

NOVEMBER, 2019

TAX Bulletin



VOLUME - 52



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

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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.

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FROM THE DESK OF CHAIRMAN – INDIRECT TAXATION COMMITTEE

"Learning is a treasure that will follow its owner everywhere."

Anonymous

Walking the path with a vision based on hard work, open communication, a strong emphasis on team work and a high level of responsibility, we have come a long way. Moving forward with this zeal in our heart, this vision of duty, aspiration and faith has become a reality and it is a proud moment for us to see that our little steps forward has become small milestones of our achievements. I truly think that hard work and toil bears the sweet fruits of success.

Right now our main vision to emphasis on Customs and Role of Cost Accountants in that area. In this connection we have arranged a webinar on the topic "*Import & Export Procedure - Practical Approach*" on Customs" in this month and we are planning to conduct few more webinars to highlight the various areas of customs in near future.

Simultaneously, the Tax Research Department is also focussing on Crash Course on GST in universities and Degree colleges with the aim of creation of employment opportunities among youths. This course is successfully running in Umeshchandra College-Kolkata, SBRR Mahajan 1st grade degree college, PG wing- Mysore and we are all set to inaugurate this course in D G Vaishnav College- Chennai by the end of November, 2019.

We have organized on 14th November 2019 a seminar on the burning topic "*Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019*" at India Islamic Center, New Delhi and Seminar on Direct and Indirect Taxes on 16th November 2019 at Hotel Re-Gen-Ta Mysore. In both the occasion there was a huge participation in the presence of Government officials from CGST, CBDT and SGST.

I would like to thank each of the contributors for their continuous support to the department.

Thank You...!!!

A handwritten signature in blue ink, which appears to read 'Niranjana Mishra'.

CMA Niranjana Mishra
Chairman, Indirect Taxation Committee
18th November 2019



FROM THE DESK OF CHAIRMAN – DIRECT TAXATION COMMITTEE

"Your positive action combined with positive thinking results in success."

Shiv Kherra

I extend my warm wishes to each and every member and chapters as well as regions towards making vibrant the celebration of DTC Month from 5th September 2019 to 5th November 2019. Recently Rajpur Chapter & Rourkela Chapter has conducted a seminar on the occasion of celebration of DTC Month. Let us continue forward with the same dedication and commitment.

Some Income Tax changes announced in this year's Budget has been effective from 1st September 2019 like '*TDS on additional payments made when purchasing immovable property*', '*TDS on cash withdrawals from bank account*', '*TDS on payments made by individuals and HUFs to contractors and professionals*', '*TDS on non-exempt portion of life insurance*', '*Banks and FIs can be asked to report even small transactions*', '*Interchangeability of PAN and Aadhaar and mandatory quoting in prescribed transactions*' etc. and in this connection a Webinar was arranged on the topic "*IT amendments effective from 01-09-2019*" for the benefit of members.

Beside this, members have been given opportunity to raise their query in Direct Tax through Taxation helpdesk and also Taxation Portal is being updated time to time with recent amendments and notifications.

At the same time, as you are aware that we are continuing with our efforts to include the name of Cost Accountants in the definition of Accountant under the new Direct Tax Code. The Task Force led by Mr. Akhilesh Ranjan had already submitted its report to the Government in the month of August but the same has not been made available in public domain till now. We are expecting the overhauling of the Income Tax Act if all the sweeping changes mentioned in the report get implemented along with our recommendations.

I hope that our Department will continue to work with the same zeal, integrity, competence and dedication with a greater heights of success for the benefit of stakeholders.

Jai Hind...!!!



(Rakesh Bhalla)

CMA Rakesh Bhalla
Chairman, Direct Taxation Committee
18th November 2019

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Practicing Cost & Management Accountant
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Practicing Cost & Management Accountant
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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



ALL ABOUT INPUT TAX CREDIT RESTRICTION

CMA Bhogavalli Mallikarjuna Gupta
Chief Taxologist & Head of Cloud Business
Logo Infosoft Business Technology Private Limited

Self-Assessment of the liability and input tax credit are the two business-friendly measures rolled out in GST, and it is being misused by a section of the taxpayers. As a result of it, to curb the tax evasion on the supply side, e-way bills were introduced, and now it is completely operational. On the input tax credit side, the provisions of the act were clear that the buyer/recipient can avail input tax credit only on matching (seller will file his return, and the same will be reflected in the buyers return, and there he was supposed to accept or reject or modify the same) and this was kept on hold based on the feedback received from the trade and industry. But off late, lots of cases of input tax credit frauds and tax evasion are being detected. To put an end to all these, the Government has decided to simplify the return filing process and also start implementing the same from the 1st of Oct 2019, but the same is deferred till the 1st of April 2020 basis of the decisions taken in the 37th GST Council Meeting.

Like a bolt from the blue, on 9th Oct 2019, **Notification No 49/2019 – Central Tax**, dated 9th Oct 2019, was issued stating that matching is mandatory. There were a lot of interpretation issues on the effective date and amount of restricted input tax credit to be derived. To address the same, CBIC has issued a clarification on **Circular No. 123/42/2019– GST dated 11th Nov 2019**. As on date, most of the queries/interpretation issues have been cleared, barring a few. What is the restricted input tax credit, how it works etc., are explained in simple FAQs for the users to understand and comply with the latest GST Provisions.

FAQ's on the restricted input tax credit

1. What is the effective date for matching?

The effective date of the matching and availing of the 20% restricted input tax credit is 9th Oct 2019, which means it is applicable for filing of the returns for Sep 2019 also.

The wordings used in the “**Notification No 49/2019 – Central Tax, dated 9th Oct**

2019“Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.” The same is published in the Official Gazette on 9th Oct 2019, only wide Gazette No REGD. NO. D. L.-33004/99. It is also confirmed wide **Circular No. 123/42/2019– GST dated 11th Nov 2019**.

2. What should I do as I have availed input tax credit without matching while filing the returns for Sep 2019?

At the time of filing GSTR – 3B for Oct 2019, you have to do the matching for both the months. For the unmatched invoices for the GSTR – 2A of Sep 2019; you have to reverse the same along with interest for the differential days @ 24% as per the provisions of Section 51 of CGST Act 2017.

3. On what basis GSTR – 2A and my purchase register should be matched?

As per the provisions of Rule 69 of the CGST Rules 2017, matching has between the purchase register and GSTR – 2A has to be carried out for the following

- a) GSTIN of the Supplier
- b) GSTIN of the Recipient / Buyer
- c) Invoice or Debit Note Number
- d) Invoice or Debit Note Date
- e) Tax Amount

For every document, if any of the above fields do not match, then input tax credit cannot be availed.

4. What could be the reasons for the differences between GSTR – 2A and my purchase register?

- I. The supplier must not have filed the return
- II. The supplier has not uploaded the tax invoice

- III. GSTIN wrongly entered by the Supplier
- IV. GSTIN wrongly entered in the accounting / ERP Package
- V. Tax invoice number wrongly entered by the Supplier
- VI. Tax invoice number wrongly entered in the accounting / ERP Package
- VII. Tax invoice date wrongly entered by the Supplier
- VIII. Tax invoice date wrongly entered in the accounting / ERP Package
- IX. The supplier ships goods but they are in transit
- X. Goods received but not accounted – in QC/ Bills to reach the Accounts department
- XI. The supplier has not entered the invoice amount correctly
- XII. Invoice amount wrongly entered in the accounting / ERP Package
- XIII. The invoice amount is manually overwritten for shortages/breakages or any other reason
- XIV. The supplier has issued the invoice but not shipped the goods
- XV. Invoice issued by the supplier but not received by the recipient

5. How is the 20% restricted input tax credit derived?

20% of the restricted input tax credit is derived basis of the total of the input tax credit available in the GSTR – 2A for the month for which return is being filed. The same is explained in the example given below

Total purchases in a month where ITC is eligible is Rs 10,00,000 & actual purchases on which tax is paid is Rs 12,00,000

Amount Reflected in GSTR – 2A is Rs 7,00,000 and amount eligible for availing input tax credit is Rs 6,00,000

What is the provisional credit which can be claimed?

20% of eligible credit i.e., Rs 6,00,000

20% of Rs 6,00,000 = Rs 1,20,000

Total amount of Credit eligible for the month = Rs 6,00,000 + Rs 1,20,000 = Rs 7,20,000

6. Is the 20% input tax credit restriction available for the sum of all the taxes or tax-wise?

As the same is notified in the Rules and the rules are different for the different taxes, it means the restriction is for each tax, i.e., for CGST, SGST, IGST & Compensation cess.

7. Do I need to consider the input tax credit on account of reverse charge, ISD, import of goods, etc. for computing the restricted input tax credit?

No, It is not required to be considered for determining the restricted input tax credit.

8. Can I take the input tax credit if the supplier has not paid the taxes in the subsequent months?

If the supplier has not paid the taxes or filed the return of uploaded your invoice in the subsequent returns, then you have to reverse the input tax credit claimed on those invoices and pay interest on the same.

9. How to take the input tax credit if the supplier has filed and paid the taxes in the subsequent months?

If all the suppliers have filed and paid the taxes, then the differential amount of tax can be claimed in the month during which the supplier has filed or paid the taxes or uploaded the invoice.

10. How much input tax credit I can avail if the sum of the restricted credit and eligible credit is more than the amount showing in GSTR – 2A?

If the 20% restricted or provisional credit is more than the eligible amount, then the taxpayer has to avail on the eligible amount only. The same is explained in the example below

Total purchases in a month where ITC is eligible is Rs 1,00,000 & actual purchases during the month is Rs 15,00,000

Amount Reflected in GSTR – 2A is Rs 12,00,000 and amount eligible for availing input tax credit is Rs 90,000

What is the provisional credit which can be claimed?

