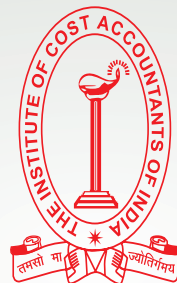


JANUARY, 2020



TAX Bulletin

★ ★ VOLUME - 55 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

www.icmai.in

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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 and also Crash Courses on GST for Colleges and Universities.

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CMA Rakesh Bhalla
Chairman, Direct Taxation Committee



CMA Niranjana Mishra
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends, Members and Professional Colleagues,

Greetings from The Tax Research Department, and wishing you a very happy and prosperous New Year Ahead...!! May lord bless you with health and happiness.

We would like to start by thanking each one of our Council Colleagues, Members, Resource Persons, Corporate Delegates, Government Officials and stake holders for participating whole heartedly and making the National Seminar on Taxation a grand success. It was organized by the Tax Research Department along with the Bhubaneswar Chapter on the theme “**Conducive Tax Laws - Challenges & Opportunities**” on the 21st and 22nd of December, 2019 at Bhubaneswar.

The Seminar was widely appreciated. Shri Padmanabha Behera, Hon’ble Cabinet Minister, Planning Convergence, Commerce and Transport, Govt. of Odisha and Shri Ranendra Pratap Swain, Hon’ble Cabinet Minister, Food Supplies & Consumer Welfare, Cooperation, Govt. of Odisha attended the seminar as Chief Guest on the 1st day along with Ms Aparajita Sarangi, Hon’ble Member of Parliament (Lok Sabha) attending the seminar as Chief Guest on 2nd day. CMA Govind Krishna Dixit, IRS, Commissioner, Department of Revenue, CBIC (Customs and CGST), New Delhi also graced the occasion. It was also illuminated by the esteemed presence of the President and Vice President of our Institute along with our other Council Colleagues. Eminent Tax experts, CBIC and CBDT officials and more than 550 participants joined the seminar. 11 noteworthy publications have also been released by the Tax Research Department in the seminar which addresses the areas of Direct and Indirect Taxation in present economic situation in our economy.

We would also like to bring to your kind notice that the admissions for Certificate Course in GST and Advanced Certificate Course in GST in indirect taxation and Certificate Course in Filing of Returns and Certificate Course on TDS are going on in full swing and the last dates are nearby. We urge the learners to take part in the courses and upgrade their knowledge. The Crash Course on GST for Colleges and Universities are also undergoing at various locations PAN India and some are in pipeline in locations like Kolkata, Chennai, Madurai to name a few.

We are confident that the year 2020 would be a year of achievement and accolades for Team Tax Research and the team would keep on working with zeal and passion on all their deliverables. Wish you all the luck – Team TRD.

Jai Hind

(Rakesh Bhalla)

CMA Rakesh Bhalla
7th January 2020

CMA Niranjana Mishra
7th January 2020

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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



GST BLOCKED CSR...?

CMA Anil Sharma

Practicing Cost & Management Accountant

Goods and Service tax was rolled out in midnight of 1st July 2017 with big bang and whole country witnessed it. In federal system of the country GST was a challenge for any government that is why it took almost seventeen years to get matured. After its introduction, it brought many new concepts, thoughts and discussions among stakeholders. As it was consumption based tax, it changed whole indirect tax mechanism in the country. It also brought many new issues like mixed supply, composite supplies, and new POS rules etc. etc.

As GST was IT driven indirect tax system, it thrown many challenges for IT professionals and policy makers also. It has affected almost every business transaction may be supply of goods, services, purchases, sponsorship, donations, charity and even non-business transactions to the extent. One of such transactions is Corporate Social Responsibility (CSR).

What is Corporate Social Responsibility?

When Company's Act 2013 was implemented wef 01.04.2013, concept of Corporate Social Responsibility (CSR) was brought in. Section 135 of the said Act, effective from April 1, 2014, talks about CSR. For better understanding to the provisions of the said section, the same is reproduce here under:

Sec. 135(1) Every company having **net worth of rupees five hundred crore** or more, or **turnover of rupees one thousand crore** or more or **a net profit of rupees five crore** or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in **Schedule VII**;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, **at least two per cent.** of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Company's Act 2013 has made CSR mandatory for a class of companies to spend at least 2% of their average net profit in activities as listed in Schedule –VII of the act.

The basic reason and spirit of the law of having CSR under Company's Act, 2013 is to make it a key business process for sustainable growth of the country and the society at large.

'Net profit' is end result of any business transaction. After having net profit there is no business transactions and new business cycle starts. Law made mandatory to spend 2% of net aggregate profit of the company. To execute the provisions of the law, companies undertake various activities and during process of CSR buy or supply goods or services which are subject to Goods and Services Tax (GST) at the rates as applicable on each.

Financial Implication of GST:

If any company having net aggregate profit of Rs. Ten Crore in any F/Y than its CSR liability comes to Rs. 20.00 lakh i.e 2% of net profit. So, in this case company has to spent Rs. 20.00 lakh minimum on its CSR activities. Under GST provisions if company spent this amount on items, as listed in schedule-VII of the Company's Act, 2013, which are subject to GST say 18% than minimum Tax amount is Rs. 3.60 lakh (Rs. 20.00 Lakh *18%). Similarly, for more profits more tax will be paid as illustrated below:

Sr No	Net Profit (in Cr.)	CSR Amt @2% (Rs in Lakh)	GST @18% (Rs. in Lakh)
1	10.00	20.00	3.60
2	100.00	200.00	36.00
3	1000.00	2000.00	360.00

So any company having net profit of Rs. 100.00 Crore a year has to pay GST for Rs. 36.00 lakh on its CSR activities which is not a small amount for any one may be company or exchequer.

Input Tax Credit (ITC) on CSR Activities:

It's a much debated topic weather ITC is available on CSR expenses or not? Weather ITC should be allowed or not?

Section 17(5) deals with the cases or transactions where ITC is not available or allowed. Section 17(5)(h) reproduced as under:

17(5)(h): *goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples,..*

So, under CSR companies spend money for the welfare of the society and supply goods free of cost to the community at large. Though, it's a cost to the company and company is spending money out of its earnings. But big question is whether ITC on account of GST paid on these expenses can be made available to the companies or not?

Arguments in favour of 'allow ITC' on CSR Expenses.

- Company incur expenditure on such activities as listed out in law itself
- It's a legal binding under Company's Act 2013.
- CSR improve company's brand image and create goodwill.
- Expenses incurred on CSR are 'in furtherance of business' as it has impact on business of the company in long run.

Arguments against 'allowing ITC' on CSR expenses:

- CSR expenses are to be undertaken by the company as per its stated policy but should not include its normal business activities.
- CSR activities are being undertaken free of cost and supplied without consideration.

- CSR expenses are not ‘in furtherance of the Business’ as company deals in some other activities not in goods or services provided under CSR,
- Expenses incurred out of net profits of the company which is end result of any business transactions.
- CSR expenses are application of money earned out of business.
- Spirit of the law is to do charity through CSR mechanism and not by deriving any benefit out of it. Otherwise it will defeat the purpose and hit hard the sentiments of society.

Company’s (Corporate Social Responsibility Policy) Rules-2014:

Rule 4(1): The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects, programs or activities (either new or existing), excluding activities undertaken in pursuance of its normal course of business.

Rule 4(5): The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act.

Proviso below Rule 6(1) (b): Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.

Rule 6(2): The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

Rule 7: CSR expendituredoes not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

Treatment of CSR in Cost Accounting Records:

Under Section 148 of Companies Act 2013, class of companies is required to maintain its Cost records for the products manufactured and get these records Audited in the manner as may be prescribed.

As per the guiding note issued by the Institute of Cost Accountants of India (ICMAI-CMA) regarding treatment of CSR expenses while working out the cost of any product, it treat CSR as non-cost item hence do not charge these expenses to cost of sale or cost of production. As per said guiding note CSR expenses are not business expenses and do not have direct impact on its production or cost of products. Even any assets created out of CSR activities do not form part of company’s assets. Similarly, any profit or gain from such activities does not form part of company’s profits. CSR expenses are philanthropic in nature hence, any benefit, present or future does not flow into company’s profits.

CSR and Income Tax Act, 1961

Under the existing provisions of the Income-tax Act, expenditure incurred wholly and exclusively for the purposes of the business is allowed as a deduction for computing taxable business income. Finance Act, 2014 made an amendment in section 37 of the Income Tax Act, from the financial year 2014-15 disallowing any expenditure incurred by the assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013.

Considering all fact and provisions of different laws i.e Company’s Act 2013, Income tax Act, 1961 and CGST Act., 2017,and rules framed their under, in gross sense ITC should not be allowed otherwise it will defeat the very purpose of CSR and social service by corporate from their earnings. In our religion and culture also there is a say.....”*Nekki kar dariya main daal*”

Valuation of CSR expenses:

If the quantum of GST in CSR is so high than definitely valuation issue of such CSR activities/expenses should also to be addressed. Question comes whether CSR amount as determined under law is inclusive of GST or not? In above said illustration, if CSR is inclusive of GST that it can be a big relief to the companies.

Law made it mandatory to spend at least 2% of net aggregate profit on CSR. If ITC is not available to Companies on GST paid for such expenses than tax portion become part of cost of expense incurred. If that is

the case, than definitely CSR expenses and GST paid on these expenses must be considered as compliances under the law. It means expenses incurred on CSR are basic value plus GST as applicable.

Case Laws:

Advance ruling on CSR in GST regime

In the case of *Polycab Wires Pvt Ltd* reported at 2019-VIL-100-AAR, the applicant had distributed electrical goods to people affected by flood in Kerala against discharge of its CSR obligations. The Kerala AAR held that the applicant distributed electrical items on free basis without collecting any money and for these transactions input tax credit would not be available as per Section 17(5)(h) of the KSGST Act and CGST Act.

