same for rent.
- The petitioner claimed that input tax credit can be availed on the same since they are mainly carrying on the business activity of constructing shopping malls for the purpose of letting out the same to numerous tenants and lessees.
- It was further contended that huge quantities of materials and other inputs in the form of Cement, Sand, Steel, Aluminium, Wires, plywood, paint, lifts, escalators, Air-conditioning plant, chillers, electrical equipment, special façade, DG sets, Transformers, building automation systems and also services in the form of Consultancy, Architecture, legal and professional, engineering etc. are required for the aforesaid construction purpose.
- However, the revenue department rejected the claim.

Decision of the Case

- The bench comprising Chief Justice K S Jhaveri and Justice K R Mohapatra has observed that the very purpose of the Act is to make uniform provision for

the levy, collection of tax, the intrastate supply of goods and services, both Central or State and to prevent multi-taxation.

- The petitioner would have paid GST if it disposed of the property after the completion certificate is granted and in case the property is sold prior to completion certificate, he would not be required to pay GST.
- But here he is retaining the property and is not using for his own purpose but he is letting out the property on which he is covered under the GST, but still he has to pay huge amount of GST, to which he is not liable.
- In that view, of the matter, in our considered opinion the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted.
- So if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to pay under Section 17(5)(d) of the CGST Act.

Diagnostic Centres need not obtain GST Registration: AAR Kerala

M/S Medivision Scan & Diagnostic Research Center (P) Ltd. vs. Kerala Authority for Advance Ruling

Case No. – Ker/41/2019
Date – 12.04.2019

Fact of the Case

- The applicants are running a diagnostic centre.
- They claimed that the services provided by them would amount to health care services and therefore, exempted from GST.
- Under the GST, 'clinical establishment' is defined as a hospital, nursing home, eye clinic, sanatorium or any other institution by, whatever' name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity. Abnormality or pregnancy in any I

recognized the system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

Decision of the Case

- The authority observed that the diagnostic centres are organized facilities to provide diagnostic procedures such as radiological investigation supervised by a radiologist and clinical laboratory services by laboratory specialists usually performed through referrals from physicians and other health care facilities.
- Clinical Medical diagnostic laboratory means a laboratory with one or more of the following; where microbiological, serological, chemical, haematological, immune-haematological, immunological, toxicological, genetic, exfoliative cytogenetic, histological, pathological or other examinations are performed of materials/fluids derived from the human body for the purpose of providing 'information on diagnosis, prognosis, prevention, or treatment of disease. These types of diagnosis or investigations rightly come under the category of health care services and are, therefore, eligible for exemption from GST," the authority said.
- By virtue of Section 23 of State Goods and Services Tax Act, any person engaged. Exclusively in the business of supplying goods or services or both, that is not liable to tax or wholly exempt from tax under GST Art, are not liable to take registration.
- However, such persons are liable to obtain registration if they are receiving any goods or services liable to tax under reverse charge as per notifications issued under Section 9(3) of the State Goods and Services Tax Act," the authority added.

**No Stay on IGST Levy on Ocean Freights:
Gujarat HC Order grants specific Relief to
Petitioner Only**

Ghanshyamlal and Company vs. Union of India

Case No. – 9284 of 2019

Date – 09.05.2019

Fact of the Case

- Ghanashyamlal & company is the petitioner in the present case.
- Earlier, there were reports stating that the High Court has stayed the levy of Integrated Goods & Service Tax (IGST) on ocean freight.
- The GST law provides for a specific provision with respect to taxability on the component of ocean freight. The law specifically provides that the importers are required to discharge IGST at the rate of 5 percent on ocean freight services under the Reverse Charge Mechanism (RCM) under which, the duty of importer have to pay IGST on behalf of the foreign buyer.
- At the same time, customs duty on the CIF value (which includes the component of freight as well) of the goods imported into India is also paid by the importer. As a result, there is double taxation on the component of ocean freight under GST law which is an impediment and has bloated the cost of imports.

Decision of the Case

- Last year, a petition was filed by Mohit Minerals Pvt Ltd challenged vires of the said notification. The petition has principally three elements.
- First, having paid the tax under IGST Act on the entire value of imports (inclusive of the ocean freight), the petitioner cannot be asked to pay tax on the ocean freight all over again under a different notification.
- Secondly, in case of CIF (Cost, Insurance and Freight) contracts, the service provider and service recipient both are outside the territory of India. No tax on such service can be collected even on reverse charge mechanism.
- Thirdly, in case of High Sea sales, the burden is cast on the petitioner as an

importer whereas, the petitioner is not the recipient of the service at all. It is the petitioner's seller of goods on high sea basis who has received the services from the exporter/ transporter.