20% of eligible credit i.e., Rs 12,00,000 i.e., is Rs 2,40,000

Eligible credit is only Rs 1,00,000, so the taxpayer can avail max of Rs 1,00,000 (Rs 1,00,000 – Rs 10,000).

11. Are there any changes required in my accounting practices?

Yes, if the accounting practices are changed, it will give complete control and visibility for tracking the errant suppliers. The general practice is whatever are the amounts available in the ledger are considered for the return filing. So, it is recommended to change the accounting policy also.

For this, new ledger accounts have to be created at each registration level if multiple registrations exist. The new ledgers to be created are

Sl.No	Ledgers
1	Interim / Suspense / Provisional ITC – SGST
2	Interim / Suspense / Provisional ITC – CGST
3	Interim / Suspense / Provisional ITC – IGST
4	Interim / Suspense / Provisional ITC – GST Cess

The existing accounting entry, which is passed/ generated at the time of GRN/ MRN creation or booking of the purchase invoice, also has to be changed. The existing accounting entry is

Ledgers	Debit / Credit
Inventory/Services/ Expenses A/c	Dr
ITC – SGST A/c	Dr
– CGST A/c	Dr
To Suppliers A/c	Cr

The new accounting entry which is to be passed or generated at the time of the creation of GRN / MRN or booking the purchase invoice should be

Ledgers	Debit / Credit
Inventory / Services / Expenses A/c	Dr
Interim / Suspense / Provisional ITC – SGST A/c	Dr
Interim / Suspense / Provisional ITC – CGST A/c	Dr
To Suppliers A/c	Cr

The accounting entry to be passed or generated at the time of matching is

Ledgers	Debit / Credit
ITC – SGST A/c	Dr
ITC – CGST A/c	Dr
Interim / Suspense / Provisional ITC – SGST A/c	Cr
Interim / Suspense / Provisional ITC – CGST A/c	Cr

As the revised accounting entries are at the supplier level, it will give complete visibility on the suppliers who have not filed the returns and also helps in follow up with the suppliers more effectively.

12. How should I do the reconciliation?

Reconciliation has to be carried out for each invoice and every month. The challenge is if the supplier files the GSTR Returns in the subsequent tax periods, then the same will be updated in the GSTR – 2A for the period in which the invoice is generated. The taxpayers have to check the GSTR – 2A of the previous months till the supplier files the returns or till filing of the September months return or filing of the annual return whichever is earlier. The reconciliation statement has to be maintained for each month, along with a consolidated statement.

13. Can I adopt technology to address the same?

Yes, there are a lot of tools available for the reconciliation, and also most of the ERP's support the availing of the input tax credit on a provisional basis and availing the same only at the time of matching. If the existing accounting software or ERP provides the same, it should be implemented immediately as it will save a lot of time and effort.

14. Is it mandatory to avail the restricted input tax credit?

No, it is not mandatory to avail the restricted input tax credit; the option is given to the taxpayers to avail or not.

15. What are the other alternatives I have if I do not like to avail the restricted or provisional credit?

There are other options like while awarding the contract or purchase order to the suppliers, who are filing the GST Returns in time. The supplier's tax filing compliance also has to be verified along with the price, quality, after supply service, along with the previous track record.

Now it clear that the matching is mandatory and also the process on how to derive the restricted 20% input tax credit. Now the taxpayers have to follow the same from the 9th of Oct 2019, but due to interpretation issues, many of the tax professionals have concluded that it is effective for the filing of Oct 2019 returns. The taxpayers have to take a clear decision on to avail the 20% of the restricted credit along with the eligible input tax credit or avail only the eligible input tax credit after considering the following points

- a) Borrowing cost for the restricted 20%
- b) Cost of time and efforts required for deriving the 20% restricted credit
- c) Training the respective stakeholders
- d) Cost of automation – if the same is provided in their existing accounting or ERP or separate software is required.

Unless and the taxpayers do a cost-benefit analysis for availing the 20% restricted credit or not based on the above-discussed points, it would be difficult to ascertain the same. It is typically required for large corporates where they have 1000's of purchase invoices monthly. Whatever is the decision, it will be applicable from the next month's transactions and for filing of the returns for Oct 2019, they have to do reconciliation if the decision is not taken.

Disclaimer

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ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) BEPS ACTION PLAN 13

CMA Harish Joshi

Direct Taxation & Transfer Pricing - Senior Manager, Alfanar Power Limited

Under Base erosion and profit shifting (BEPS) action plan 13, all large multinational enterprises (MNEs) are required to prepare a country-by-country (CbC) report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. As per BEPS action plan 13 in addition to country-by-country report companies also need to prepare & file Master file. Since India is the member of G-20 countries, so therefore India introduced a few BEPS Action Plans in Finance Act, 2016. The major one has been the introduction of the concepts of Master File & Country by Country (CbC) reporting in the Indian transfer pricing (TP) regulations with effect from the financial year beginning 1st April, 2016, in line with BEPS Action Plan 13.

Furnishing of Country-by-Country report in respect of international group.

Section 286 (1) Every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority in the form and manner, on or before such date, as may be prescribed (i.e. Rule 10DB).

Threshold for CbCR reporting: -

Total Consolidated group revenue of the international group shall be five thousand five hundred crore rupees and where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate (Rule 26) of such currency on the last day of the accounting year preceding the accounting year.

Rule 10DB –

(1) For the purpose of sub-section (1) of section 286, every constituent entity resident in India, shall, if its parent entity is not resident in India, intimate the Director General of Income-tax in Form No. 3CEAC, the following namely: -

- a) whether it is the alternate reporting entity of the international group; or
- b) the details of the parent entity or the alternate reporting entity, as the case may be, of the international group and the country or territory of which the said entities are residents.

(2) Every intimation under sub-rule (1) shall be made at least two months prior to the due date for furnishing of report as specified under sub-section (2) of section 286

Sub-Section (2) of Section 286:- Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority (Within a period of twelve months from the end of the said reporting accounting year) in form 3CEAD.

Note: - If Country-by -country (CbC) report is file by foreign parent entity or their foreign subsidiaries in their tax jurisdiction then only form 3CEAC will be filed by Indian constituent entity at least two months prior to the due date of furnishing of report by foreign parent entity or their foreign subsidiaries (i.e. International Group). Generally, most of the countries accounting year is January to December, So they have to file CbCR within a period of twelve months from the end of the said reporting accounting year. So Indian constituent entity has to file 3CEAC by 31st October 2019.



LIQUIDATED DAMAGE – COMPENSATION OR CONSIDERATION

CMA Mosharraf Hussain

Accounts Officer (EB, SM & Legal), BSNL, Patna

A] The general rule is that performance of a contract, for discharge of obligations thereto, must be precise and exact. That is, a party performing an obligation under a contract must perform that obligation exactly within the time frame set by the contract and exactly to the standard required by the contract. [Anson (2016) 465]

B] If the obligations of the contract is either not performed within the time frame set by the contract or not performed to the required standard then it results in breach of contract. And as soon as the party is in breach *a new obligation* will arise by *operation of law* – an obligation to pay *damages* to the other party in respect of any loss or damage sustained by that breach. So, every breach of contract entitles the injured party to damages. [Anson (2016) 533]

C] In case of supply of goods and services, apart from the breach of conditions (stipulations which are essential to the main purpose of the contract) of the contract there may be breach of warranties (stipulations which are only collateral to the main purpose of the contract). Breach of conditions is severe in nature and may even lead to repudiation of the contract whereas breach of warranties does not entitle the parties to the contract to repudiate [Sale of Goods Act 1930 Sec 12]. Again, the breach of conditions may be of three types – one with respect to the time, another with respect to the quantity and still other with respect to the quality. Though the quality is rarely compromised the time of delivery and the quantity of the delivery are generally subjected to pragmatic approach ie instead of repudiation of contract compensation in the form of damages for the purchaser and quantum meruit for the supplier of goods and services are usually considered. Damages for delay in delivery are generally predetermined and mentioned in the contract and are known as liquidated damages. Matters of short supply are usually settled through credit notes.

D] Where an obligation arises *not by an agreement* between the parties *but by operation of law* then it is regarded as a relationship resembling that of a contract and is known as quasi-contract. Strictly

speaking, a quasi-contract cannot be called a contract but Indian Contract Act 1872 Chapter V Sec 68 to 72 recognises four such relationships as a contract:

a) Sec 68 says that if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

b) Sec 69 says that a person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

c) Sec 70 says that where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered [commonly known as ‘quantum meruit’].

d) Sec 71 says that a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

e) Sec 72 says that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

E] Indian Contract Act 1872 Chapter VI Sec 73 to 75 deals with the breach of contract and its consequences which are altogether different from Chapter V dealing with quasi-contract.

F] Indian Contract Act 1872 Sec 73 says that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the

breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

G] Indian Contract Act 1872 Sec 73 further says that when *an obligation resembling those created by contract* (quasi-contract) has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract. Thus, even in case of breach of quasi-contract the obligation to pay damages arises.

H] Indian Contract Act 1872 Sec 73 explains that in estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account. It may be noted that difficulty in assessing damages does not disentitle from having an attempt made to assess them, unless they depend on entirely speculative possibilities [Anson (2016) 565]. Such damages, however, shall be compensatory and shall not be penal in nature ie damages for breach of contract are given to compensate for loss suffered by the innocent party and not to punish the contract-breaker. So, punitive or exemplary damages have no place in the law of contract and thus any stipulation in this regard is held as nugatory by English Courts [Anson (2016) 564].

I] But this distinction in the nature of damages ie being compensatory or penalising under English common law has been partially undone by amendment of 1899 in the Indian Contract Act 1872 Sec 74 ie in case of liquidated (predetermined) damages [Mulla (2010) 1677].