In the case of *Essel Propack v. Commissioner* [2018-TIOL-3257-CESTAT-Mumbai], CESTAT observed that CSR undertaken by the company for specific reasons, is not in the nature of charity as it has got a direct relation on its manufacturing activities which is largely dependent on smooth supply of raw materials.

Supply of Goods for CSR is subject to GST:

In case of M/s Indian Institute of Corporate Affairs, it was held that the amount paid by the companies to external agencies for CSR activities to undertake specified projects would be considered as 'Consideration'. Thus, executing CSR activities as per companies' direction would be interpreted as Supply, and GST would be applicable on the same.

ITC on services used for CSR

According to sub-section (5)(h) of Section 17, ITC is not available for "*goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples*".

If we go by the words of said sub-sections, restriction is on free distribution of goods and does not restrict ITC on provision of free services rendered for.

In the case of *CIT v. Ajax products Ltd* reported at (1965) 55 ITR 741, the Apex Court had held that *there was no scope for intendment where the words used by the legislature were clear and unambiguous.*

Therefore, based upon above arguments, the restriction under Section 17(5)(h) cannot be made applicable on free provision of services. But that is not the spirit of the law as for as CSR is concerned and government must come out with some clarification to avoid unnecessary litigation on the issue.



E INVOICING

CMA Rajendra Rathi
General Manager
Indirect Taxation, Reliance Industries

The objective of bringing E invoicing in India is

- (1) To pre-populate data in the relevant GST returns and reduce the reconciliation process. (E invoice has unique invoice reference number (IRN) generated by invoice registration portal (IRP))
- (2) Aims to make invoice reporting an integral part of a business process and remove the tedious task of invoice-compilation at the end of a return period.
- (3) To control on Claiming fictitious Input Tax Credit (ITC) by raising fake invoices is also one of the biggest challenges currently faced by tax authorities.
- (4) E way bill may not be required later
- (5) Inter-operable eliminating transcription and other errors.

Currently over 60 countries which have adopted this method of invoice generation and population, and India could be one such country soon to be added to the list.

The generation of e-invoice will be the responsibility of the taxpayer who will be required to report the same to Invoice Registration Portal (IRP) of GST.

This portal will generate a unique Invoice Reference Number (IRN) and digitally sign the e-invoice and also generate a QR code.

The QR Code will contain vital parameters of the e-invoice and return the same to the taxpayer who generated the document in first place. The IRP will also send the signed e-invoice to the recipient of the document.

Summary of recent Notifications on E invoicing

Sr no	Notification no date	Relevant subject/Rule	Comments
1	68/2019 Dated 13-12-2019	CBIC amends Manner of Issuing Tax Invoice under GST Insertion of Sub Rule (4), (5) & (6) to Rule 48 of CGST Rule 2017	48(4) Given Power to Govt to make Rule for E invoice preparation through Common GST Electronic portal for such class of registered person as Notified. 48(5) :- Every invoice (Mandatory e invoice) issued as per rule 48(4) will be consider invoice and other than manner specified shall not be treated as an invoice. 48(6) :- Printing of Triplicate/Duplicate is not required in case of e invoicing
2	69/2019 Dated 13-12-2019	Notified common GST Electronic portal for E invoicing	E invoice can be prepared on these 10 common GST E portal w.e.f.01-01-2020 (Voluntary) (from 01-04-2020 mandatory for turnover exceeding 100 crs.)
3	70/2019 dated 13-12-2019	CBIC notifies Class of registered person required to issue e-invoice under GST Threshold limit for E invoicing for B2B	E invoice mandatory with effective from 01-04-2020 for as a class of registered person whose aggregate turnover in FY exceeds 100 crores to a registered person.

4	71/2019 dated 13-12-2019	CBIC notifies rule 46 of CGST Rules, 2017 (Tax Invoice) w.e.f. 01.04.2020	B TO C invoice need to issue with QR Code w.e.f 01-04-2020
5	72/2019 Dated 13-12-2019	Thresh hold limit for B2C invoice with QR Code Class of registered person required to issue GST invoice having QR Code	If turnover in a FY exceeds to 500 crores to an unregistered person shall have QR code on B 2 C invoice. In case where such registered person makes Dynamic Response Code (QR) available to recipient through a display ,such B 2C invoice containing cross reference of payment using Dynamic QR code shall be deemed to be QR Code

From above it can be concluded that

- (a) Industry/Firm, need to modify their ERP system to integrate with specific tool /technology to generate an invoice reference number (IRN) for E invoice.
- (b) Customer/Service/Vendor master need to be updated according to new requirement to generate invoice in timely /correctly and to book input tax credit in system.

Further, all important data availability will be in system, display of good health of firm resulting good offer from bankers for loan on reduced rate.

Above is compilation of information on subject available till date.



INPUT TAX CREDIT MECHANISM UNDER THE NEW GST RETURN SYSTEM

CMA Abhijit Khasnobis
Practicing Cost Accountant

1. Overview: The new GST return system or GST 2.0 was proposed by Shri Nandan Nilekani and is applicable for all regular taxpayers. As per the decision of 37th GST Council meeting, the new GST return system will now be implemented from April 2020. However, the prototype of this new return system is already available in the GST home page for assesses to have a hand on experience of the various features of this new system and can send their feedback in a structured template as provided in the GST portal.

Under the new GST return system, regular taxpayers are classified under two turnover categories:-

- ❖ **Small Taxpayers** – having turnover of upto ₹ 5 crore in the last financial year. These small taxpayers shall have the facility to file quarterly return with monthly payment of taxes on self-declaration basis. Moreover, the return filing of these small taxpayers are further classified based on the type of transaction carried on by them as shown below,
 - **Normal Quarterly Return (RET-1)** - taxpayers having all types of outward supplies viz., B2B, B2C, Export, SEZ, E-commerce etc.
 - **SAHAJ Quarterly Return (RET-2)** – taxpayers having only B2C type outward supplies.
 - **SUGAM Quarterly Return (RET-3)** – taxpayers having B2B and B2C type outward supplies.

With the increase of turnover limit from ₹ 1.5 crore to ₹ 5 crore for small taxpayers the filing burden will be reduced for more than 93% taxpayers in the country who may now share the quarterly return platform. This will also ensure lower risk of system breakdown as it will now work with a balance load.

- ❖ **Large Taxpayers** – having turnover more than ₹ 5 crore in the last financial year. These large taxpayers shall be compulsorily required to file monthly return as well as monthly payment of taxes on self-declaration basis.

All the above taxpayers are also required to furnish two annexures – **ANX-1** (to report liability from outward supplies) and **ANX-2** (Information on ITC from inward supplies).

2. Exceptions: The new return system facility shall not be extended to certain category of taxpayers like Composition taxpayers, Non-resident or Casual taxpayers, Input Service Distributor (ISD), Persons liable to deduct tax at source under section 51 of CGST Act, 2017 and Persons liable to collect tax at source under section 52 of CGST Act, 2017.

3. ITC Control Mechanism: Apart from providing simplified return forms to ensure ease of filing, this new return system will bring-in host of control mechanisms to streamline the phenomena of availment of input tax credit and tracking of missing supplier invoices. Some of the key features introduced in this respect are:

a. Continuous uploading and viewing of Invoices:

- The suppliers will be allowed to continuously upload their invoices anytime during the month and these uploaded invoices shall be continuously visible to the recipient. Such uploaded invoices would act as valid documents for claiming input tax credit by the recipient. Moreover, all invoices uploaded by the supplier by 10th of the succeeding month shall be auto-populated in the liability table of the supplier i.e. ANX-1. Also these invoices will feature in ANX-2 of the recipient for that month so that actions can be initiated by the recipient to avail the input tax credit against such purchases after 11th of the next month. Any invoice uploaded after 10th of the succeeding month will be populated in the liability table of the supplier in the subsequent month.

- For example, if invoice no. 1 of December is uploaded on 8th of January and invoice no. 2 of December is uploaded on 15th of January by the supplier, the recipient shall be able to avail input tax credit for invoice no. 1 with the return of December filed on say 20th January and for invoice no. 2 he shall be able to avail input tax credit with the return filed for the month of January, filed on say 20th of February.
- However, the recipient would be allowed to avail input tax credit on self- declaration basis even if the invoices are not uploaded by the supplier by 10th of the next month or thereafter using the facility of availing input tax credit on missing invoices. This facility will be available during the transition phase of six months after the new return system is implemented.
- The recipient will also be provided with a “viewing facility” using which the recipient shall be allowed to see the return filing status of the supplier after the due date of filing of return and thus be aware whether the tax liability on purchases made by him has been discharged by the supplier or not.

b. Invoices uploaded but return not filed by the supplier:

- **In case of supplier who files return monthly** – Supplier uploads invoices in GST ANX-1 but does not file two returns for the month of ‘M’ and ‘M+1’. Then from 10th of ‘M+3’ onwards , for invoices auto-populated in GST ANX-2 of the recipient, no ITC entitlement will be there for invoices uploaded in GST ANX-1 for the month ‘M+2’ and onwards.
- **In case of supplier who files return quarterly** – Supplier uploads invoices in GST ANX-1 but does not file ‘Q’ quarter return for two months. Then from 10th of ‘M+3’ onwards , for invoices auto-populated in GST ANX-2 of the recipient, no ITC entitlement will be there for invoices uploaded in GST ANX-1 for the quarter ‘Q+1’ and onwards.

c. Unidirectional Flow of documents:

- The recipient will be allowed to avail input tax credit only on the basis of the invoices or debit notes uploaded by the supplier on the common portal. However, if the recipient avails input tax credit on the basis of invoices or debit notes which are not uploaded by the supplier, then such invoices or debit notes are referred to as ‘missing invoices’. Where credit is availed on missing invoices by the recipient and such missing invoices are not uploaded by the supplier within the prescribed time period, input tax credit availed in relation to such invoices or debit notes shall be recovered from the recipient.