- A similar petition is filed by Ghanshyamlal and Company where the Court decided to hear both the petitions together this year.
- The interim stay order passed by the Gujarat High Court, in a petition filed by Ghanshyamlal and Company stayed the impugned demand where the petitioners challenged the vires of IGST related notification.

**Goods can't be detained for Defect in E-Way
Bill since there is No Supply: Gujarat High
Court**

M/S Neuvera Wellness Ventures Pvt. Ltd. vs.
State of Gujarat

Case No. – 7189 of 2019

Date – 18.04.2019

Fact of the Case

- In the present case the petitioner is the buyer of goods.
- The GST department, in the present case, had released the goods belongs to the petitioners on the ground of absence of Part-B of E-way bills.
- Later, the demand and penalty were raised, rejecting the petitioner's request to release the goods, the department directed them to make payment of tax and 100% penalty within seven days from the date of the order and recorded that in case of failure of payment of tax and penalty, action under section 130 of the GST Acts would be initiated.

Decision of the Case

- The division bench observed that the basis for computing the additional tax is the IGST paid by the petitioners.
- No reasons have been assigned by the second respondent for the purpose of holding the petitioner liable to payment of tax and penalty despite the fact that IGST had already been paid on such transaction.

- The goods were being moved from the customs warehouse to the petitioner's own godown and it being the case of the petitioners that there was no supply, and hence, the provisions of GST Act are not applicable.
- It was further held that in the absence of any reasons in support of the tax and penalty levied by the second respondent, the impugned order stands vitiated as being an unreasoned order and as such cannot be sustained.

DIRECT TAX

Salary paid to Employees of University not subject to TDS: ITAT

Mahatma Gandhi University vs. The Income Tax Officer (TDS)

Case No. – 555 & 556/Coch/2018
Date – 14.05.2019

Fact of the Case

- In the present case university is the assessee who discharged TDS liability on the payment made to employee on death cum retirement gratuity, commutation of pension and leave salary.
- The assessee claimed that it is covered under the definition of "State". The Assessing Officer rejected the said arguments of the assessee that the assessee is covered under the definition of "State".
- It was observed that the status of the University is neither that of a State/Central government nor its employees are the employees of the Central government.
- On the second appeal, the department claimed that section 192(2A) of the Income Tax Act, for TDS purposes, has clearly mentioned an employee of the University separately from a Government servant.

Decision of the Case

- The Tribunal observed that the salary, pension and retirement benefits are paid from the consolidated fund of the state government and the grant for payment of salary and retirement

benefits are provided by the Legislature through the budget of the State.

- There exists an employer-employee relationship between the 'payer' and 'payee' i.e. the government and the employee. The state government retains complete and direct control over the expenditure of the university. The salary, pension and retirement benefits were directly credited to the account of the employees by the Treasury Officer,"
- In the opinion of the Tribunal the employees of the assessee are found to be holding civil posts under the State Government, therefore, the provisions of section 10(10)(i), 10(10A) and 10(10AA) of the Act are fully attracted.
- Once the assessee falls under the above provisions of the Act, the same cannot be subject to TDS.
- Therefore hold that payments made by the assessee to its employees towards death cum retirement gratuity, commutation of pension or leave salary shall not be liable for TDS.

Cash Loan from Parents and Brother for purchasing House for whole Family do not attract Penalty: ITAT

Sonia Malik vs. ICIT
ITA No. – 7792/Del/2017

Date – 10.05.2019

Fact of the Case

- The assessee is an individual deriving income from salary and other sources.
- The Assessing Officer completed the assessment determining the total income at Rs.34,12,062/- wherein he disallowed an apart of the long-term capital gain claimed by the assessee u/s 54F of the Income Tax Act apart from making the addition of Rs.57,538/- on account of interest and Rs. 8,160/- under the head 'Salary.'
- The officer further levied penalty under section 271D on the ground that the assessee had taken cash loan of Rs.1,25,000/- from Shri Darshan Singh Gujral, Rs.1,00,000/- from Smt. Joginder Kaur and Rs1 lakh from Shri Gurdeep Singh Gujral and, therefore,

she has violated the provisions of section 269SS.

Decision of the Case

- The tribunal accepted the contentions of the assessee and held that the transaction took place between the assessee and her parents and brother.
- The Tribunal explained that 'a family transaction, between two independent assessee, based on an act of casualness, specially in a case where the disclosure thereof was contained in the compilation of accounts, and which had no tax effect, established 'reasonable cause' under section 273 B of the Act' and, therefore, the provisions of section 271D are not applicable.
- The assessee, in the instant case, has received cash loan from her parents and brother to meet the stamp duty cost for purchase of a house property for her own living, therefore, I am of the considered opinion that it is not a fit case for levy of penalty u/s 271D of the Act and the provisions of section 273B will come to the rescue of the assessee as a reasonable cause.