J] Indian Contract Act 1872 Sec 74 adds that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of *such* breach, or if the contract contains any other stipulation by way of *penalty* (such as forfeiture of the sum advanced or the security deposit), the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. This section merely dispenses with proof of actual damage, it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted [Fateh Chand v Balkishan Das AIR 1963 SC 1405. Again, there may be cases when the liquidated damages cease to be payable such as waiver by the purchaser,

fault of the purchaser resulting in delay, etc. [Markanda (2010) 1156].

K] The parties to a contract, however, generally make provision in the contract for the damages to be paid on a breach of contract. Such provision does not exclude the application of the general rule that damages for breach are intended to compensate for the actual loss sustained by the injured person. Rather it is a genuine attempt to liquidate, that is to say, to reduce to certainty, prospective damages of an uncertain amount [Anson (2016) 598].

L] European legal system accepts that changes of circumstances may justify modifying a contract where to maintain the original contract would produce *intolerable results* incompatible with justice. So the *toleration arises* when the original contract is modified. But English legal system, including India, concerned that modification would undermine certainty and alter the risks allocated by the contract, made provisions for the discharge of a contract only where, after its formation, a change of circumstances makes contractual performance illegal or theoretically impossible [Anson (2016) 497]. Such a situation is provided for by the doctrine of frustration where the parties are discharged of their obligation due to radical change in circumstances [Indian Contract Act 1872 Sec 56].

M] Ind AS 115 issued under the Companies Act 2013 speaks of revenue from contracts with customers wherein rules for the recognition of revenue have been spelt out but it does not talk specifically about liquidated damages. Though the Expert Advisory Committee of the Institute of Chartered Accountants of India has considered the issue on accounting of liquidated damages and has issued an opinion on accounting treatment of liquidated damages on unexecuted portion of the contract but it has dealt the matter from the perspective of suppliers only [Query No.26 disposed of by the Committee on 23 Jan 2014]. It is conspicuously silent over the accounting treatment of liquidated damages from the perspective of purchasers of goods or services who are recovering the liquidated damages for delay in supply.

N] The Supreme Court in CIT Gujarat v Saurashtra Cement Limited (2010) 11 SCC 84, where the damages to the assessee was directly and intimately linked with the procurement of a capital asset which would obviously lead to delay in coming into existence of the profit making apparatus, rather than a receipt in the course of profit earning process, observed that compensation paid for the delay in procurement of capital asset amounted to sterilization of the capital asset of the assessee as

supplier had failed to supply the plant within time as stipulated in the agreement and clause of liquidated damages came into play. Thus the amount of liquidated damages received by the assessee towards compensation for sterilization of the profit earning source, not in the ordinary course of their business, was a capital receipt in the hands of the assessee.

O] Income Tax Act 1961 Sec 2(24) defines income to include: a) Profits and gains; b) Dividend; c) Voluntary contributions received by a trust; d) Perquisite or profit in lieu of salary; e) Any special allowance or benefit other than perquisite; f) City compensatory allowance or dearness allowance; g) Any benefit or perquisite to a director; h) Any benefit or perquisite to a representative assessee ; i) Any sum chargeable under IT Sec 28 (profit and gains from business or profession), 41 (deemed business profit) and 59 (deemed capital gain); j) Capital gains; k) Insurance profit; l) Income of banking of a cooperative society; m) Winning from lottery; n) Employee contribution towards provident fund; o) Amount received under keyman insurance policy; p) Fair market value of inventory; q) Gift of exceeding Rs.50,000; r) Consideration for issue of shares; s) Advance money; t) Compensation on termination of employment or modification of terms of employment; u) Assistance in the form of a subsidy or grant. So we see that definition of income under Income Tax Act 1961 Sec 2(24) is wide enough to include the liquidated damages unless it is against the assets in which case, as per the aforesaid decision of Supreme Court, it will be treated as capital receipt and be kept out of taxable income.

P] Finance Act 1994 Sec 66B is the charging section for service tax which reads thus: There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of all services, other than those services specified in the negative list, *provided or agreed to be provided* in the taxable territory by one person to another and collected in such manner as may be prescribed.

Q] In order to obviate the cloud of doubts over certain services in respect of its amenability to service tax Finance Act 1994 Sec 66E was introduced which declared certain services amenable to service tax through legal fiction. Finance Act 1994 Sec 66E (e) declared '*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*' as service amenable to service tax.

R] CGST Act 2017 Sec 9 is the charging section for goods and service tax levied by the central government. The relevant portion for our purpose is

CGST Act 2017 Sec 9 (1) which reads thus: 'Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State *supplies* of goods or services or both, except on the supply of alcoholic liquor for human consumption, *on the value determined* under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.'

S] Scope of supply has been delineated in CGST Act Sec 7. The relevant portion for our purpose is CGST Act 2017 Sec 7 (1) which reads thus: "For the purposes of this Act, the expression 'supply' includes— (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (b) import of services for a consideration whether or not in the course or furtherance of business; (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and (d) the *activities* to be treated as supply of goods or supply of services as referred to in Schedule II."

T] CGST Act 2017 Schedule II lists several activities to be treated as supply of goods or supply of services. The relevant portion for our purpose is CGST Act 2017 Schedule II (5) (e) which reads thus '*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*'.

U] So by dint of erstwhile Finance Act 1994 Sec 66E(e) and now CGST Act 2017 Schedule II (5) (e) read with Sec 7 declaring the '*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*' as service or supply the erstwhile service tax department and now GST department is of the view that liquidated damages are a consideration for toleration and hence liability for erstwhile service tax and now goods and services tax arises. But this inference suffers from the fallacy of *ignoratio elenchi* (missing the point) in the sense that their conclusion of liquidated damages as a consideration for toleration is not based on any valid premises.

V] Tolerate means 'to allow, so as not to hinder; to permit, as something not wholly approved; to suffer; to endure; to admit'; for instance, *to tolerate* infringement of copyright [Aiyar]. And to get a glimpse of refrain one may refer Indian Contract Act 1872 Sec 27 Exception I which reads thus: 'One who sells the goodwill of a business may agree with the buyer *to refrain* from carrying on a similar business, within specified local limits, so long as the

buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.' So, refrain simply means to hold back; to abstain [Aiyar].

W] The fallacy is again repeated when the erstwhile service tax department conclude that by declaring any service as declared one the requirement of charging section with respect to agreement is not to be complied. Even if they contend that the obligation of liquidated damages arise by operation of law hence there is a quasi contract then also it is not substantiated by the four express provisions of quasi contract under Indian Contract Act 1872 Chapter V Sec 68 to 72.

X] The contention of the GST department that for levying goods and service tax under Sec 9 the only requirement is of supply, which is defined in Sec 7, and the value, which is determined under Sec 15; and since CGST Act 2017 Schedule II (5) (e) read with Sec 7 declares the obligation to refrain from an act, or to tolerate an act or a situation as supply and Sec 15 determines the sum payable as liquidated damages as the value the liquidated damages are amenable to goods and service tax. Patently this argument appears very plausible but on scrutiny it suffers from the fallacy of hasty generalisation and *ignoratio elenchi*. First, the link between 'the obligation to refrain from an act, or to tolerate an act or a situation' and the breach of contract and compensation thereon is conspicuously absent and being a taxing provision it calls for strict construction, ie unless the liability is clearly written it cannot be levied. Second, had it been the intention of the legislature then it had clearly expressed such as CGST Act 2017 Sec 15(2)(d) wherein interest or late fee or *penalty for delayed payment* of any consideration of any supply is to be included into the value of supply. Third, adjustment in consideration will result into novation of contract, which requires agreement on the part of purchaser and supplier else the doctrine of failure will apply. Fourth, CGST Act 2017 Sec 15(1) expressly provides that where the supplier and recipient of the supply are not related the price will be the sole *consideration* for the supply which clearly signifies the presence of an express agreement and not the obligation which arises by operation of law as is the case with the obligation to pay damages in case of breach. Fifth, in case of breach of contract enabling the obligation for damages there is *failure to perform an act* rather than an *act of tolerating*. Sixth, the breach of condition may give rise to the right of repudiation as well as claiming of damages and by opting claim of damages only the purchaser is not

refraining or tolerating the repudiation rather it is the commercial expediency because in both the cases the supplier has got its right of payment for supplies made by it under the doctrine of quantum meruit [Indian Contract Act 1872 Sec 70]. Seventh, by treating the liquidated damages as consideration in case of capital equipments will require accounting of such consideration as other income instead of adjustment with value of the asset; which will be a contradiction to the ruling propounded in (2010) 11 SCC 84. Eighth, adding goods and service tax on the value of liquidated damages will cause the amount to go beyond the predetermined amount which will be a violation of Indian Contract Act 1872 Sec 74 for time being because the supplier will get the input tax credit at a later date.

Y] If the liquidated damage is to be treated as consideration then the requirement of agreement and quasi-contract need to be statutorily relaxed as well as toleration as provision of services need to be statutorily recognised.

Z] Hence, for the time being the liquidated damage is to be treated as compensation and should be kept outside the purview of declared services. Apart from the legality this measure will be appropriate for the reason that the intention of the agreeing party is for delivery without delay; had they intended the delay they would have sought an extended delivery period.

AA] In view of above discussion, it is respectfully submitted that the ruling given by Maharashtra Authority for Advance Ruling under GST [No.GST-ARA-15/2017-18/B-30 dated 8 May 2018]] and approval of the same by the Maharashtra Appellate Authority for Advance Ruling [MAH/AAAR/SS-RJ/09/2018-19 dated 11 Sep 2018] in re Maharashtra State Power Generation Co. Ltd. reported in (2018) 70 GST 411 that liquidated damages are considerations liable to be taxed under GST need to be reviewed at the earliest to give succour to already bleeding public sector undertakings who are mainly affected by this innovation.