d. Missing invoice reporting:

- Reporting of missing invoices to be made by the supplier, in the main return for any tax period, along with applicable interest and penalty.
- Reporting of missing invoices by recipient can be delayed up to two tax periods to allow recipient to follow up and get the missing invoice uploaded from the supplier. Taxpayers filing quarterly returns shall report missing invoices in the next quarter.
- For example, purchase invoices received by recipient in December on which input tax credit has been availed but not uploaded by the supplier, shall be reported by the recipient not later than the return of February filed in March.

e. Tracking of supplier invoices and provisional availment Input tax credit:

Supplier Details	Month 1 – December’ 2019		
	Purchase Register (₹)	ANX-2 (₹)	Action taken by recipient in December’2019
Supplier A (Regular filer)	1000	1000	1) Input tax credit of Supplier A i.e. ₹ 1000 is availed by choosing ‘Accept’ option in ANX-2. 2) Input tax credit of Supplier B ₹ 500 & Supplier C ₹ 300 is availed on self-declaration basis in RET-1 (Sec 4A -10 of RET-1). 3) Total ITC claimed ₹ 1800 in December’2019.
Supplier B (Late filer)	500	0	
Supplier C (Non- filer)	300	0	

Supplier Details	Month 2 – January' 2020		
	Purchase Register (₹)	ANX-2 (₹)	Action taken by recipient in January'2020
Supplier A (Regular filer)	2000	2000	1) Input tax credit of Supplier A i.e. ₹ 2000 is availed by choosing 'Accept' option in ANX-2. 2) Input tax credit of Supplier B i.e. ₹ 500 is availed by choosing 'Accept' option in ANX-2 on being uploaded by the supplier in ANX-1. 3) Reversal of ITC of Supplier B ₹ 500 in RET-1(Sec 4A-3 of RET-1) as the same is already availed in the previous month on provisional basis. 3) Total ITC claimed ₹ 2000 in January'2020.
Supplier B (Late filer)	0	500	
Supplier C (Non- filer)	0	0	

Supplier Details	Month 3 – February' 2020		
	Purchase Register (₹)	ANX-2 (₹)	Action taken by recipient in February'2020
Supplier A (Regular filer)	3000	3000	1) Input tax credit of Supplier A i.e. ₹ 3000 is availed by choosing 'Accept' option in ANX-2. 2) Input tax credit of Supplier C ₹ 300 to be reported in ANX-1 (Sec 3L) at invoice level- as the recipient is required to report missing documents on which ITC has been claimed in T-2/T-1 (for quarterly filer) tax period and as the Supplier had not reported the same till the filing of return for the current tax period. 3) Total ITC claimed ₹ 3000 in February'2020.
Supplier B (Late filer)	0	0	
Supplier C (Non- filer)	0	0	

4. Conclusion: The new GST return system with quarterly filing facility for small taxpayers is no doubt a welcome move as it will relieve them from the filing burden. However, the tax payment will continue to be made on monthly basis which to some extent will dilute the euphoria of this quarterly filing privilege. It would have been more attractive if the payment also could have been made on quarterly basis like composition assesses or as existed in the service tax regime for individual, proprietor or partnership firms. Another critical area that needs to be monitored is where the supply takes place between the Quarterly return filer and Monthly return filer.



ROLE BACK OF PENALTY PROCEEDINGS FROM SECTION 271(1)(C) TO SECTION 270A

Tapas Majumdar
Advocate & Tax Consultant

We.f. the normal assessment which is going to be barred on 31/12/2019 pertaining to the F.Y. 2016-17 the existing provisions and procedures of initiation of penalty has become widened replacing section 271(1) (C) to section 270A of the Income tax Act.

Here the Assessing Officers must be careful so as to initiate the penalty proceedings u/s 270A correctly and the same will be initiated on satisfaction of any one of the following basic elements as under.

- i. under-reporting of income or
- ii. under-reporting in consequence of misreporting thereof.

Taking into consideration above case laws and provisions of section 270A, penalty u/s 270A may be initiated as follows:

1. Penalty proceedings u/s 270A of Income Tax Act are hereby initiated for under-reporting of income
2. Penalty proceedings u/s 270A of Income Tax Act are hereby initiated for under-reporting of income which is in consequence of misreporting thereof.

Two different rates are applicable herein.

One @ 50% & another @ 200% which are required to be levied u/s 270A based on the addition of Income. Hence, after each addition, it must be clearly specified whether penalty is being initiated on what grounds.

Section 270A has clearly defined under-reporting of income in Section 270A(2) and misreporting of income in Section 270A(9). In comparison, 'furnishing inaccurate particulars of income' and 'concealed particulars of income' were not defined in section 271(1)(c). Hence, as far as possible, while recording satisfaction for initiation of penalty, the assessing officer should try to identify in which clause or sub-clause of Section 270A(2) or Section 270A(9) that particular addition falls. Similarly, in the penalty order also the relevant clause or sub-clause of Section 270A(2) or Section 270A(9) should be specified. Moreover, if the assessing officer has specified the clause or sub-clause in assessment order, it is essential that in the penalty order also, same clause or sub-clause has to be relied upon.

Courts have consistently held that at the time of initiation of penalty, charge should be clearly specified. Understanding of this basic concept by the assessing officers will go a long way in correct initiating of penalty and passing of sustainable penalty orders. Each and every word in the sentence for initiation of penalty is crucial. Hence, the assessing officers must stop, think and ponder before recording satisfaction for initiation of penalty.

As reproduced above, Hon'ble Karnataka High Court in the case of CIT Vs Manjunatha Cotton & Ginning Factory held that notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Similarly, in the printed notice u/s 274 r.w.s 270A, it is essential to tick the applicable part in printed penalty notice and strike off inapplicable part in printed penalty notice. Thus, if penalty is initiated only for under reporting of income, the printed notice must not contain mention of misreporting of income. In such a case, misreporting of income is required to be essentially struck off.

Section 270AA provides for immunity from imposition of penalty u/s 270A. The section is reproduced below:

Immunity from imposition of penalty

270AA. (1) An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, if he fulfils the following conditions, namely:

a) the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of section 143 or section 147, as the case may be, has been paid within the period specified in such notice of demand; and

b) no appeal against the order referred to in clause (a) has been filed.

(2) An application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in clause (a) of sub-section (1) has been received and shall be made in such form and verified in such manner as may be prescribed.

(3) The Assessing Officer shall, subject to fulfillment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, where the proceedings for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A.

(4) The Assessing Officer shall, within a period of one month from the end of the month in which the application under sub-section (1) is received, pass an order accepting or rejecting such application”

In view of the above provision, penalty u/s 270A is required to be waived by the assessing officer if the assessee pays entire tax and interest within the time specified in notice of demand and does not file appeal against the order. However, it may be noted that in view of provisions of section 270AA(3), immunity is not provided for cases of misreporting of income refer to in section 270A(9).

Penalty proceedings u/s 271(1)(c) are required to be initiated in assessments upto A.Y. 2016-17. In view of various case laws discussed above, as far as possible, penalty u/s 271(1)(c) for a particular addition should be initiated either for furnishing inaccurate particulars of income or concealment of income, not both limbs. Penalty u/s 271(1)(c) may be initiated as follows:

- i. Penalty proceedings u/s 271(1)(c) of Income Tax Act are initiated for furnishing inaccurate particulars of income
- ii. Penalty proceedings u/s 271(1)(c) of Income Tax Act are initiated for concealing particulars of income

Penalty proceedings u/s 271(1)(c) initiated in the following manner may not stand the test of appeal:

- i. Penalty proceedings u/s 271(1)(c) are initiated for furnishing inaccurate particulars of income and concealing particulars of income
- ii. Penalty proceedings u/s 271(1)(c) are initiated for furnishing inaccurate particulars of income or concealing particulars of income
- iii. Penalty proceedings u/s 271(1)(c) are initiated for furnishing inaccurate particulars of income and/or concealing particulars of income

Thereafter, inapplicable part in printed penalty notice is required to be struck off

Thus, correct initiation of penalty is the foundation upon which entire penalty order stands. Correct initiation of penalty after due application of mind will go a long way in penalty orders being sustained.

Penalty in Cash Deposit Cases

Assessing Officers are making addition u/s 68 or section 69A of Income Tax Act on account of unexplained cash deposits.

In many cases, Assessing Officers have initiated penalty u/s 271(1)(c) or 270A.

In this regard, attention is drawn to provisions of section 271AAC of Income Tax Act applicable from A.Y. 2017-18 onwards. Penalty is required to be levied under this section where addition has been made u/s section 68, section 69, section 69A, section 69B, section 69C or section 69D and tax is payable u/s 115BBE of IT Act. Section 271AAC is reproduced below:

Penalty in respect of certain income.

271AAC. (1) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

(2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Hence its undoubtly remarkable that the new provisions make stronger to the department and the Assessing Officer also where the assessee should give proper attention while filing Income Tax Return.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

Central Tax Notifications

Notification No. 74/2019 – Central Tax

Date – 26th December 2019

Seeks to waive late fees for non- filing of FORM GSTR-1 from July, 2017 to November, 2019

CBIC has made amendments in the Notification No. 4/2018– Central Tax, dated the 23rd January, 2018.

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

Amendment - “Late fee payable under section 47 for non-filing of GSTR 1 for the months/quarters from July, 2017 to November, 2019 by the due date has been waived if GSTR 1 is filed between 19th December, 2019 to 10th January, 2020.”