Non-filing of Income Tax Return can't be a ground to deny Capital Gain Exemption: ITAT

Smt. Tupel Raja Iyengar Shakuntala vs. The Income Tax Officer

Case No. - ITA No./64/Bang/2019
Date - 10.05.2019

Fact of the Case

- In the present case the assessee is the beneficiary of long term capital gain.
- The assessee sold a residential property but had not filed a return of income for the relevant assessment year.
- The Assessing Officer, on receipt of information, re-opened the assessment by holding that the assessee escaped income exigible to tax, by way of the above transaction of sale of the property.
- The Tribunal noted that the assessee had filed the computation of capital

gains before the CIT(A) and the assessee had purchased a residential property for a consideration of Rs. 37,50,830/- on 22.05.2008, i.e., within 7 days from the sale of original property on 16.05.2008.

- It is also seen that the AO, after examination of details /documents filed by the assessee before the CIT(A); has reported in his remand report dated 30.01.2018, that the documents produced by the assessee have been examined.
- It was further noted that no adverse remarks have been made by the AO with regard to the computation of LTCG as well as the entitlement to claim an exemption under section 54 of the Act.

Decision of the Case

The ITAT observed the following points and finally conclusion has been drawn that

- It is, therefore, clear that the AO was satisfied with the sale/purchase of the said properties and the investment benefit available to the assessee under section 54 of the Act.
- In the report, the AO has only remarked that there is a claim for exemption under section 54 of the Act and that no return of income has been filed by the assessee for Assessment Year 2009-10.
- This remark by the AO cannot be a factor to deny the assessee its legitimate claim for exemption under section 54 of the Act.
- There is no prohibition under the Act on the assessee in claiming an exemption under section 54 of the Act in case it has not filed a return of income.
- It is held that the assessee is entitled to exemption under section 54 of the Act and therefore the entire sale consideration of Rs. 46,65,000/- assessed by the AO is hereby deleted.

Customer Relationship Rights are 'Goodwill': ITAT allows Depreciation

M/S Incap Manufacturing Service Pvt. Ltd vs. Deputy Commissioner of Income Tax

Case No. - ITA No. 2214 to 2216/Bang/2018

Date – 30.04.2019

Fact of the Case

- The assessee is a subsidiary of Incap OYJ (Incap Finland) and is engaged in the business of manufacturing of electrical equipment, sub-systems, inverter power products and power electronic products.
- The assessee filed the Return of income for the assessment year 2009-10 on 30/09/2009 declaring net loss of Rs. 119,738,203/-.
- After scrutiny of the returns, the Assessing Officer held that depreciation claim of Rs. 1,26,54,563/- is not allowable since customary relationship rights would not amount to goodwill.
- The Tribunal found that the co-ordinate bench of the Tribunal based on the findings of the AO, has observed that the claim of the assessee is required to be considered by treating the said payment as goodwill.

Decision of the Case

- The Tribunal observed the strength in the submission of learned AR on the claim of depreciation on Customer Relationship Rights supported with observations of the Co-ordinate bench.
- The Tribunal set aside the order of the CIT (A) and direct the AO to grant depreciation on Customer Relationship Rights treating the same as ‘Goodwill’ and allow the grounds of appeal.
- The Income Tax Appellate Tribunal (ITAT), Bengaluru bench has held that the depreciation under Section 32 of the Income Tax Act, 1961 is allowable on the customer relationship rights since the same would amount to goodwill.

Conducting Programmes by Pharma Companies for Brand Promotion Expenses is Business Expenditure: ITAT

M/S Aishika Pharma Pvt. Ltd. vs. The ITO

Case No. – 732/Del/2019

Date - 29.04.2019

Fact of the Case

- The assessee, engaged in the business of trading and marketing of medicines, incurred expenses on business promotion which includes constant meetings/ seminars/ knowledge dissemination with doctors/ medical practitioners/ medical stores in the areas of operation of the company as part of brand promotion.
- The Company claimed that such expenses were inevitable due to competition in the pharma industry.
- The authorities disallowed the expenditure considering that assessee company has provided freebies to the Medical Practitioners and referred to the provisions contained under Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations, 2002 and also referred to CBDT Circular No.5/2012, Dated 01.08.2012.
- The Company claimed that since the assessee companies make aware of such kind of product to the key persons in the market, then only it can successfully launch its product/ medicine. Thus, these expenditures were purely incurred for business promotion of the assessee company.