TAX AND DIGITAL ECONOMY

CMA Sanjiv Naidu
Practicing Cost Accountant

The digital economy creates many new economic opportunities. Digitalization is transforming value chains in different ways, and opening up new channels for value addition and broader structural change. But positive outcomes are far from automatic. Just because digitalization has the potential to support development, any value realized is unlikely to be equitably distributed. Digital data can be used for development purposes and for solving societal problems, including those related to the SDGs (Sustainable Development Goals). It can thus help improve economic and social outcomes, and be a force for innovation and productivity growth. Platforms facilitate transactions and networking as well as information exchange. **From a business perspective, the transformation of all sectors and markets through digitalization can foster the production of higher quality goods and services at reduced costs.**

The digital revolution has transformed our lives and societies with unprecedented speed and scale, especially for developing countries. Digital advances have generated enormous wealth in record time, but that wealth has been concentrated around a small number of individuals, companies and countries. Under current policies and regulations, this trajectory is likely to continue, further contributing to rising inequality. **New technologies, especially artificial intelligence, will inevitably lead to a major shift in the labour market, including the disappearance of jobs in some sectors and the creation of opportunities in others, on a massive scale.** The digital economy will require a range of new and different skills, a new generation of social protection policies, and a new relationship between work and leisure. We need a major investment in education, rooted not just in learning but in learning how to learn, and in providing lifelong access to learning opportunities for all. **The digital economy has also created new risks, from cybersecurity breaches to facilitating illegal economic activities and challenging concepts of privacy. Governments, civil society, academia, the scientific community and the technology industry must work together to find**

new solutions. The digital technology can advance peace, human rights and sustainable development for all.

Decision-makers face a moving target as they try to adopt sound policies relating to the digital economy. A smart embrace of new technologies, enhanced partnerships and greater intellectual leadership are needed to redefine digital development strategies and the future contours of globalization. The rapid spread of digital technologies is transforming many economic and social activities. While creating many new opportunities, widening digital divides threaten to leave developing countries, and especially least developed countries.

This topic is timely, as only a decade remains for achieving the sustainable development goals (SDGs). Digital disruptions have already led to the creation of enormous wealth in record time, but this is highly concentrated in a small number of countries, companies and individuals. Meanwhile, digitalization has also given rise to fundamental challenges for policymakers in countries at all levels of development. Harnessing its potential for the many, and not just the few, requires creative thinking and policy experimentation. And it calls for greater global cooperation to avoid widening the income gap. The digital economy's expansion is driven by digital data. It also depends on the policies adopted and implemented at national, regional and international levels. Impacts on value creation and capture can be considered across several economic dimensions (e.g. productivity, value added, employment, income and trade), for different actors (workers, micro, small and medium-sized enterprises (MSMEs), platforms and governments), and for different components of the digital economy (core, narrow and broad in scope).

Measuring value in the digital economy is difficult. Measuring the digital economy and related value creation and capture is fraught with difficulties. Firstly, there is no widely accepted definition of the digital economy. Secondly, reliable statistics on its key components and dimensions, especially in

developing countries, are lacking. Although several initiatives are under way to improve the situation, they remain insufficient, and are struggling to cope with the rapid pace of evolution of the digital economy.

The Digital economy continues to evolve at breakneck speed, driven by the ability to collect, use and analyse massive amounts of machine-readable information (digital data) about practically everything. These digital data arise from the digital footprints of personal, social and business activities taking place on various digital platforms. Global Internet Protocol (IP) traffic, a proxy for data flows, grew from about 100 gigabytes (GB) per day in 1992 to more than 45,000 GB per second in 2017 (figure). And yet the world is only in the early days of the data-driven economy; by 2022 global IP traffic is projected to reach 150,700 GB per second, fuelled by more and more people coming online for the first time and by the expansion of the Internet of Things (IoT).

The digital revolution has transformed our lives and societies with unprecedented speed and scale, especially for developing countries. Digital advances have generated enormous wealth in record time, but that wealth has been concentrated around a small number of individuals, companies and countries. Under current policies and regulations, this trajectory is likely to continue, further contributing to rising inequality. **New technologies, especially artificial intelligence, will inevitably lead to a major shift in the labour market, including the disappearance of jobs in some sectors and the creation of opportunities in others, on a massive scale. The digital economy will require a range of new and different skills, a new generation of social protection policies, and a new relationship between work and leisure. We need a major investment in education, rooted not just in learning but in learning how to learn, and in providing lifelong access to learning opportunities for all. The digital economy has also created new risks, from cyber security breaches to facilitating illegal economic activities and challenging concepts of privacy. Governments, civil society, academia, the scientific community and the technology industry must work together to find new solutions.** The digital technology can advance peace, human rights and sustainable development for all.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

GOODS AND SERVICES TAX

Central Tax Notifications

Notification No. 52/2019- Central Tax

Date – 14th November 2019

Seeks to extend the due date for furnishing FORM GSTR-1 for registered persons in Jammu and Kashmir having aggregate turnover of up to 1.5 crore rupees for the quarter July, 2019 to September, 2019

CBIC has amended Notification No. 27/2019 – Central Tax, dated the 28th June, 2019.

In the said notification, in the second paragraph, the following proviso shall be inserted, namely: –

“Provided that for **registered persons whose principal place of business is in the State of Jammu and Kashmir**, shall furnish the details of outward supply of goods or services or both in **FORM GSTR-1** under the Central Goods and Services Tax Rules, 2017 effected during the **quarter July-September, 2019 till 30th November, 2019.**”

This notification shall be deemed to come into force with effect from the 31st day of October, 2019.

Notification No. 53/2019- Central Tax

Date – 14th November 2019

Seeks to extend the due date for furnishing of return in FORM GSTR-1 for registered persons in Jammu and Kashmir having aggregate turnover more than 1.5 crore rupees for the months of July, 2019 to September, 2019

CBIC has amended the Notification No. 28/2019 – Central Tax, dated the 28th June, 2019.

In the said notification, in the first paragraph, the following proviso shall be inserted, namely: –

“Provided that for **registered persons whose principal place of business is in the State of Jammu and Kashmir**, the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of Central Goods and Services Tax Rules, 2017, by such class of registered persons having **aggregate turnover of more than 1.5 crore rupees** in the preceding financial year or current financial year, **for each of the months from July, 2019 to September, 2019 till 15th November, 2019.**”

This notification shall be deemed to come into force with effect from the 11th day of August, 2019.

Notification No. 54/2019- Central Tax

Date – 14th November 2019

Seeks to extend the due date for furnishing of return in FORM GSTR-3B for registered persons in Jammu and Kashmir for the months of July, 2019 to September, 2019

CBIC has amendment the Notification No.29/2019 – Central Tax, dated the 28th June, 2019.

In the said notification, in the first paragraph, after the third proviso, the following proviso shall be inserted, namely: –

“Provided also that the return in **FORM GSTR-3B** of the said rules for the months of July to September, 2019 for registered persons whose principal place of business is **in the State of Jammu and Kashmir**, shall be furnished electronically through the common portal, **on or before the 20th November, 2019.**”

This notification shall be deemed to come into force with effect from the 20th day of September, 2019.

Notification No. 55/2019- Central Tax
Date – 14th November 2019

Seeks to extend the due date for furnishing of return in FORM GSTR-7 for registered persons in Jammu and Kashmir for the months of July, 2019 to September, 2019

CBIC has amended the Notification No. 26/2019 – Central Tax, dated the 28th June, 2019.

In the said notification, in the first paragraph, after the second proviso, the following proviso shall be inserted, namely: –

“Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in **FORM GSTR-7** of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2019 to September, 2019, whose principal place of business is **in the State of Jammu and Kashmir** shall be furnished electronically through the common portal, on or before the **15th November, 2019.**”

This notification shall be deemed to come into force with effect from the 20th day of September, 2019.

Notification No. 56/2019- Central Tax
Date – 14th November 2019

Seeks to carry out Seventh amendment (2019) in the CGST Rules, 2017 [Primarily related to Simplification of the Annual Return / Reconciliation Statement]

CBIC has made amendments in the Central Goods and Services Tax Rules, 2017, namely:-

1. These rules may be called the Central Goods and Services Tax (Seventh Amendment) Rules, 2019.
2. Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

For more details, please follow - <http://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-56-central-tax-english-2019.pdf;jsessionid=605BEEE1CEC002445A264AEAEF2DD221>

CIRCULARS

Central Tax Circulars

Circular No. 122/2019 – Central Tax
Date – 5th November 2019

Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons- reg.

CBIC has implemented a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by its offices to taxpayers and other concerned persons to maintain transparency and accountability in indirect tax administration through widespread use of information technology.

The DIN would be used for search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry.

This measure would create a digital directory for maintaining a proper audit trail of such communication. Importantly, it would provide the recipients of such communication a digital facility to ascertain their genuineness. Subsequently, the DIN would be extended to other communications.

The Board in exercise of its power under section 168(1) of the **CGST Act, 2017**/ Section 37B of the Central Excise Act, 1944 directs that no search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry shall be issued by any officer under the Board to a taxpayer or any other person, on or after the 8th day of November, 2019 without a computer-generated Document Identification Number (DIN) being duly quoted prominently in the body of such communication.

The digital platform for generation of DIN is hosted on the Directorate of Data Management (DDM)'s online portal "**cbicddm.gov.in**"

For more details, please follow - <http://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-122.pdf>

Circular No. 123/2019 – Central Tax
Date – 11th November 2019

Restriction in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017 – reg

Sub-rule (4) to rule 36 of the Central Goods and Services Tax Rules, 2017 has been inserted vide notification No. 49/2019- Central Tax, dated 09.10.2019 to provide restriction in availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37 of the Central Goods and Services Tax Act, 2017.

The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made thereunder.

The restriction is not imposed through the common portal rather it is the responsibility of the taxpayer that credit is availed and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers.

For more details, please follow –

http://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-123_New.pdf

CUSTOMS - NON TARIFF

Notification No. 81/2019 - Customs (N.T)
Date – 7th November 2019

Exchange Rates Notification No.81/2019-Custom (NT) dated 07.11.2019

CBIC has determined the rate of exchange of conversion of foreign currencies into Indian currency or vice versa relating to imported and export goods.