Notification No. 75/2019 – Central Tax

Date – 26th December 2019

Seeks to carry out changes in the CGST Rules, 2017

- Maximum ITC can be availed up to 10% of eligible ITC for invoices which are not reflecting in GSTR 2Ae.f. 01.01.2020 earlier it was 20%
- New rule 86A has been inserted
- ✓ Where the proper officer has reason to believe that ITC available in E-Credit Ledger has been fraudulently availed or is ineligible may, for reasons to be recorded in writing, not allow utilization of such ITC or refund of unutilized amount to the extent of:
 - ITC availed for the invoices issued by the supplier who has been found non-existent or not to be conducting any business from any place for which registration has been obtained.
 - ITC availed without the receipt of goods or services or both.
 - ITC availed in respect of the supply, the tax charged in respect of which has not been paid to Govt.
 - The recipient has been found non-existent or not to be conducting any business from any place for which registration has been obtained;.
 - ITC availed for which Tax invoice or other valid document is not in the possession of the registered person.

For more details, please follow - <http://cbic.gov.in/resources/htdocs-cbec/gst/notfctn-75-central-tax-english-2019.pdf>

Notification No. 76/2019 – Central Tax

Date – 26th December 2019

Seeks to extend the due date for furnishing of return in FORM GSTR-1 for registered persons in Assam, Manipur or Tripura having aggregate turnover more than 1.5 crore rupees for the month of November, 2019

CBIC has made amendments in Notification No.46/2019 – Central Tax, dated the 9th October, 2019.

Amendment - “The time limit for filling GSTR 1 for registered persons having principal place of business is in Assam, Manipur or Tripura and having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the month of November, 2019 has been extended till 31st December, 2019.”

Notification No. 01/2020 – Central Tax
Date – 1st January 2020

Seeks to bring into force certain provisions of the Finance (No. 2) Act, 2019 to amend the CGST Act, 2017

CBIC has appointed 1st January, 2020, as the date on which the provisions of sections 92 to 112, except section 92, section 97, section 100 and sections 103 to 110 of the Finance (No. 2) Act, 2019 (23 of 2019), has come into force.

Notification No. 02/2020 – Central Tax
Date – 1st January 2020

Seeks to make amendment (2020) to CGST Rules

CBIC has amended the Central Goods and Services Tax Rules, 2017, namely:-

- These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2020.
- Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 117,-

- (a) in sub-rule (1A), with effect from the 31st December 2019, for the figures, letters and word “31st December, 2019”, the figures, letters and word “31st March, 2020” shall be substituted; (b) in sub-rule (4), in clause
- (b) in sub-clause (iii), in the proviso, for the figures, letters and word “31st January, 2020”, the figures, letters and word “30th April, 2020” shall be substituted

For more details, please follow - <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-02-central-tax-english-2020.pdf>

Notification No. 03/2020 – Central Tax
Date – 1st January 2020

Seeks to amend the notification No. 62/2019-CT dt. 26.11.2019 to amend the transition plan for the UTs of J&K and Ladakh

CBIC has amended in the Notification No. 62/2019–Central Tax, dated the 26th November, 2019.

In the said notification,–

- (i) in paragraph 2, in clause (iii), for the figures, letters and words “30th day of October, 2019” and “31st day of October”, the figures, letters and words “31st day of December, 2019” and “1 st day of January, 2020” shall respectively be substituted;
- (ii) in paragraph 3, for the figures, letters and words “31st day of October, 2019”, the figures, letters and words “1st day of January, 2020” shall be substituted.

For more details, please follow - <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-03-central-tax-english-2020.pdf>

Central Tax (Rate) Notifications

Notification No. 27/2019 – Central Tax (Rate)
Date – 30th December 2019

Seeks to further amend notification No. 01/2017-Central Tax (Rate), to change the rate of GST on goods as per recommendations of the GST Council in its 38th Meeting

CBIC has made further amendments in the Notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017.

In the said notification, -

- (a) in Schedule II - 6%, serial numbers 80AA and 171A and the entries relating thereto shall be omitted;
 (b) in Schedule III - 9%, after serial number 163A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:

“163B	3923 or 6305	Woven and non-woven bags and sacks of polyethylene or polypropylene strips or the like, whether or not laminated, of a kind used for packing of goods;
163C	6305 32 00	Flexible intermediate bulk containers”.

This notification has come into force on the 1st January, 2020.

Notification No. 28/2019 – Central Tax (Rate)
Date – 31st December 2019

To amend notification No. 12/ 2017- Central Tax (Rate) so as to exempt certain services as recommended by GST Council in its 38th meeting held on 18.12.2019

CBIC has made amendments in the Notification No.12/2017- Central Tax (Rate), dated the 28th June, 2017. In the said notification, in the Table, against serial number 41, -

- (a) in column (3), for the figure “50”, at both the places where they occur, the figure “20 ” shall be substituted;
 (b) for the entry in column (5), the following entries shall be substituted, namely, -

(5)
<p>“Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:</p> <p>Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:</p> <p>Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:</p> <p>Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.”.</p>

This notification has come into force on the 1st January, 2020.

Notification No. 29/2019 – Central Tax (Rate)
Date – 31st December 2019

To amend notification No. 13/ 2017- Central Tax (Rate) so as to notify certain services under reverse charge mechanism (RCM) as recommended by GST Council in its 38th meeting held on 18.12.2019

CBIC has made amendments in the Notification No.13/2017- Central Tax (Rate), dated the 28th June, 2017. In the said notification, in the Table, for serial number 15 and the entries relating thereto, the following shall be substituted, namely: -

(1)	(2)	(3)	(4)
“15	Services provided by way of renting of any motor vehicle designed to carry	Any person, other than a body corporate who supplies the service	Anybody corporate located in the

passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate	to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient	taxable territory.”
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Integrated Tax Notifications

Notification No. 01/2020 -Integrated Tax

Date – 1st January 2020

Seeks to bring into force certain provisions of the Finance (No. 2) Act, 2019 to amend the IGST Act, 2017

CBIC has appointed the 1st January, 2020, as the date on which the provisions of section 114 of the Finance (No. 2) Act, 2019 (23 of 2019) shall come into force.

Integrated Tax (Rate) Notifications

Notification No. 26/2019 -Integrated Tax (Rate)

Date – 30th December 2019

Seeks to further amend notification No. 01/2017-Integrated Tax (Rate), to change the rate of GST on goods as per recommendations of the GST Council in its 38th Meeting

CBIC has made amendments in the Notification No.1/2017- Integrated Tax (Rate), dated the 28th June, 2017. In the said notification, -

- (a) in Schedule II - 12%, serial numbers 80AA and 171A and the entries relating thereto shall be omitted;
 (b) in Schedule III - 18%, after serial number 163A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

“163B	3923 or 6305	Woven and non-woven bags and sacks of polyethylene or polypropylene strips or the like, whether or not laminated, of a kind used for packing of goods;
163C	6305 32 00	Flexible intermediate bulk containers”.

This notification has come into force on the 1st January, 2020.

Notification No. 27/2019 -Integrated Tax (Rate)

Date – 31st December 2019

To amend notification No. 9/ 2017- Integrated Tax (Rate) so as to exempt certain services as recommended by GST Council in its 38th meeting held on 18.12.2019

CBIC has made amendments in the Notification No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017. In the said notification, in the Table, against serial number 43, -

- (a) in column (3), for the figure “50”, at both the places where they occur, the figure “20 ” shall be substituted;
 (b) for the entry in column (5), the following entries shall be substituted, namely, -

(5)
“Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area: Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard: Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever,

the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:

Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.”.

This notification has come into force on the 1st January, 2020.

**Notification No. 28/2019 -Integrated Tax (Rate)
Date – 31st December 2019**

To amend notification No. 10/ 2017- Integrated Tax (Rate) so as to notify certain services under reverse charge mechanism (RCM) as recommended by GST Council in its 38th meeting held on 18.12.2019

CBIC has made amendments in Notification No.10/2017- Integrated Tax (Rate), dated the 28th June, 2017. In the said notification, in the Table, for serial number 17 and the entries relating thereto, the following shall be substituted, namely: -

(1)	(2)	(3)	(4)
“17	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient	Anybody corporate located in the taxable territory.”

Union Territory Tax (Rate) Notifications

**Notification No. 27/2019 - Union Territory Tax (Rate)
Date – 30th December 2019**

Seeks to further amend notification No. 01/2017-Union Territory Tax (Rate), to change the rate of GST on goods as per recommendations of the GST Council in its 38th Meeting

CBIC has made amendments in the Notification No.1/2017-Union Territory Tax (Rate), dated the 28th June, 2017.

In the said notification, -

- (a) in Schedule II - 6%, serial numbers 80AA and 171A and the entries relating thereto shall be omitted;
- (b) in Schedule III - 9%, after serial number 163A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

“163B	3923 or 6305	Woven and non-woven bags and sacks of polyethylene or polypropylene strips or the like, whether or not laminated, of a kind used for packing of goods;
163C	6305 32 00	Flexible intermediate bulk containers”.

This notification has come into force on the 1st January, 2020.

Notification No. 28/2019 - Union Territory Tax (Rate)
Date – 30th December 2019

To amend notification No. 12/ 2017- Union Territory Tax (Rate) so as to exempt certain services as recommended by GST Council in its 38th meeting held on 18.12.2019

CBIC has made further amendments in the Notification No.12/2017- Union Territory Tax (Rate), dated the 28th June, 2017.

In the said notification, in the Table, against serial number 41, -

- (a) in column (3), for the figure “50”, at both the places where they occur, the figure “20 ” shall be substituted;
- (b) for the entry in column (5), the following entries shall be substituted, namely, -

(5)
<p>“Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:</p> <p>Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:</p> <p>Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of Union territory tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:</p> <p>Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the Union territory tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.”.</p>

This notification has come into force on the 1st January, 2020.

Notification No. 29/2019 - Union Territory Tax (Rate)
Date – 30th December 2019

To amend notification No. 13/ 2017- Union Territory Tax (Rate) so as to notify certain services under reverse charge mechanism (RCM) as recommended by GST Council in its 38th meeting held on 18.12.2019

CBIC has made further amendments in the Notification No.13/2017- Union Territory Tax (Rate), dated the 28th June, 2017.