Decision of the Case

- The Delhi bench of the Income Tax Appellate Tribunal (ITAT), Delhi bench has held that conducting various programmes by the pharmaceutical companies for the purpose of brand promotion expenses is business expenditure under the provisions of the Income Tax Act, 1961.
- The Tribunal observed that whatever expenses incurred by the assessee company are only on account of business promotion expenses which are allowable under the provisions of the I.T. Act.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
10-06-19	GSTR-7 - to be filed by the persons who is required to deduct TDS under GST for the month of May 2019.
10-06-19	GSTR-8 - to be filed by the <i>by</i> the e-commerce operators required to deduct TDS under GST for the month of May 2019.
11-06-19	GSTR-1 for the month of May 2019 - Applicable for taxpayers with Annual Aggregate turnover above Rs. 1.50 Crore or opted to file monthly Return (Rs. One Crore Fifty Lacs) only.
13-06-19	GSTR-6- to be filed by Input Service Distributor for the month of May 2019.
20-06-19	<i>GSTR-3B</i> - for the month of May 2019.
20-06-19	GSTR-5 & 5A -to be filed by the Non-Resident taxable person & OIDAR for the month of May 2019.
30-06-19	ITC-04 for July 2017 to March 2019- for filing the details of goods or capital goods sent to job worker and received back
30-06-19	GSTR-9C – Annual Return for FY 17-18 by registered person whose Annual Turnover for FY 17-18 is above Rs. 2 Cores
30-06-19	GSTR-9A -Annual Return for FY 17-18 For Composition Tax Payer
30-06-19	<i>GSTR 9</i> –Annual Return / Statement for FY 17-18 by all registered persons except Composition Tax Payer

DIRECT TAX CALENDAR - JUNE, 2019

07.06.2019

- Due date for deposit of Tax deducted/collected for the month of May, 2019. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

14.06.2019

- Due date for issue of TDS Certificate for tax deducted under section 194-IA & section 194-IB in the month of April, 2019

15.06.2019

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of May, 2019 has been paid without the production of a challan.
- Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2019
- First instalment of advance tax for the assessment year 2020-21
- Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during Financial Year 2018-19
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of May, 2019

29.06.2019

- Due date for e-filing of a statement (in Form No. 3CEK) by an eligible investment fund under section 9A in respect of its activities in financial year 2018-19.

30.06.2019

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & section 194-IB in the month of May, 2019
- Return in respect of securities transaction tax for the financial year 2018-19
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending March 31, 2019
- Statement to be furnished (in Form No. 64C) by Alternative Investment Fund (AIF) to units holders in respect of income distributed during the previous year 2018-19
- Report by an approved institution/public sector company under Section 35AC(4)/(5) for the year ending March 31, 2019
- Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2018-19. This statement is required to be furnished to the unit holders in form No. 64B

DIRECT TAX CALENDAR - JULY, 2019

07.07.2019

- Due date for deposit of Tax deducted/collected for the month of June, 2019. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
- Due date for deposit of TDS for the period April 2019 to June 2019 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H.

15.07.2019

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of June, 2019 has been paid without the production of a challan
- Due date for issue of TDS Certificate for tax deducted under section 194-IA & section 194-IB in the month of May, 2019
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending June, 2019
- Quarterly statement of TCS deposited for the quarter ending 30 June, 2019
- Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending June, 2019
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of June, 2019

30.07.2019

- Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 2019
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & section 194-IB for the month of June, 2019

31.07.2019

- Quarterly statement of TDS deposited for the quarter ending June 30, 2019
- Annual return of income for the assessment year 2019-20 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under section 92E.
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending June 30, 2019
- Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is July 31, 2019)
- Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on or before July 31, 2019)
- Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or 11(1) (if the assessee is required to submit return of income on or before July 31, 2019)
- Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2018-19 and of foreign tax deducted or paid on such income in Form no. 67. (If the assessee is required to submit return of income on or before July 31, 2019.)

NOTES

A series of horizontal dotted lines for writing notes, spanning the width of the page.

TAXATION COMMITTEE - PLAN OF ACTION

Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

Disclaimer:

The Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, users should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in these documents does not cover every situation and is not intended to replace the law or change its meaning.

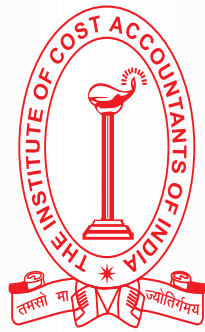
The opinion expressed in Article is fully based on the views of the experts. This information is provided for public services only and is neither an advertisement nor to be considered as legal and professional advice and in no way constitutes an attorney-client relationship between the Institute and the User. Institute is not responsible or liable in any way for the consequences of using the information given.

Contact Details:

Tax Research Department
12, Sudder Street, Kolkata - 700016

Phone: +91 33 40364747/ +91 33 40364721/ +91 33 40364711

E-mail: trd@icmai.in



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

Behind every successful business decision, there is always a CMA