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	(For Imported Goods)	(For Exported Goods)
Australian Dollar	50.00	47.80
Bahraini Dinar	194.85	182.80
Canadian Dollar	54.90	52.95
Chinese Yuan	10.30	10.00

For more details, please follow –

<http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt81-2019.pdf>

Notification No. 82/2019 - Customs (N.T)
Date – 15th November 2019

Amendment to All Industry Rates of duty drawback effective from 16.11.2019

CBIC has made amendments in the Notification No. 95/2018- Customs (N.T.), dated the 6th December, 2018, namely:-

In the said notification, in the Schedule, in Chapter - 71-

- i. against tariff item 711301, in the entry in column (4), for the figures “272”, the figures “372.9” shall be substituted;
- ii. against tariff items 711302 and 711401, in the entry in column (4), for the figures “3254”, the figures “4332.2” shall respectively be substituted.

This notification shall come into effect from the 16th November, 2019.

Notification No. 84/2019 - Customs (N.T)
Date – 15th November 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 amended 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

Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
1511 10 00	Crude Palm Oil	613
1511 90 10	RBD Palm Oil	654
1511 90 90	Others – Palm Oil	634
1511 10 00	Crude Palmolein	658
1511 90 20	RBD Palmolein	661

For more details, please follow- <http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt84-2019.pdf>

CUSTOMS – ANTI DUMPING DUTY

Notification No.43/2019 - Customs (ADD)
Date – 11th November 2019

Seeks to rescind notification Nos. 24/2018- Customs (ADD) the dated 7th May, 2018, 41/2018- Customs (ADD) and 42/2018- Customs (ADD) dated 24th August, 2018 which had prescribed provisional assessment on export of jute products from Bangladesh by specified exporters.

CBIC has rescinded the following Notifications of the Government of India in the Ministry of Finance (Department of Revenue)

Notification Number	G.S.R. Number
24/2018- Customs (ADD) the dated 7th May, 2018	428(E) dated the 7th May, 2018
41/2018- Customs (ADD) the dated 24th August, 2018	810(E) dated the 24th August, 2018
42/2018- Customs (ADD) the dated 24th August, 2018	811(E) dated the 24th August, 2018

Notification No.44/2019 - Customs (ADD)

Date – 11th November 2019

Seeks to amend notification No. 1/2017-Customs dated 5th January, 2017 to insert S. Nos. 48 to 52 in the duty table to finalize the assessment of exports of jute products by M/s. Roman Jute Mills Ltd. (Producer/Exporter) and M/s SMP International, LLC, USA (Exporter/ Trader), M/s Aziz Fibres Limited (Producer/Exporter), M/s Natore Jute Mills (producer), Bangladesh and M/s PNP Jute trading LLC (Exporter/Trader), USA.

In case of import of ‘Jute Products’ namely, Jute Yarn/ Twine (multiple folded/cabled and single), Hessian fabric, and Jute sacking bags falling under Tariff Headings 5307, 5310, 5607 or 6305 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) originating in, or exported from Bangladesh and Nepal and imported into India, the designated authority had come to the conclusion that-

- (i) there is dumping of subject goods from the subject countries;
- (ii) imports from subject countries are undercutting and suppressing the prices of the domestic industry;
- (iii) performance of domestic industry has deteriorated in the terms of profitability return on investments and cash flow;
- (iv) injury to domestic industry has been caused by dumped imports, and had recommended imposition of definitive anti-dumping duty on imports of the subject goods, originating in, or exported from, the subject countries and imported into India, in order to remove injury to the domestic industry.

For more details, please follow –

<http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-add2019/csadd44-2019.pdf>

DIRECT TAX

NOTIFICATION

Notification No. 88/2019

Date – 5th November 2019

Amendment in Notification No . S.O. 2752(E), dated the 22nd October, 2014

CBDT has made following amendments in the Notification No. S.O. 2752(E), dated the 22nd October, 2014

1. In the said notification, -

(A) in Schedule-I, against the entries in serial number 67,- (i) in column (3), for the words “Jammu, Jammu and Kashmir”, the words “Jammu, the Union territory of Jammu and Kashmir and the Union territory of Ladakh” shall be substituted;

(ii) in column (4), for the words “All districts of State of Jammu and Kashmir”, the words “All districts of the Union territory of Jammu and Kashmir and of the Union territory of Ladakh” shall be substituted;

(B) In Schedule –II, against the entries in serial number 8, in column (4), for the words “State of Jammu and Kashmir” the words “the Union territory of Jammu and Kashmir and the Union territory of Ladakh” shall be substituted. 2. This notification shall be deemed to have come into force with effect from the 31st day of October, 2019.

It is hereby certified that no person is being adversely affected by giving retrospective effect to this notification.

Notification No. 89/2019
Date – 5th November 2019

Amendment in Notification No . S.O. 2754(E), dated the 22nd October, 2014

CBDT has made following amendments in the Notification No. S.O. 2754(E), dated the 22nd October, 2014.

1. In the said notification, in the Schedule, against the entries in serial number 4, in column (4), for the words “State of Jammu and Kashmir”, the words “the Union territory of Jammu and Kashmir and the Union territory of Ladakh” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of October, 2019.

It is hereby certified that no person is being adversely affected by giving retrospective effect to this notification.

Notification No. 90/2019
Date – 5th November 2019

Amendment in Notification No . S.O. 2793(E), dated the 30th October, 2014

CBDT has made following amendments in the Notification No. S.O. 2793(E), dated the 30th October, 2014.

1. In the said notification, in the Schedule, against the entries in serial number 7, in column (4), for the words “Jammu and Kashmir”, the words “the Union territory of Jammu and Kashmir and the Union territory of Ladakh”, shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of October, 2019.

It is hereby certified that no person is being adversely affected by giving retrospective effect to this notification.

Notification No. 91/2019
Date – 5th November 2019

Amendment in Notification No . S.O. 2814(E), dated the 3rd November, 2014

CBDT has made following amendments in the Notification No. S.O. 2814(E), dated the 3rd November, 2014.

1. In the said notification, in the Schedule, against the entries in serial number 2, in column (4) in item number (ii), for the words “Jammu and Kashmir”, the words “the Union territory of Jammu and Kashmir, Union territory of Ladakh” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of October, 2019.

It is hereby certified that no person is being adversely affected by giving retrospective effect to this notification.

Notification No. 92/2019
Date – 5th November 2019

Amendment in Notification No . S.O. 2816(E), dated the 3rd November, 2014

CBDT has made following amendments in the Notification No. S.O. 2816(E), dated the 3rd November, 2014.

1. In the said notification, in the Schedule, for the words “Jammu and Kashmir”, wherever they occur, the words “the Union territory of Jammu and Kashmir, Union territory of Ladakh” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of October, 2019.

It is hereby certified that no person is being adversely affected by giving retrospective effect to this notification.

Notification No. 93/2019
Date – 5th November 2019

Amendment in Notification No . S.O. 2914(E), dated the 13th November, 2014

CBDT has made following amendments in the Notification No. S.O. 2914(E), dated the 13th November, 2014.

1. In the said notification, in the Schedule, against the entries in serial number 4, in column (6), for the words “Jammu and Kashmir”, the words “the Union territory of Jammu and Kashmir and the Union territory of Ladakh” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of October, 2019.

It is hereby certified that no person is being adversely affected by giving retrospective effect to this notification.

Notification No. 94/2019
Date – 5th November 2019

Amendment in Notification No . S.O. 3125(E), dated the 10th December, 2014

CBDT has made following amendments in the Notification No. S.O. 3125(E), dated the 10th December, 2014.

1. In the said notification, in Schedule –II, against the entries in serial number 6, in column (4), for the words “Jammu and Kashmir”, the words “the Union territory of Jammu and Kashmir, Union territory of Ladakh” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of October, 2019.

It is hereby certified that no person is being adversely affected by giving retrospective effect to this notification

Notification No. 95/2019
Date – 6th November 2019

Amendment in Income Tax Rules 1962

CBDT has made following rules further to amend the Income-tax Rules, 1962, namely:-

In the Income-tax Rules, 1962, in Appendix-II,- (1) in Form Nos. 3AC, 3AD, 8, 10CCB, 10CCBA, 10CCBB, 10CCBBA, 10CCBC, 10CCBD, 12B, 13, 27A, 27B and 34F, for the words and letters “Permanent Account No.”, wherever they occur, the words “Permanent Account Number or Aadhaar Number” shall be substituted;

For more details, please follow –

https://www.incometaxindia.gov.in/communications/notification/notification_95_2019.pdf

Notification No. 96/2019
Date – 11th November 2019

Inclusion of New Rule after 11UAB

CBDT has made following rules further to amend the Income-tax Rules, 1962, namely: –

In the Income-tax Rules, 1962, after rule 11UAB, the following rule shall be inserted from the 1st day of April, 2020 and shall be applicable for assessment year commencing on the 1st day of April, 2020 and subsequent assessment years, namely:-

Prescribed class of persons for the purpose of clause (XI) of the proviso to clause (x) of sub-section (2) section 56

11UAC- .The provisions of clause (x) of sub-section (2) of section 56 shall not apply to any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi, where the Central Government by notification in the Official Gazettee, regularised the transactions of such immovable property based on the latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration for conferring or recognising right of ownership or transfer or mortgage in regard to such immovable property in favour of such resident.

For more details, please follow –

https://www.incometaxindia.gov.in/communications/notification/notification_96_2019.pdf

PRESS RELEASE

INDIRECT TAX

Press Release
Date – 14th November 2019

GSTR-9 and GSTR-9C are more simplified and last dates of submission extended

The Government has decided today to extend the due dates of filing of Form GSTR-9 (Annual Return) and Form GSTR-9C (Reconciliation Statement) for Financial Year 2017-18 to 31st December 2019 and for Financial Year 2018-19 to 31st March 2020. The Government has also decided to simplify these forms by making various fields of these forms as optional.