In the said notification, in the Table, for serial number 15 and the entries relating thereto, the following shall be substituted, namely: -

(1)	(2)	(3)	(4)
“15	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient	Anybody corporate located in the taxable territory.”

CGST Circulars

Circular No. 129/48/2019 – GST

Date – 24th December 2019

Standard Operating Procedure to be followed in case of non-filers of returns – reg

- A system generated message would be sent to all the registered persons 3 days before the due date about filing of the return for the tax period by the due date.
- Once the due date for furnishing the return under section 39 is over, a system generated mail / message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period. The said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc.
- 5 days after the due date of furnishing the return, a notice in FORM GSTR-3A shall be issued electronically to such registered person who fails to furnish return under section 39, requiring him to furnish such return within 15 days;
- In case the said return is still not filed by the defaulter within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said person under section 62 of the CGST Act, to the best of his judgement taking into account all the relevant material which is available or which he has gathered and would issue order under rule 100 of the CGST Rules in FORM GST ASMT-13. The proper officer would then be required to upload the summary thereof in FORM GST DRC07;
- For the purpose of assessment of tax liability under section 62 of the CGST Act, the proper officer may take into account the details of outward supplies available in the statement furnished under section 37 (FORM GSTR-1), details of supplies auto populated in FORM GSTR-2A, information available from e-way bills, or any other information available from any other source, including from inspection under section 71.
- In case the defaulter furnishes a valid return within thirty days of the service of assessment order in FORM GST ASMT-13, the said assessment order shall be deemed to have been withdrawn in terms of provision of sub-section (2) of section 62 of the CGST Act. However, if the said return remains unfurnished within the statutory period of 30 days from issuance of order in FORM ASMT-13, then proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act.

For more details, please follow - <http://cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-129.pdf>

Circular No. 130/48/2019 – GST

Date – 31st December 2019

RCM on renting of motor vehicles

Suppliers of service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient have an option to pay GST either at 5% with limited ITC (of input services in the same line of business) or 12% with full ITC.

When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC. The only interpretation of the notification entry in question which is not absurd would be that –

- (i) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and,
- (ii) where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non-body corporate clients, to bring in greater clarity, serial No. 15 of the notification No. 13/2017-CT (R) dated 28.6.19 has been amended vide notification No. 29/2019-CT (R) dated 31.12.19 to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed

to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:–

- (a) is other than a body-corporate;
- (b) does not issue an invoice charging GST @12% (6% CGST + 6% SGST) from the service recipient; and
- (c) supplies the service to a body corporate.

For more details, please follow - <http://cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-130.pdf>

Customs –Tariff Notifications

Notification No.36/2019 - Customs

Date – 30th December 2019

Seeks to amend Customs Tariff notifications so as to align them with amended Customs Tariff

CBIC has directed that each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below shall be amended in the manner specified in the corresponding entry in column (3) of the said Table, namely: -

Sl. No (1)	Notification number and Date (2)	Amendments (3)
1.	Notification No.25/99- Customs, dated the 28th February, 1999 [G.S.R. 161 (E), dated the 28th February, 1999]	In the said notification, in the Table, in List A, against serial number 231, in column (2), for the figure “2710 19 60”, the figure “2710 19 71” shall be substituted.

For more details , please follow - <http://cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs36-2019.pdf>

Notification No.37/2019 - Customs

Date – 30th December 2019

Seeks to amend Customs Tariff notifications No. 50/2017-Customs dated the 30th June, 2017 so as to align them with amended Customs Tariff

CBIC has made further amendments in the Notification No. 50/2017- Customs, dated the 30th June, 2017.

For more details, please follow - <http://cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs37-2019.pdf>

Notification No.38/2019 - Customs

Date – 30th December 2019

Seeks to amend Customs Tariff notifications No. 82/2017-Customs, dated the 27th October, 2017 so as to align them with amended Customs Tariff

CBIC has made amendments in the Notification No. 82/2017-Customs, dated the 27th October, 2017.

For more details, please follow - <http://cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs38-2019.pdf>

Notification No.39/2019 - Customs

Date – 30th December 2019

Seeks to amend certain Customs Tariff notifications issued under section 110 of the Finance Act, 2018 (13 of 2018) so as to align them with amended Customs Tariff.

CBIC has directed that each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below shall be amended in the manner specified in the corresponding entry in column (3) of the said Table, namely: -

Sl. No (1)	Notification number and Date (2)	Amendments (3)
1.	Notification No. 11/2018-Customs, dated the 2nd February, 2018 [G.S.R.114 (E), dated the 2nd February, 2018]	In the said notification, in the Table, - (i) <i>against serial number 1, in column (2),</i> (a) for the figures “0713 10 00”, the figures “0713 10”, shall be substituted; (b) for the figures “6204 31 00”, the figures “6204 31”, shall be substituted; (c) for the figures “6204 62 00”, the figures “6204 62”, shall be substituted; (d) for the figures “6206 30 00”, the figures “6206 30”, shall be substituted; (ii) <i>Against serial number 51, for the entry in column (2), the entry, “All goods falling under tariff items 8517 12 11, 8517 12 19 and 8517 12 90.” shall be substituted.</i>

For more details, please follow - <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs39-2019.pdf>

Notification No.40/2019 - Customs
Date – 30th December 2019

Seeks to amend Customs Tariff notification No. 53/2017- Customs, dated the 30th June, 2017 so as to align them with amended Customs Tariff

CBIC has made amendments in the Notification No. 53/2017- Customs, dated the 30th June, 2017,

In the said notification, in the Table, against Sl. No. 4, for the entry in column (2), the entry “2710 19 39” shall be substituted.

This notification has come into force from the 1st January, 2020.

Notification No.41/2019 - Customs
Date – 31st December 2019

Seeks to amend notification No. 46/2011-Customs dated 01.06.2011 so as to provide deeper tariff concessions in respect of specified goods when imported from ASEAN under the India-ASEAN Free Trade Agreement w.e.f. 01.01.2020.

CBIC has made further amendments in the Notification No.46/2011-Customs, dated the 1st June, 2011.

For more details, please follow - <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs41-2019.pdf>

Notification No.42/2019 - Customs
Date – 31st December 2019

Seeks to amend notification No. 53/2011-Customs dated 01st July, 2011 so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) w.e.f. 01.01.2020

CBIC has made further amendments in the Notification No.53/2011-Customs, dated the 1st July, 2011.

For more details please follow - <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs42-2019.pdf>

Customs – Non Tariff Notifications

Notification No.91/2019 - Customs (N.T.)

Date – 19th December 2019

Exchange Rates Notification No.91/2019-Custom (NT) dated 19.12.2019

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

SCHEDULE-I

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	(For Imported Goods)	(For Exported Goods)
Australian Dollar	50.05	47.80
Bahraini Dinar	194.65	182.55
Canadian Dollar	55.15	53.20
Chinese Yuan	10.30	10.00

For more details , please follow - <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt91-2019.pdf>

Notification No.92/2019 - Customs (N.T.)

Date – 31st December 2019

Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seed, Areca nut, Gold & Silver - reg.

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

For more details , please follow - <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt92-2019.pdf>

Notification No 01/2020 - Customs (N.T.)

Date – 2nd January 2020

Exchange Rates Notification No.01/2020-Customs (NT) dated 02.01.2020

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

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Exported Goods)
1.	Australian Dollar	51.15	48.90
2.	Bahraini Dinar	195.25	183.15
3.	Canadian Dollar	55.90	53.90

For more details, please follow - <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt01-2020.pdf>

Customs – Anti Dumping Duty Notifications

Notification No. 46/2019-Customs (ADD)

Date - 19th December, 2019

Seeks to further amend notification No. 35/2018-Customs(ADD) regarding levy of anti-dumping duty on High Tenacity Polyester Yarn to amend the name of exporter name from " M/s. Oriental Textile (Holding) Ltd." to "M/s. Oriental Industries (Suzhou) Ltd".

In case of High Tenacity Polyester Yarn (HTPY) falling under tariff item 5402 20 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from China PR, and imported into India, the Designated Authority had come to the conclusion that-

- (i) the subject goods have been exported to India from the subject country below its normal value, resulting in dumping;
- (ii) the domestic industry had suffered material injury due to dumping of the product under consideration from the subject country;
- (iii) the material injury had been caused by the dumped imports of the subject goods from subject country.

and had recommended imposition of definitive anti-dumping duty on imports of HTPY, in order to remove injury to the domestic industry.

For more details, please follow - <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-add2019/csadd46-2019.pdf>

Notification No. 47/2019-Customs (ADD)

Date - 19th December, 2019

Seeks to amend Anti Dumping notifications issued under section 9A of the Customs Tariff Act,1975 (51 of 1975), read with rules 13, 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) so as to align them with amended Customs Tariff

CBIC has directed that each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below shall be amended in the manner specified in the corresponding entry in column (3) of the said Table, namely:-

Sl. No	Notification number and Date	Amendments
(1)	(2)	(3)
1.	Notification No. 22/2016-Customs (ADD) dated the 31st May, 2016 [G.S.R. 566 (E), dated the 31st May, 2016]	In the said notification, in the Table, in the Column (2), - (a) for the figures, '2915 39 90', the figures '2915 39 99' shall be substituted; (b) for the figures, '2933 19 90', the figures '2933 19 91, 2933 19 99' shall be substituted.

For more details, please follow - <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-add2019/csadd47-2019.pdf>

DIRECT TAX

Notifications and Circulars

Notification No.105/2019
Date – 30th December 2019

Notification regarding modes of payment for the purpose of section 269SU

CBDT has made amendments in the Income-tax Rules, 1962

In the Income-tax Rules, 1962, after rule 119A, the following rule shall be inserted, namely:— “119AA. Modes of payment for the purpose of section 269SU.- Every person, carrying on business, if his total sales, turnover or gross receipts, as the case may be, in business exceeds fifty crore rupees during the immediately preceding previous year shall provide facility for accepting payment through following electronic modes, in addition to the facility for other electronic modes of payment, if any, being provided by such person, namely:—

- (i) Debit Card powered by RuPay;
- (ii) Unified Payments Interface (UPI) (BHIM-UPI); and
- (iii) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code).”.