Central Board of Indirect Taxes & Customs (CBIC) today notified the amendments regarding the simplification of GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement) which inter-alia allow the taxpayers to not to provide split of input tax credit availed on inputs, input services and capital goods and to not to provide HSN level information of outputs or inputs, etc. for the financial year 2017-18 and 2018-19.

CBIC expects that with these changes and the extension of deadlines, all the GST taxpayers would be able to file their Annual Returns along with Reconciliation Statement for the financial years 2017-18 and 2018-19 in time. Various representations regarding challenges faced by taxpayers in filing of GSTR-9 and GSTR-9C were received on which by the Government has acted in a very responsive manner.

It may be noted that earlier the last date for filing of GSTR-9 and GSTR-9C for Financial Year 2017-18 was 30th November 2019 while that for Financial Year 2018-19 was 31st December 2019. Notifications implementing the decisions as above have been issued today (14th November 2019).

DIRECT TAX

Press Release
Date – 7th November 2019

Income Tax Department makes high cash seizure in Pune

Income Tax Department conducted a search in the case of a businessman in Pune on 04/11/2019 and

made high cash seizure. The search was conducted at the residence of the businessman.

Intelligence information was received on 04/11/2019 that the businessman was in possession of large amount of cash at his residence and that this cash was likely to be moved within short span of time. In a swift action, some preliminary discreet enquiries were made to ascertain the availability of cash and a single warrant was executed to search the residence of the individual, along with survey u/s 133A at his business premises. The assessee is in the business of construction subcontracting and real estate activities. During the search, unaccounted cash amounting to Rs. 9.55 crore was found and seized. This is the highest cash seizure in Pune by the Income Tax Department till date. Investigations in the case are still under progress.

Press Release
Date – 7th November 2019

Income Tax Department conducts search on a prominent business group in Pune

Income Tax Department conducted searches on a prominent business group in Pune on 06/11/2019 under the Income Tax Act, 1961. The searches were conducted at various places covering the cities of Pune, Mumbai, Nagpur, Delhi, Bengaluru and Noida. A total of 15 premises were covered in search action under section 132 and 13 premises were covered under section 133A. The group has diversified business activities and provides services in the areas of mechanized house-keeping, landscaping and gardening, civil and electrical maintenance, fabrication services, turnkey solutions, logistic support and other services required by government agencies and municipal corporations. The search was carried out based on specific information regarding the claim of bogus losses, bogus purchases and bogus sub-contract expenses.

The search and seizure action has led to unearthing of incriminating evidence regarding bogus claim of brought-forward losses of Rs. 91 crore pursuant to scheme of demerger which is not found in accordance with the provisions of I.T. Act, 1961. Bogus expenses in the form of unsubstantiated purchases to the tune of Rs. 77 crore have also been detected so far and further verification is in progress. Evidence has also been found in respect of cash expenses to the tune of Rs. 20 crore. Further, unaccounted cash of Rs. 60

Lakh has been found. Several lockers have been found and put under restraint. Based on evidence unearthed so far, undisclosed income to the tune of Rs. 180 crore from A.Y. 2016-17 onwards has been detected. Search proceedings are still under progress.

Press Release
Date – 11th November 2019

Income Tax Department conducts search on an Educational Group in Chennai

On 07.11.2019, the Income Tax Department conducted search action under the Income-tax Act, 1961 in the case of a group of trusts that are running educational institutions in and around Chennai for the past thirty years. The institutes run by the group include a number of engineering colleges, polytechnic institutes, dental college, nursing colleges, hospitals & schools. The group has interests in other sectors like fishing harbor, cement, milk, bottled water and iron & steel etc.

There were reports of the group accepting fee/donations in cash, which were largely unaccounted and of the funds of the trust being diverted to other sister concerns. The action began on 7/11/2019 covering 32 premises in and around Chennai. During the search proceedings, evidence of suppression of fee receipts has been found. In addition, one group entity has adopted the modus operandi of showing the actual fees received as 'advance fee collection' in the liability side of the balance sheet and advancing the said amounts as payments, mainly, to its sister concerns against certain expenses/purchases, which were found to be inflated/ bogus. Thus, the money of the trusts is found to be diverted outside the trusts for the objects outside the scope of Trust.

Apart from the above, evidences have been found of unexplained cash debits, unrecorded cash expenditure, suppression of sale receipts in fishing harbor, loans advanced in cash, non-disclosure of income from sale of property etc. Cash of approximately Rs. 5 crore and Jewelry of more than about Rs. 3 crore was seized in the said action. The preliminary estimate of the undisclosed income of the group detected so far is more than Rs. 350 crore. The search proceedings have been temporarily concluded and investigations into the findings are in progress.

Press Release
Date – 11th November 2019

Income Tax Department busts a major racket of bogus billing & hawala transactions

Income Tax Department carried out searches in the first week of November, 2019 on a group of persons indulging in issuing bogus bills and carrying on hawala transactions. The search operations covered 42 premises across Delhi, Mumbai, Hyderabad, Erode, Pune, Agra & Goa. The search operations resulted in busting of a major racket of cash generation by leading corporate houses in the infrastructure sector through bogus contracts/bills. Funds meant for public infrastructure projects were siphoned off through entry operators, lobbyists and hawala dealers. The companies involved in siphoning of funds are mostly located in NCR and Mumbai. One such company was earlier searched by Income Tax Department in April, 2019.

The projects involved in bogus billings are major infrastructure and EWS projects located in Southern India. Evidence of cash payment of more than Rs. 150 crore to a prominent person in Andhra Pradesh has also been unearthed during the search.

The search action was successful in unearthing incriminating evidences and establishing the nexus between big corporates, hawala operators and identification of entire chain of delivery, as well as siphoning of funds by way of bogus contracts to the tune of Rs. 3300 crore. Unexplained cash of Rs 4.19 crore and jewellery in excess of Rs 3.2 crore was also seized during the search operation.

Press Release
Date – 13th November 2019

Meeting between Secretaries of Switzerland and India to further assistance in tax matters

Fighting the menace of Black Money stashed in offshore accounts is a key priority area for the Government. Following the agreement between the Indian Prime Minister and the Swiss President for enhanced cooperation in the fight against tax evasion the two sides have worked closely for expeditious information exchange in tax matters. To further this cooperation, Revenue Secretary, Dr. Ajay Bhushan Pandey and Switzerland's State Secretary for International Finance, Ms. Daniela Stoffel met today at New Delhi. The Secretaries expressed satisfaction over the progress made over

the past few years in the area of administrative assistance in tax matters, particularly the efforts made by Switzerland in providing assistance in HSBC cases.

Welcoming the first transmission of financial account information on automatic basis between the two countries in September 2019, the Secretaries reiterated their countries' commitment to global tax transparency for tackling offshore tax evasion. This automatic exchange of financial account information will usher in a new era of financial transparency as Indian tax administration will now know the details of all bank accounts held by Indians in Switzerland. The Secretaries encouraged the competent authorities of both the countries to further collaborate and share experiences with the aim of continuously enhancing the quality of the exchanged data.

The Revenue Secretary and Swiss State Secretary also exchanged views on addressing the challenges arising out of digitalization of the economy and agreed that coordinated international actions, as in the case of tax base erosion and profit shifting project, are central to achieving a consensus-based long-term solution that leads to desired tax certainty and sustainable development. The Secretaries reaffirmed the need for continuous dialogue at the level of competent authorities of the two countries to further enhance the cooperation under the India-Switzerland tax treaties and agreed to carry forward the dialogue in the spirit of mutual friendship and cooperation. A Joint Statement was signed by the two Secretaries at the conclusion of the meeting.

Press Release
Date – 14th November 2019

Income Tax Department conducts search on prominent business groups in Mumbai

The Income Tax Department conducted search action in Mumbai and Surat on 06.11.2019 on entry providers and beneficiaries who have been engaged in execution of civil contracts mainly in Brihanmumbai Municipal Corporation (BMC). A total of 37 premises were covered under search action and 7 premises were covered under survey. There were reports that certain contractors had taken entries in the form of loans, etc. from entry providers and also inflated expenses in the books of accounts to suppress income.

Incriminating evidences showing large scale tax evasion and money laundering have been found. It has also led to the detection of the use of bogus

companies (floated by entry providers) for giving entries to businesses in the form of loans or bills for expenses, etc. In the case of the entry providers, systematic modus operandi of bank fraud and forgery has been detected whereby the promoters have made investments in immovable properties and shares of group companies by siphoning off the bank loans. In the case of the contractor groups, several instances about inflation of expenses by bogus purchases/sub-contracts and taking of loans from entry providers have been identified.

So far, detection on account of above mentioned issues is to the tune of Rs.735 crore and extent of accommodation entries is being quantified.

Investigations are in progress, including identification of the remaining beneficiaries.

JUDGEMENTS

INDIRECT TAX

**HC while exercising Revisional Jurisdiction can
Condone Delay Since No Exclusion of
Application of Limitation Act is made by HP
VAT: SC**

**Superintending Engineer of Dehar Power
House Circle Bhakra Beas Management Board
Slapper and another vs. Excise and Taxation
Officer, Sunder Nagar**

**Civil Appeal No – 8276-8277 of 2019
Date – 25.10.2019**

Fact of the Case

- In the present case superintending engineer is the petitioner
- The petitioner appealed to the H.P Tax Tribunal beyond 90 days from the date of communication of the order and it was accepted
- Excise & Taxation officer appealed to the High Court against the above
- The High Court refused to condone the delay against the order passed by the H.P Tax Tribunal because section 5 of limitation act cannot be applied
- The case referred to Supreme Court as per applicant's application.

Decision of the Case

- The Bench constituting of Justices Arun Mishra, M.R. Shah and B.R. Gavai held that the provisions of Section 5 of the Limitation Act are applicable to the revisional provision under Section 48 of the Act of 2005.
- The Court stated that as the revision under the Act of 2005 lies to the High Court, the provisions of Section 5 of the Limitation Act are applicable on the major reason that there is no express exclusion of the provisions of Section 5 and per se Section 29(2), unless a special law expressly excludes the provision, sections 4 to 24 of the Limitation Act are applicable.
- The Supreme Court in the case of Superintending Engineering v Excise and Taxation Officer held that the provisions of Section 5 of the Limitation Act are applicable on High Court while

exercising revisional power since there is no express exclusion of the Limitation Act by the provisions of HP VAT.

**No GST on Collecting Exam Fee from Students
and Remitting same to that Particular
University: AAR**

**Applicant Name - M/s Arivu Educational
Consultants Pvt. Ltd**

**Advance Ruling – KAR ADRG 116/2019
Date-30.09.2019**

Fact of the Case

- In the present situation the Applicant provides coaching, learning and training services in relation to under-graduate, graduate and post-graduate degree, diploma and professional courses on a standalone bases to students or for any institution, corporate, company, institutes, universities and colleges in the subject and branches of all types of disciplines such as commerce, hardware, software, computer, science etc.
- The applicant acts as pure agent
- So the examination fees collected from the students
/institution/university/corporate/company etc to be excluded from GST

Decision of the Case

- The authority of advance ruling observed that The applicant is collecting the exact amount payable to institute or college or universities as exam fee from the students (service recipient) and remits the same amount to the respective institute or college or universities (third party) without any profit element or additions, on the authorization of the student.
- This payment is separately indicated in the invoice issued to the respective students. The applicant providing this kind of services to the student in 'addition to the services as training and coaching institute.
- Hence the applicant satisfies all the conditions of the pure agent as narrated in Rule 33 of the COST Rules, 2017.
- Therefore, amount of the fee collected by the applicant from the student as exam

fee which is remitted to the respective institute or college or universities is excluded from the value of supply”.

No GST on Profit Sharing Agreement between Star Health and Shareholders: AAR

Applicant Name - Venkatasamy Jagannatahn

Order No. – 19 AAR/2019

Date – 21.05.2019

Fact of the Case

- Venkatasamy Jagannatahn is the applicant in the present case
- The Applicant has entered into a Profit Sharing Agreement (PSA) and is entitled to a strategic sale of equity shares over and above a specified sale price per equity share by a set of shareholders of SHA and seeks a ruling on whether the PSA between the applicant as an employee and the shareholders, attract GST in his hands.
- The applicant contended that the PSA is only due to his contribution as Managing Director and hence is under employer/employee activities which are exempt under GST.

Decision of the Case

- The Bench constituting of members Ms MG Kata and TK Selvaan ruled that the PSA between the applicant and various shareholders of Company is an actionable claim and is neither a supply of goods nor a supply of services and hence is not taxable to CGST or SGST Act.
- The Bench elaborated that in the instant case, the parties to PSA have agreed to pay a certain sum in the event of strategic sale
- The applicant has a claim to specified amounts in event of the occurrence of the strategic sale making his claim contingent on happening of an event. Hence, the PSA was ruled to be an actionable claim.
- The Tamil Nadu bench of the Authority of Advance Rulings (AAR) in an application filed by Venkatasamy Jagannathan ruled that, the Profit Sharing Agreement between the applicant and various shareholders of Star Health and Allied Insurance Ltd is an actionable

claim and is as neither a supply of goods nor a supply of services covered under Schedule III to CGST Act and SGST Act and hence is not taxable to CGST or SGST.

Dalochar classifiable under Tariff head 2619 00 90 is leviable to 18% GST: AAR

M/S Jairaj Ispat Limited

Advance Ruling - KAR ADRG 60/2019

Date 20.09.2019

Fact of the Case

- Jairaj Ispat Limited is the applicant in the instant case
- The applicant deals in Dalochar. The question is whether Dalochar is leviable to GST @18% or not
- The classification of product– Dalochar is sought before the present Authority. The product is partly burnt coal (cinder) emerged during the manufacturing process of Iron ore. The physic-chemical properties of Dolochar reveal that it is a type of semi-coke and has poor was ability.
- The applicant contends that the product proposed to be supplied falls under Entry 30 of notification No. 1/2017-ITR dated 28.06.2017 under the description ‘Other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste other than fly ash’ attracting a levy of IGST at 18%

Decision of the Case

- The Bench constituting of Shri Harish Dharnia and Ravi Prasad held that Char Dolochar/ Dolochar (waste emerging during the process of manufacturing Sponge Iron) supplied by the Applicant is classifiable under Tariff Item 26190090 of Customs Tariff Act, 1975 and in view of Entry 28 of Schedule III of Notification 01/2017-ITR attract GST of 18%.
- The Bench further found that Dalochar emerges as a by-product in manufacturing of Sponge Iron and not a fuel manufactured from coal and cannot be classified under Tariff Item 2701 and

is classifiable under Tariff item 26190090 leviable to 18%

**GST: PVC Tufted Coir Mats and Mattings
Taxable at 12%, says AAR**

M/s Travancore Cocotuft Pvt Ltd

**Advance Ruling KER /67/2019
Date 12.10.2019**

Fact of the Case

- In the present case M/S Travancore Cocotuft Pvt Ltd is the applicant
- The applicant is a manufacturer and exporter of PVC tufted coir mats and mattings.
- The manufacturing activity is fully mechanized. The applicant seeks a ruling of the present authority on the rate applicable on the PVC tufted coir mats and mattings.

Decision of the Case

- The Bench constituting of members B.G. Krishnan and B.S. Thyagarajababu while referring to an earlier decision of the present forum of Advance Ruling No. KER/31/2019 dated 1.03.2019 ruled that PVC Tufted Coir Mats and Matting shall not be covered by the heading mentioning textile of coir and floor coverings covered under HSN 5702, 5703 and 5705.
- Further, it was held that if PVC/rubber are stuffed on the textile of coir used as floor mats, it shall fall under the Customs Tariff Head 5703 90 90 and will be taxed at 12%.

**Resale of Food Items and Sale of Bakery
Products not Restaurant Services: AAR**

**Applicant Name - M/s Square One Homemade
Treats**

**Advance Ruling KER/66/2019
Date -30.09.2019**

Fact of the Case

- In the present case M/S Square One Homemade Treats is the applicant
- The applicant is engaged in the business of reselling pre-packed food products like cakes, baked items like cookies, brownies,

ready to eat homemade packed food, ready to eat snacks, hot and cold beverages through dispensing machine.

- In the bakery premises, they have provided a table for customers who like to eat food items procured from the counter.
- An advance ruling is sought on (1) whether resale of food and bakery products fall under restaurant services and (2) whether the classification of HSN and Tax rates are done by the applicant is correct or not.

Decision of the Case

- The Bench of Authority constituting of members B.G. Krishnan and B.S. Thagarajababu held the following:
 - ✓ With respect to the first issue, it was held that resale of food and a bakery product does not fall under restaurant services. The Authority differentiate between the services provided by a restaurant and a bakery wherein, in the latter, ready to eat items are sold.
 - ✓ With respect to the second issue, the Authority classifies different products under different Schedules. It provides for the classification of Sweets, Chappathi, Coconut Chutney Powder, etc. specifically by providing the rate applicable on each of the specified item.

**No GST Registration Needed for Co-Owner in
AoP until the Turnover Reached the Threshold
Limit: AAR**

Applicant Name - Sri Rabi Sankar Tah

**Advance Ruling 28/WBAAR/2019-20
Date - 21.10.2019**

Fact of the Case

- In the present case the Applicant is one of the co-owners of immovable property, jointly owned by three individuals.
- All three co-owners, including the Applicant, hold an equal share in the property. The property is let out to CGST & CX, Chandannagar Division.
- Total rental received exceeds the threshold provided under section 22(1) of the GST Act, but the share of each of the

three co-owners does not cross the said threshold.

- The Applicant seeks a ruling on whether he and the other two co-owners are to be treated as an association of persons or a body of individuals and, therefore, a person as defined under section 2(84)(f) of the GST Act, who is required to be registered under section 22(1) of the Act.

Decision of the Case

- The AAR observed that, “the Applicant and the other two co-owners cannot be treated as an association of persons and, therefore, as a person defined under section 2(84)(f) of the GST Act, where their income from renting is separately ascertainable and assessed for income tax individually at the hand of each co-owner.
- The Applicant is required to be registered under section 22(1) of the GST Act will, therefore, depend on his gross turnover, ascertained separately from the other co-owners, exceeding the threshold as provided under the Act”.
- The Authority of Advance Ruling in West Bengal has ruled that, GST Registration is not needed for Co-Owner in Association of Persons (AoP) until the turnover reached the Threshold limit under the GST Act, 2017.

No TDS liability on Co-operative Society under GST from payment made to it by Vendors for Providing Taxable Goods: AAR

Applicant Name - M/S Karnataka co-operative milk producers federation ltd.

**Advance Ruling No. KAR/ADRG 27/2019
Date 12.09.2019**

Fact of the Case

- Karnataka co-operative milk producers federation ltd is the applicant in the present case
- The applicant is registered under the co-operative Society Act 1959
- District Co-operative milk unions are shareholders of the applicant’s organisation.
- Further applicant is a taxable person under the GST Acts and the entire shareholding is with the district milk unions and not with the State

Government of any State or the Central Government or any local authority.

- Hence it is not a department or an establishment of Central Government/ State Government/ local authority. Therefore applicant is not covered under clauses (a) & (b) of Section 51(1) of the CGST Act, 2017.