For more details, please follow –

https://www.incometaxindia.gov.in/communications/notification/notification_105_2019.pdf

Notification No.106/2019
Date – 30th December 2019

Notification regarding Anti-Corruption Bureau, Government of Rajasthan, Jaipur

In pursuance of sub-clause (ii) of clause (a) of sub-section (1) of section 138 of the Income-tax Act, 1961, the Central Government hereby specifies Director General, Anti-Corruption Bureau, Government of Rajasthan, Jaipur for the purpose of said clause.

It is clarified that income-tax authority, as specified in Notification No. S.O. No. 731(E) dated 28.07.2000, shall -

- furnish only relevant and precise information after forming an opinion that furnishing of such information is necessary so as to enable the above notified authority to perform its functions under the law being administered by it; and
- convey to the authority being specified vide this notification to maintain absolute confidentiality in respect of information being furnished.

Notification No.107/2019
Date – 30th December 2019

Amendment of Notification 28th September 2019

CBDT has amended the Notification dated 28th September, 2019

In the said notification:—

31st December, 2019 shall be substituted by 31st March, 2020.

Notification No.01/2020
Date – 3rd January 2020

CBDT notifies ITR-1 and ITR-4 for Assessment year 2020-21

CBDT has notified ITR-1 and ITR-4 for Assessment year 2020-21.

For more details, please follow –

https://www.incometaxindia.gov.in/communications/notification/notification_01_2020.pdf

Circular No. 31/2019
Date – 19th December 2019

Order under section 119(2) of the Income-tax Act, 1961- Extension of the due date of payment of tax deducted at source under 194M of the Act -reg.

Considering the fact that the utility for payment of tax deducted at source under section 194M of the Income-tax Act, 1961(the Act) was deployed on 17.12.2019, CBDT has extended the due date for payment of tax deducted at source under section 194M during the month of September, 2019 and October, 2019 and the due date for furnishing the challan-cum-statement in Form 26QD for the same, from 31.10.2019 and 30.11.2019 respectively to 31.12.2019. Consequently, the due date of furnishing of the certificate of deduction of tax in Form 16D has also been extended for the tax deducted during the month of September, 2019 and October, 2019 to 15.01.2020.

Circular No. 32/2019
Date – 30th December 2019

Clarifications in respect of prescribed electronic modes under section 269SU of the Income-tax Act, 1961 – reg

A new provision namely Section 269SU was inserted in the Income-tax Act, 1961 ("the Act"), vide the Finance (o. 2) Act 2019 ("the Finance Act") to encourage digital economy and move towards a less-cash economy, which provides that every person having a business turnover of more than Rs 50 Crore ("specified person") shall mandatorily provide facilities for accepting payments through prescribed electronic modes.

Further, Section 10A of the Payment and Settlement Systems Act 2007, inserted by the Finance Act, provides that no Bank or system provider shall impose any charge on a payer making payment, or a beneficiary receiving payment, through electronic modes prescribed under Section 269SU of the Act.

Consequently, any charge including the MDR (Merchant Discount Rate) shall not be applicable on or after 01 " January, 2020 on payment made through prescribed electronic modes.

In this connection, it may be noted that the Finance Act has also inserted section 271 DB in the Act, which provides for levy of penalty of five thousand rupees per day in case of failure by the specified person to comply with the provisions of section 269SU. In order to allow sufficient time to the specified person to install and operationalise the facility for accepting payment through the prescribed electronic modes, it is hereby clarified that the penalty under section 271 DB of the Act shall not be levied if the specified person installs and operationalises the facilities on or before 31" January, 2020. However, if the specified person fails to do so, he shall be liable to pay a penalty of five thousand rupees ay m 01" February, 2020 under section 271 DB of the Act for such failure.

JUDGEMENTS

INDIRECT TAX

M/s Caroa Properties LLP held Guilty of Profiteering for the Project 'Godrej City Panvel Phase-I'

M/s Caroa Properties LLP vs. National Anti Profiteering Authority

Case No. – 78/2019
Date – 24th December 2019

Fact of the Case

- The National Anti Profiteering Authority (NAA) in a case filed against M/s Caroa Properties LLP held that the respondent had denied the benefit of ITC to the buyers of the flats.
- Applicant No. 1 had filed an application submitting that he had purchased a flat in the Respondent's project situated at Raigarh and alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of the flat.
- The Respondent claimed to pass off the benefit of 3.35% of the base price to the eligible customers of the present project by way of reduction in prices under the GST regime. He submitted that the supplies which were fully provided in the GST regime, would not attract the Anti-profiteering provisions.

Decision of the Case

The Quorum constituting of B.N. Sharma, J.C. Chauhan and Amand Shah while rejecting the contentions made by the respondent as laid out above, held that the respondent had denied benefit of ITC to the buyers of the flats and the shops

Supply of a Bundle of Services at a Single Price, If not Composite, then Mixed Supply under Sec

2(74): AAR

Applicant - Infobase Services Pvt Ltd

Case No. – 44 of 2019
Date – 1st October 2019

Fact of the Case

- In the present case Infobase Services Pvt Ltd is the applicant

- The Applicant herein, in addition to supplying printing service to the Tollygunge Club Ltd, was also acting as an intermediary on behalf of the Club for selling space for advertisements in the Directory.
- Any profit generated from the sale of space would be divided among the parties with the applicant receiving 75% of the profit.
- The question raised in the application was whether its procurement of advertisements for the Directory is classifiable as selling of space for advertisement in print media and whether SI No. 21(i) of the amended Rate Notification is applicable thereto.
- The Applicant further argued that the Directory is not meant for commercial purpose and therefore, is a book and part of the print media as defined under clause 2 (zr) of the above notification.
- Revenue submitted that the Applicant's supply of services goes beyond the sale of space for advertisements.

Decision of the Case

- The Authority noted that the "Applicant is making a bundled supply to the Club of printing service and intermediary service for selling space for advertisement on behalf of the Club and charging a single price for the bundle as the project cost for printing.
- The two services are not naturally bundled or supplied in conjunction with each other in the ordinary course of business". The Authority further pointed out that they are bound by an obligation specified in the agreement between the Applicant and the Club and therefore, not a composite supply.
- The court further elaborated that such a supply should be treated as supply of that service which attracts the highest rate of tax [section 8 (b) of the GST Act].
- The Authority hence ruled that the applicant is making a mixed supply to the Tollygunge Club of printing service and intermediary service for selling space for advertisement on behalf of the club.

Supply of Mixture and Dough of Wheat Flour, Sugar and Water, cut into specific shape, which is dried and hardened by heating attracts 28%

GST: AAR

Applicant – Ambo Agritec Pvt. Ltd

Case No. – 43 of 2019

Date – 30th September 2019

Fact of the Case

- The applicant is a manufacturer of vanaspati, refined oil and biscuits along with non-edible intermediary product for confectionery prepared from a dough of wheat flour, sugar, food-grade sodium bicarbonate and water.
- The issue before the present authority is the determination of the appropriate classification of the intermediary product.
- The applicant contended that the non-edible intermediary product is sold in non-branded packs to confectionery manufacturers, who processes it further by baking or frying and adding necessary condiments to come out with an edible preparation.
- The Applicant argues that although its product can be placed in the category of mixes and dough, the final edible preparation is not limited to bakers' ware. It can be baked into biscuits or fried into namkeen.
- The Revenue submits that HSN 1103 classifies the goods that bear registered brand names. As the Applicant is not supplying its Kaju-shaped products under any brand name, it is not classifiable under HSN 1103.

Decision of the Case

- The honourable bench observed that applicant is supplying mixes and dough for preparation of biscuits and other bakers' wares, whether or not the preparation of the final edible item involves further baking or frying. It is, therefore, classifiable under tariff item 1901 20 00.
- Finally in the present case The West Bengal Authority of Advance Ruling (AAR) stated that it is classifiable under tariff item 1901 20 00 which will attract 28% GST.

Tax Amount to be indicated in the Tax Invoice under Sec 33: Karnataka HC

K. Anathakrishna Shetty vs. Mangalore Mahanagara Palike and Town Municipal Council
Writ Petition – 18049/2019

Date – 11th October 2019

Fact of the Case

- The Petitioner was a contractor and had been awarded contracts relating to the execution of public projects by the respondent-Authority.

- Petitioner has executed works and has been raising bills in accordance with the work order issued pursuant to the tender. However, the respondent – Authority orally declined to consider bills raised after 01.07.2017 including the component of GST in the invoices for the purpose of payment and have orally directed the petitioner to exclude the component of GST.
- The petitioner contended that the contract between the petitioner and the respondent – Authority provides that the rates quoted by the contractor is deemed to be inclusive of taxes and hence, he is obliged to include the tax component in the invoice.

Decision of the Case

- The Court pointed out that “the obligation to pay GST by supplier of goods and services is clear as per Section 9 of the Central Goods and Services Tax Act, 2017.
- The court also further added that it is for the respondent to take note of the fact that in the contract between the petitioner and the respondent – Authority Clause 35 provides that the rates quoted by the contractor is deemed to be inclusive of taxes.
- The Karnataka High Court ruled that the obligation under Section 33 of the Act provides that while raising an invoice, the amount of tax is to be indicated in the tax invoice.

Denial of Benefit of ITC to Buyers of Flats would amount to Profiteering: NAA

M/S Nirala Projects Pvt. Ltd . vs. Director Genral of Anti Profiteering

Case No. – 75/2019
Date – 18th December 2019

Fact of the Case

- In the present case the Applicant had booked a flat in the Respondent's project “Nirala Greenshire” situated at Uttar Pradesh and he alleged that the Respondent had increased the price of the flat after introduction of GST and had not passed on the benefit of input tax credit by way of commensurate reduction in the price.
- On prima facie having satisfied itself that the Respondent had not passed on the appropriate benefit of input tax credit to the above Applicant and forwarded the said application to the DGAP for detailed investigation.

- The DGAP submitted that the ITC as percentage of total turnover which was available to the respondents during the pre GST period was 1.47% and during the post GST period the ratio was 6.89%, the respondent had benefited from the additional ITC of the total turnover which he was required to pass on to the flat buyers of this project.
- The DGAP further submitted that on the basis of the aforesaid the turnover had, in fact, accrued to the respondent and the same was required to be passed on to the applicant.
- The Respondent submitted that he has duly passed on the GST benefit of minimum 3% to his customers. He said that in the contention of carried forward CENVAT Credit of pre-GST period in respect of unsold units if carried forward any excess Credit, then it was a case of tax evasion and not of profiteering. The DGAP's report is not justified.

Decision of the Case

- The bench comprising of members B.N Sharma, Chairman, J.C. Chauhan Technical Member and Amand Shah, Technical Member held that the respondent has denied the benefit of ITC to the buyers of the flats and the shops being constructed by him in his project "Nirala Greenshire".
- The provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent as he has profited an amount of which includes GST from all the flat buyers. He has committed an offence under section 171(3A) of the Act.
- The Authority as per Rule 136 of CGST Rules 2017 directs the commissioners of CGST/SGST to monitor this order for ensuring that the amount profited by the respondent is passed on to all the eligible buyers.

DIRECT TAX

ITAT allows Disallowance of Sum for Non-Submission of Documents and Non-Deduction of TDS on Reimbursements

M/s Reliant Healthcare Consultancy Pvt. Ltd. Vs. DCIT

**ITA No. 1070/Del/2017
Date – 30th October 2019**

Fact of the Case

- In the present case the assessee company was engaged in the business of providing consultancy in the medical field.
- The assessee filed the return of income for the year under consideration, declaring loss which was further revised due to inadvertent claim of excess TDS. The case was selected for scrutiny and assessment under section 143(3) of the Income-tax Act, 1961 was completed at an assessed loss after making the addition.
- The addition was made on account of the excessive claim of the salary in the name of employees. The addition was made for non-deduction of tax at source on the difference of amount in salary debited in profit and loss account and salary amount appearing in form No. 16 in case of the four persons.
- The assessee explained that the amount was reimbursed to the employees towards driver salary, petrol expenses and mobile expenses, on which no tax was deductible at source, and therefore, same did not appear in form No. 16A issued to the employees.
- In view of the absence of any documentation to support the alleged reimbursement of two employees and non deduction of TDS of four employees, the CIT(A) sustained that amount.

Decision of the Case

- The CIT(A) observed that only ledger accounts of driver's salary, petrol and mobile reimbursement were filed and no evidence by way of vouchers submitted by the concerned employees
- The alleged reimbursement was nothing but a fixed amount being paid in cash to the employees, which being in the nature of the salary/fixed allowance, on which TDS was deductible.
- Before this court, the assessee did not produce any such vouchers of incurring expenses by those employees and claimed as reimbursement.
- In such circumstances, the court not find any error in the order of the learned CIT(A) on the issue in dispute and accordingly, uphold the disallowance sustained by the learned CIT(A).

Revised Return can be Filed Belatedly by the Companies Incorporated under Schemes of Arrangement and Amalgamation: Supreme Court

M/s Ganpati Dealcom Pvt. Ltd. Vs. Union of India & Others

APO No. 8 of 2019
Date – 12th December 2019

Fact of the Case

- The Appellants M/S Dalmia Power Limited and M/S Dalmia Cement (Bharat) Limited are public limited companies, incorporated under the Companies Act, 1956.
- In the present case, Appellant /Transferee Companies filed their original Returns of Income. Thereafter, they entered into Schemes of arrangement and Amalgamation with Transfer or Companies in 2017. The Schemes were finally sanctioned and approved by the NCLT, Chennai.
- The Schemes incorporated provisions for filing the revised Returns the prescribed time limit since the Schemes would come into force retrospectively from the Appointed Date. Accordingly, the Appellants filed their Revised Returns.
- The Department submitted by virtue of Section 139(5) and 119(2)(b) of the Income Tax Act that the Appellant ought to have made an application for condonation of delay, and sought permission from the CBDT, before filing the revised Returns beyond the statutory period.
- The appellant submitted that since the revised Returns were not filed on account of omission or wrong statement or omission contained therein. The delay occurred on account of the time taken to obtain the sanction of the Schemes of Arrangement and Amalgamation from the NCLT.

Decision of the Case

- The two-judge bench comprising of Justice Uday Umesh Lalit and Justice Indu Malhotra held that impossibility for the assessee companies to have filed the revised Returns of Income before the due date since the NCLT take time for passing the last orders for granting approval and sanction of the Schemes.
- The Department submitted that the Appellants ought to have made a representation to the Board for condonation of delay while filing the revised Returns.
- In the present case, the predecessor companies/transferor companies have been succeeded by the Appellants/transferee companies who have taken over their business

along with all assets, liabilities, profits and losses etc.

- In view of the provisions of Section 170(1) of the Income Tax Act, the Department is required to assess the income of the Appellants after taking into account the revised Returns filed after the amalgamation of the companies.

Non Furnishing of Full Details of Income required by Assessing Officer Leads to Penalty: ITAT

Deepak Petrochem Ltd. Vs. DCIT

Case No. 2469/Ahd/2013
Date – 21st November 2019

Fact of the Case

- In the present case the assessee is a public ltd. Company which issues share in the market for collecting capital
- On scrutiny of the accounts, it revealed to the AO that the assessee's authorized share capital has been increased and the assessee has taken share application money from 273 applicants, out of that from 272 parties share application money was taken in cash.
- The AO has directed the assessee to furnish identity of the creditors, their credit-worthiness and genuineness of the transaction. The assessee has given half details. The AO made addition and determined taxable income of the assessee.
- Dispute travelled to the Tribunal, and the Tribunal has confirmed the addition. The AO has initiated penalty proceedings and issued the notice under section 274
- Appeal to the CIT(A) did not bring any relief to the assessee.

Decision of the Case

- The Tribunal bench observed that In the present case, the assessee is not furnished full details of income. Apart from that, the assessee has not given any details.
- Monies have been taken in cash and not through banking channel. Therefore, neither it has proved the genuineness of the transaction nor credit-worthiness of the alleged applicants; rather say their identities also doubtful.
- In such circumstances, it has to be construed that the explanation offered by

the assessee has been proved as false by the AO. Therefore, the court upholds the order of the Id.CIT(A) and the appeal of the assessee is dismissed.

Capital Gain Exception can't be denied If Non-completion of Construction was not Assessee's Fault: ITAT

Abodh Borar vs. ITO

Case No.-5114/Del/2016
Date – 18th November 2019

Fact of the Case

- The assessee is an individual who claimed an exemption on account of capital gain arisen to her by selling 2 of her properties during the year under Section 54 and 54F of the Act.
- The AO had not allowed the deduction on the ground that the assessee had not completed the construction of the residential house within the period of 3 years so from the date when the capital gain has arisen to her.
- The CIT confirmed the order of the AO on the same reasoning
- The issue before the present Authority is a determination of whether the disallowance of deduction claimed u/s 54F was justified

Decision of the Case

- Reiterating the facts of the case, it has been stated that as per the agreement the developer was supposed to hand over the possession of plot within 18 months from the date of allotment letter.
- However, the developer did not deliver possession. Hence, the assessee could not complete the construction within the prescribed period of 3 years. This delay in construction was not attributable to the assessee.
- The Tribunal, however, holding that the AO and the CIT (A) both have ignored the fact that the assessee has made a full payment to the developer and such payment was more than the amount of the deduction claimed by the assessee ruled in favour of the assessee.
- The Bench constituting of N. K. Billaiya and Amit Shukla ruling on the facts that the delay in developer's delivery of possession due to which the assessee could not complete the construction was not under assessee's control, the deduction shall be allowed.

Assessee can Produce Third Parties before AO to dispute Documentary Evidence found during Search: ITAT
ACIT vs. Educomp Infrastructure & School Management Ltd

Case No. – 6894/Del/2015
Date – 29th November 2019

Fact of the Case

- In the present case Assessee Company was engaged in the business of providing infrastructural facilities to the educational institution of the Educomp group.
- During search and seizure on 'Educomp Group', including the assessee and its contractors, disparities were found between the books of the assessee and its contractors. The AO claimed that the assessee has claimed excess expenditure on construction of the building through two contractors, and thus claimed excess capitalization of the asset of building and consequently claimed excess depreciation on building, which the assessee was not entitled to.
- The Department argued that two of the employees of the assessee has acted in the capacity of authorised signatory of those contractor companies. The Department also argued that the certain documents seized from the premises of the Assessee showed the actual low rate of the work.
- The Assessee also argued that there is no evidence to indicate that the assessee has authorised it's personal to manage or supervise the affairs of the contractor and that no benefit in the form of salary or otherwise was derived by the personnel of the assessee from said contractors.

Decision of the Case

- After having gone through the fact in details the court hence ruled that "the bills raised by the contractors on the assessee are inflated one and not of the actual amount of the work done for the assessee. Consequently, the cost debited by the assessee in respect of the building, which has been capitalized is inflated and not the actual cost.
- The Court further held that, "in principle, we hold that the assessee is not entitled to the depreciation on the inflated portion of the cost of a capital asset shown by the assessee as incurred through two contractors, namely.
- While discussing the quantum of depreciation the court held that, "the AO was required to examine relevant bills of the two contractors, where the value of construction work has been inflated".