Decision of the Case

- The AAR observed that, “In the instant case the applicant has not been established by national, regional or local governments but is registered under Co-operative Society Act 1959
- The applicant has not been tasked with any responsibilities by the Government of Karnataka.
- The Directors have been nominated only to safeguard the funds of the said society. Therefore the applicant is not covered under clause (c) of Section 51(1) of the CGST Act 2017.
- The Authority for Advance Ruling, Karnataka has ruled that, TDS provision are not applicable to a cooperative society registered under the Karnataka State Co-operative Society Act, 2001 under GST from the payment made to it by vendors for providing/ procuring taxable goods and services for making its supplies.

DIRECT TAX

Power of the Appellate Tribunal are Co-extensive with Power of the Commissioner u/s 12AA of the IT Act under Certain Circumstances: Allahabad HC

M/S Reham Foundation Kandhari Lane Lal Bagh Lucknow vs. Commissioner of Income Tax Exemption,U.P

**Appeal No. 37/2017
Date – 26.09.2019**

Fact of the Case

- Reham Foundation is the applicant in the present case
- The Appeal was preferred by the revenue against the order of the ITAT directing registration of the Trust under Section 12AA(1)(b) of the Act within a period of 60 days, failing which the Trust shall be deemed to have been registered.

- The DR submits that the power for registration of a Trust or an institution under Section 12AA of the Act has been given to the Commissioner and cannot be exercised by the Tribunal.
- If at all on the scrutiny of the case in Appeal, a case is made out for registration of Trust, the matter is to be remanded to the Commissioner.

Decision of the Case

- The Bench held that in the case where the Commissioner has refused to accept the application for registration of Trust after making a record that the activities and objectives of the Trust are not genuine
- The Appellate Tribunal and the Appellate Tribunal on the basis of the same material on record comes to the conclusion that the order of the Commissioner is perverse since it has been passed ignoring, misconstruing or misinterpreting such evidence, then it can direct registration of the Trust without remanding the matter to the Commissioner.
- The Allahabad High Court in the case of Commissioner of Income Tax Exemption v. Reham Foundation held that the power and jurisdiction of the Appellate Tribunal under Section 254(1) of the Act, 1961 is unfettered thereby enabling the Appellate Tribunal to direct registration of the Trust at its level itself but the same is not open as a matter of course and such power is to be exercised only in certain circumstances.

No TDS u/s 194B on Prize won in Gift Coupons: ITAT

R.V.V. K. Peringanam v. Income-tax Officer

**ITA No. 194/Coch/2019
Date – 07.08.2019**

Fact of the Case

- In the present case R.V.V. K. Peringanam is the applicant
- The assessee made purchases of cloth from a shop and was given a certain number of price coupons on reaching a certain limit of purchase.
- The price coupon given to the assessee was under a scheme of the Kasargod

vyapari Vyavasaya Ekopana Trust. The assessee won one kg of gold and was issued 600 gms of the same after deducting 40% of the price money u/s 194B of the IT Act.

- The assessee filed Nil Return and claimed a refund of the 40% price money. The AO, however, rejected the assessee's claim on the ground that the assessee's price constituted winning from lottery and tax had been rightly deducted. The CIT on being approached by the assessee also ruled against the assessee. Hence the present appeal.
- The assessee submitted that no consideration was paid to participate in the process. The gift coupon is a "free gift coupon".

Decision of the Case

- The Bench constituting of Shri Chandra Poojari and George K ruling in favour of the assessee held that the essential ingredients of 'lottery' prior to 2002 are absent.
- W.e.f. 1.04.2002 It was added was to bring within the purview of Section 194B, winnings from prizes awarded to any person by a draw of lots under any scheme, whether or not the participant had paid a price for acquiring the chance of winning the prize.
- However, since the present appeal relates to AY 2000-2001, the amended definition shall not apply.
- So the case was not covered under section 194B of Income Tax Act

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
20.11.2019	GSTR-5 & 5A for the month of October 2019 - to be filed by the Non-Resident taxable person & OIDAR
20.11.2019	GSTR 3B - for the month of October 2019.

DIRECT TAX CALENDAR - NOVEMBER, 2019

07.11.2019

- Due date for deposit of Tax deducted/collected for the month of October, 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

14.11.2019

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

15.11.2019

- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2019
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of October, 2019 has been paid without the production of a challan
- 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 October, 2019

30.11.2019

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA and section 194-IB in the month of October, 2019
- Annual return of income for the assessment year 2019-20 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
- Audit report under section 44AB for the assessment year 2019-20 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E
- Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transaction
- Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2018-19
- Country-By-Country Report in Form No. 3CEAD by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the accounting year 2018-19
- Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during previous Year 2018-19 (Form No. 64)
- Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2018-19) to units holders
- Due date to exercise option of safe harbour rules for international transaction by furnishing Form 3CEFA
- Due date to exercise option of safe harbour rules for specified domestic transaction by furnishing Form 3CEFB
- Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2018-19. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A
- Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager.
- 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 November 30, 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 November 30, 2019)
- Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company has any international/specified domestic transaction]
- 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 November 30, 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 due date of submission of return of income is November 30, 2019).

DIRECT TAX CALENDAR - DECEMBER, 2019

07.12.2019

- Due date for deposit of Tax deducted/collected for the month of November, 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

15.12.2019

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of November, 2019 has been paid without the production of a challan
- Third instalment of advance tax for the assessment year 2020-21
- Due date for issue of TDS Certificate for tax deducted under section 194-IA and section 194-IB in the month of October, 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 November, 2019

30.12.2019

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA and section 194-IB in the month of November, 2019
- Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2018 to December 31, 2018) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report u/s 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.

SNAPSHOTS – OF TRD ACTIVITIES



SIRC conducted a Seminar on 5th October 2019

Theme - Income Tax And Direct Tax Code - Expectations Ahead

Chief Guest - Dr. G. M. Doss, IRS, Commissioner of Income Tax

Dr. G.M. Doss, IRS, Commissioner of Income Tax inaugurating the Seminar by lighting the Traditional Lamp.

CMA H. Padmanabhan - Chairman Region - Chapter
Coordination Committee, Mrs. Jyothi Satish, Chairperson – SIRC, Rajesh Sai Iyer, RCM – SIRC and other
Income Tax Department Officials graced the seminar.



*CMA H. Padmanabhan, Chairman Region-Chapter
Coordination Committee addressing the Seminar*

Dr. G. M. Doss, IRS, Commissioner of Income Tax handled a Session on ‘Transfer Pricing’.

The other Topics ‘*International Taxation*’, ‘*Any other topics covering Capital Gains and Loss set off*’, ‘*Assessment Procedure*’, ‘*Taxation in Non-Government/Non Profit Organizations*’ & ‘*TDS Provisions and Case Study*’ were handled by Smt. R. Anita - IRS Senior Authorized Representative ITAT, Shri. T. Manimaran - IRS, Assistant Commissioner of Income Tax, Smt. R. Parameswari, Smt. Dhanalakshmi Ravikumar and Shri. R. Devarajan – Income Tax Officers respectively.



TRD in association with NIRC conducted a Seminar on 14.11.2019

Theme of Seminar - Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 and Practical Issues of Annual Return

Chief Guest - Mr. SHAIK KHADER RAHMAN - IRS, Commissioner (IT & Compliance Verification)

Guest of Honor - Mr. RAJNISH GOENKA - Chairman, MSME Development Forum

CMA Biswarup Basu - Vice President of The Institute of Cost Accountants of India, **CMA Niranjan Mishra** - Chairman Indirect Taxation Committee, **CMA Rakesh Bhalla** - Chairman Direct Taxation Committee, **CMA Anil Sharma** - Chairman, NIRC, **CMA P. Raju Iyer** - Chairman, Internal Audit Standards Board, **CMA (Dr.) Sanjay Bhargave** - Practicing Cost Accountant graced the seminar



CMA Niranjan Mishra - Chairman Indirect Taxation Committee delivering his speech during the seminar conducted by NIRC in association with TRD



Tax Research Department conducted a Seminar on Direct Tax and Indirect Tax in association with Mysore Chapter on 16.11.2019

Chief Guest – Mr. S. Rakesh - IRS, Assistant Commissioner, Income Tax

CMA Niranjan Mishra - Chairman, Indirect Taxation Committee, **CMA Vishwanath Bhat** - RCM, SIRC, **CMA Ashok Kumar** - Chairman, Mysore Chapter and other dignitaries graced the seminar

CMA Niranjan Mishra - Chairman Indirect Taxation Committee delivering his speech during the seminar at Mysore



Gurgaon Chapter conducted a Seminar on the topic *"Tax and Cost Conclave"*

Chief Guest – **CMA Rajeev Mehrotra** - CMD (Rites Ltd.)

CMA Anil Sharma – Chairman, NIRC, **CMA Vivek Laddha**-Practicing Cost Accountant, **CMA Aseem Jain**- Practicing Cost Accountant and other dignitaries graced the seminar

Inauguration of **Crash Course on GST** in *Pooja Bhagavat Memorial Mahajana Post Graduation Centre, Mysore* conducted by Tax Research Department in association with Mysore Chapter on 16.11.2019



Lighting of the lamp in the Inauguration and MOU exchange Programme



CMA Niranjan Mishra - Chairman, Indirect Taxation Committee, **CMA Ashok Kumar** - Chairman, Mysore Chapter, **CMA Sreepada H. R** - Chairman, Bengaluru Chapter, **Dr. C.K Renukarya** - Director of PBMMEC College, **Dr. Bhavani** - HOD - Directorate of Studies, Commerce of PBMMEC College, **Mr. Srinivas K.R** - Assistant Professor of PBMMEC College and other dignitaries graced the occasion

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.

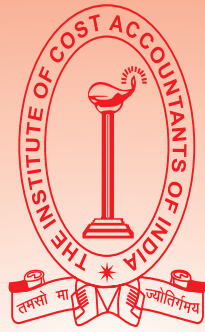
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