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
10.01.2020	GSTR-7 for the month of December 2019- to be filed by the by the to be filed by the person who is required to deduct TDS under GST
10.01.2020	GSTR-8 for the month of December 2019- to be filed by the by the e-commerce operators required to deduct TDS under GST
11.01.2020	GSTR-1 for the month of December 2019- Applicable for taxpayers with Annual Aggregate turnover Above Rs. 1.50 Crore or opted to file monthly Return (Rs. 1.50 Crores).
13.01.2020	GSTR-6 for the month of December 2019- to be filed by Input Service Distributor
20.01.2020	GSTR-5 & 5A for the month of December 2019- to be filed by the Non-Resident taxable person & OIDAR
20.01.2020	GSTR 3B - for the month of December 2019.

DIRECT TAX CALENDAR - JANUARY, 2020

07.01.2020

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

14.01.2020

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

15.01.2020

- Due date for issue of TDS Certificate for tax deducted under section 194M in the month of September, 2019 and October, 2019
The due date for furnishing of the certificate the tax deducted during the month of September, 2019 and October, 2019 has been extended to January 15, 2020 vide Circular no. 31/2019 [F. no. 370142/18/2019-TPL], dated 19-12-2019
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of December, 2019 has been paid without the production of a challan
- Quarterly statement of TCS deposited for the quarter ending December 31, 2019
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending December, 2019

30.01.2020

- Quarterly TCS certificate in respect of tax collected for the quarter ending December 31, 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 December, 2019
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of December, 2019

31.01.2020

- Quarterly statement of TDS deposited for the quarter ending December 31, 2019
- Quarterly return of non-deduction at source by a banking company from interest on time deposit in respect of the quarter ending December 31, 2019
Intimation under section 286(1) in Form No. 3CEAC, by a resident constituent entity of an international group whose parent is non-resident

COURSES OFFERED BY TAX RESEARCH DEPARTMENT

Eligibility criterion for admission in TRD Courses

- ✓ Qualified Cost & Management Accountants
- ✓ Other Professionals (CS, CA, MBA, M.Com, Lawyers)
- ✓ Executives from Industries and Tax Practitioners
- ✓ Students who are either CMA qualified or CMA pursuing

CERTIFICATE COURSE ON GST

Course Fee - Rs. 10,000+18% GST
*20% Discount for Members, CMA
Final Passed Candidates and CMA
Final pursuing Students*

Exam Fees - Rs. 1,000+18% GST
Duration – 72 Hours
Mode of Class – Offline and Online
**_Special Discount for Corporate*

ADVANCED CERTIFICATE COURSE ON GST

Course Fee - Rs. 14,000+18% GST
*20% Discount for Members, CMA
Final Passed Candidates and
CMA Final pursuing Students*

Exam Fees - Rs. 1,000+18% GST
Duration – 40Hours
Mode of Class – Online

CERTIFICATE COURSE ON TDS

Course Fee - Rs. 10,000+18% GST
*20% Discount for Members, CMA
Final Passed Candidates and
CMA Final pursuing Students*

Exam Fees - Rs. 1,000+18% GST
Duration – 30Hours
Mode of Class – Online

CERTIFICATE COURSE ON INCOME TAX RETURN FILLING

Course Fee - Rs. 10,000+18% GST
*20% Discount for Members, CMA
Final Passed Candidates and
CMA Final pursuing Students*

Exam Fees - Rs. 1,000+18% GST
Duration – 30Hours
Mode of Class – Online

CRASH COURSE ON GST FOR COLLEGE AND UNIVERSITY

Batch Size – 50 (Minimum)

Eligibility criterion - B.COM/B.B.A pursuing or completed
M.COM/M.B.A pursuing or completed

Course Fee - Rs. 1,000+ 18% GST

Exam Fees - Rs. 200+18% GST
Course Duration - 32 Hours

For enquiry about courses, mail at – trd@icmai.in

GLIMPSES OF 2 DAY NATIONAL SEMINAR ON TAXATION
Theme “Conducive Tax Laws - Challenges & Opportunities”

21st AND 22nd DECEMBER 2019, BHUBANESWAR



Inaugural session of Day-1 (21.12.19) of Two-Day National Seminar on Taxation with the State Anthem (Bande Utkal Janani)



CMA Balwinder Singh ,President , ICMAI delivering key note address during Day-1 (21.12.19) at the Inaugural Session of Two-Day National Seminar on Taxation



CMA Biswarup Basu, Vice President, ICMAI being felicitated at the 2nd Technical Session of Two-Day National Seminar on Taxation

GLIMPSES OF 2 DAY NATIONAL SEMINAR ON TAXATION

Theme “Conducive Tax Laws - Challenges & Opportunities”

21st AND 22nd DECEMBER 2019, BHUBANESWAR



CMA Niranjan Mishra, Chairman, Indirect Taxation Committee, ICAI and Chairman Conference Committee delivering Key Note Address on Day-1 (21.12.19) at the Inaugural Session of Two-Day National Seminar on Taxation



CMA Rakesh Bhalla, Chairman, Direct Taxation Committee, ICAI and Chairman, Conference Committee delivering Key Note Address on Day-1 (21.12.19) at the Inaugural Session of Two-Day National Seminar on Taxation



Shri Ranendra Pratap Swain, Hon'ble Cabinet Minister, Food Supplies & Consumer Welfare, Cooperation, Govt. of Odisha and **Shri Padmanabha Behera**, Hon'ble Cabinet Minister, Planning Convergence, Commerce and Transport, Govt. of Odisha releasing Souvenir published to mark the Two-Day National Seminar in the presence of other dignitaries on the Dais.

GLIMPSES OF 2 DAY NATIONAL SEMINAR ON TAXATION

Theme “Conducive Tax Laws - Challenges & Opportunities”

21st AND 22nd DECEMBER 2019, BHUBANESWAR



Shri Padmanabha Behera, Hon'ble Cabinet Minister , Planning Convergence, Commerce and Transport, Govt. of Odisha addressing the participants during Day-1 (21.12.19) at the Inaugural Session of Two-Day National Seminar on Taxation.



Honoring **Smt. Aparajita Sarangi**, Hon' ble Member of Parliament (Lok Sabha), Bhubaneswar by Felicitating her with an Uttorio on Day-2 (22.12.19) at the inaugural session of Two-Day National Seminar on Taxation.

Book Releases

Releases on Day 1 – 21.12.19



Shri Ranendra Pratap Swain, Hon'ble Cabinet Minister, Food Supplies & Consumer Welfare, Cooperation, Govt. of Odisha and **Shri Padmanabha Behera**, Hon'ble Cabinet Minister, Planning Convergence, Commerce and Transport, Govt. of Odisha and other dignitaries releasing Taxation publication "Handbook on GST on Service Sector".



Shri Ranendra Pratap Swain, Hon'ble Cabinet Minister, Food Supplies & Consumer Welfare, Cooperation, Govt. of Odisha and **Shri Padmanabha Behera**, Hon'ble Cabinet Minister, Planning Convergence, Commerce and Transport, Govt. of Odisha and other dignitaries releasing Taxation publication "Guidance Note on GST Annual Return and Audit".



Shri Ranendra Pratap Swain, Hon'ble Cabinet Minister, Food Supplies & Consumer Welfare, Cooperation, Govt. of Odisha and **Shri Padmanabha Behera**, Hon'ble Cabinet Minister, Planning Convergence, Commerce and Transport, Govt. of Odisha and other dignitaries releasing Taxation publication "GST on Education Sector".

Book Releases



Shri Ranendra Pratap Swain, Hon'ble Cabinet Minister, Food Supplies & Consumer Welfare, Cooperation, Govt. of Odisha and **Shri Padmanabha Behera**, Hon'ble Cabinet Minister, Planning Convergence, Commerce and Transport, Govt. of Odisha releasing of Taxation Publication on "Insight into assessment including E – Assessment" on the 1st day Inaugural session



Releasing of Taxation Publication on "Input Tax Credit (ITC) - An In-depth Discussion" during the 1st Day Technical Session – II on ITC under GST Law- Provisions, Advance Rulings and Critical Issues



Releasing of Taxation Publication on "Exemptions under Income Tax Act 1961" during the 1st Day Technical Session –II on ITC Under GST Law- Provisions, Advance Rulings and Critical Issues

Book Releases



Releasing of Taxation Publication on “Taxation on Cooperative Sector” during the 1st Day Technical Session – I on E-Invoicing and Reconciliations of Credits.

Releases on Day 2 – 22.12.19



Releasing of Taxation Publication on “Handbook on Works Contract under GST” by Smt. Aparajita Sarangi, Hon’ble Member of Parliament (Lok Sabha), Bhubaneswar in the presence of other dignitaries during Day-2 (22.12.19) at the Inaugural session of 2-Day National Seminar on Taxation.



Releasing of Taxation Publication on “Impact of GST on MSME” by Smt. Aparajita Sarangi, Hon’ ble Member of Parliament (Lok Sabha), Bhubaneswar in the presence of other dignitaries during Day-2 (22.12.19) at the Inaugural session of 2-Day National Seminar on Taxation.

Book Releases



Releasing of Taxation Publication on “Insight into Customs - Procedures & Practice” by CMA Govind Krishna Dixit, IRS, Commissioner, Department of Revenue, CBIC (Customs and CGST), New Delhi in the presence of other dignitaries during Technical Session-IV - Annual Return and Audit under GST Law on Day-2 (22.12.19)



Releasing of Hand Book on Impact of GST on Real Estate by Smt Aparajita Sarangi , Hon'ble Member of Parliament (Lok Sabha), Bhubaneswar in the Day-2 at the Inaugural Session of 2- Day National Seminar on Taxation.

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.

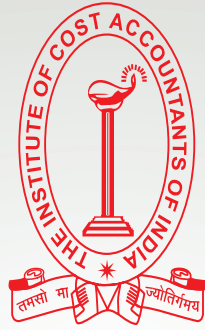
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