

May 2024

TAX Bulletin

Volume - 160
17.05.2024



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

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Duration (Hrs)	32	32

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Behind every successful business decision, there is always a **CMA**

FROM

TAX RESEARCH DEPARTMENT

A workshop had also been conducted on the following dates: 29.04.2024, 30.04.2024, 02.05.2024 and 03.05.2024 on the topic 'Understanding and Overcoming Challenges in ITC: Reconciliation of GST'. The workshop was a paid session and was widely participated by people from the industry. There had been a CEP of 4 hours for the workshop. This workshop was undertaken by two faculties, CMA B M Gupta and CMA Dipak N Joshi, both of whom are GST professionals.

The contents of the workshop have been: (i) ITC Provisions – Implications (ii) Why Reconciliation is required and (iii) Breakup of ITC ledger-wise-in GSTR-9C. Reconciliation between various heads like (i) GSTR - 2A/B and GSTR-3B (ii) GSTR - 2A and Purchase Register and (iii) GSTR - 2A and Table 8A of GSTR -9 were also discussed. Case studies and practical sessions also formed a part of this learning assignment.

Professionals understand that GST Reconciliation is a crucial step that the taxpayer, need to undertake to avail input tax credit (ITC) and also to assess their liabilities. For every month's GST return filing, one needs to reconcile his purchase data with all his suppliers' sales data that they have uploaded on GSTN. If the data on both ends match in the reconciliation process, claiming ITC can be a convenient. However, on account of mismatch can put an assessee into the mammoth task of exploring through huge piles of invoices for one simple error. GST reconciliation is extremely important as failing to do so can incur huge ITC losses to businesses. Additionally, there can be invoice mismatches causing return filing errors that can lead to penalties or SCNs from authorities.

The classes for all the 7 courses on Taxation are on the way of completion and the admissions for the upcoming batches also also going on in full swing. Other regular activities of the department, like update of Taxation Portal, quiz, courses for colleges and universities all are being carried on with utmost sincerity.

Thank You.

Tax Research Department

The Institute of Cost Accountants of India

17.05.2024



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Please send the articles to

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Applicability of GST on Corporate Guarantee

CMA Dipankar Biswas

Cost Accountant



Meaning of the Corporate Guarantee:

GST Law has not defined the term of “Guarantee” or “Corporate Guarantee”. Hence, Section 126 of the Indian Contracts Act, 1872 can be taken into consideration for the definition of the “Guarantee”. Here, “Contract of Guarantee” is a contract to perform the promise, or discharge the liability of a third

person in case of his default. In other word, a guarantee is a promise made by one person where such person will be responsible for the debt or obligation of another person. The following three parties are there in a contract of guarantee-

1. **Guarantor** - the person who gives the guarantee
2. **Principal Debtor** - the person on whose behalf the guarantor gives the guarantee
and
3. **Creditor** - the person to whom such guarantee is given.

Example: If Mr.A gives an undertaking stating that if ₹.10,000/- is given to Mr.C by Mr.B and Mr.C does not pay the same, Mr.A will pay the same. Here, Mr.C fails

to pay the same within the specified period of time and Mr.A pays the same as he is the guarantor(surety), Mr.C is the Principal Debtor and Mr.B is the Creditor.

Hence, a Corporate Guarantee is an agreement where the corporate guarantor takes the responsibility for the debt or obligation if the principal debtor defaults or fails to pay the same to the creditor within the specified period of time. Such guarantee can be given with consideration or without consideration by the parent/holding companies to the banking institutions or financial institutions for credit facilities availed by the subsidiary companies.

Difference between a contract of indemnity and a contract of guarantee: Some important differences of a contract of indemnity and a contract of guarantee are highlighted as below:

Headings	Contract of Indemnity	Contract of Guarantee
Meaning	It is a contractual obligation or liability where one party promises to compensate for the potential loss or damage incurred by another party.	It is a legal promise made by a third party to pay the debts of another party if such party fails to pay such obligation.
Number of Parties	Two parties are involved here such as Indemnifier and Indemnified Party.	Three parties are involved here such as Guarantor, Principal Debtor and Creditor.
Risk	The Indemnifier is liable to bear the loss if it happens.	The Guarantor is liable to pay the debts if the Principal Debtor fails to pay.
Main Purpose	Its main purpose is to compensate for a loss.	Its main purpose is to ensure the performance of an obligation.
Applicable Section	Section 124 of the Indian Contracts Act, 1872.	Section 126 of the Indian Contracts Act, 1872.
Example	Insurance Contract	Bank Guarantee

Applicability of Indirect Taxes on Corporate Guarantees:

A. Before the GST Regime:

Before the GST Law, the same matter was covered by the Service Tax and if the parent/holding company provided the corporate guarantee for their subsidiaries without any consideration, the same would not be treated as service and no service tax was levied for such guarantee.

B. After the GST Regime:

Under GST Law, a conflict was present on the applicability of GST and the valuation on such Corporate Guarantees without any consideration and such conflict has been removed with the Circular No.204/16/2023-GST dated 27.10.2023 read with Notification No.52/2023-Central Tax dated 26.10.2023. Notification No.52/2023-Central Tax dated 26.10.2023 has inserted Rule 2 of Rule 28 for valuation of corporate guarantee. The applicable rate of GST for Corporate Guarantee with consideration or without consideration is 18% and SAC for such guarantee is 99715 under services Auxiliary to Financial Services (excluding insurance and pensions).

Note - Hence, Corporate Guarantees are taxable under GST@18% calculated on either 1% of the guaranteed amount or the actual consideration whichever is higher with exemptions for directors or promoters.

Clear clarification on the applicability of GST on Corporate Guarantees: Some doubts were there regarding the imposition of GST on corporate guarantees when the parents/holding companies provided such guarantees to its subsidiaries without any consideration. Ministry of Finance has issued a Circular No.204/16/2023-GST dated 27.10.2023 where it is clearly confirmed that *“where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.”*

Similarly, *“where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of ‘related persons’.* Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act”.

■ Case Study

1. In the case of Commissioner of CGST & Central Excise vs Edelweiss Financial Services Limited, it was noted that no service tax would be imposed on the corporate guarantee in the absence of any consideration. The Supreme Court stated that consideration is must for imposition of the Service Tax and the Supreme Court upheld the order of CESTAT (*Customs Excise and Service Tax Appellate Tribunal*), Mumbai on the same matter.
2. In the case of Suzlon Energy Limited, Ahmedabad vs The Dcit., Circle-8, Ahmedabad, it was held that the issuance of the corporate guarantee in question was not in the nature of “provision of services” and these corporate guarantees were to be treated as shareholder participation in the subsidiaries.

Hence, Circular No.204/16/2023-GST dated 27.10.2023 has clearly confirmed that GST is applicable on the Corporate Guarantees provided by a company/holding/parent company to the banks/financial institutions for securing the credit facilities to the other company or subsidiary company as related persons even when made without any consideration.

Valuation Under GST:

Notification No.52/2023-Central Tax dated 26.10.2023 has inserted Sub Rule 2 of Rule 28 for valuation of corporate guarantee. Hence, the taxable value of such corporate guarantees shall be



determined as per Rule 28(2) irrespective of whether full ITC is available to the recipient of services or not.

Note:

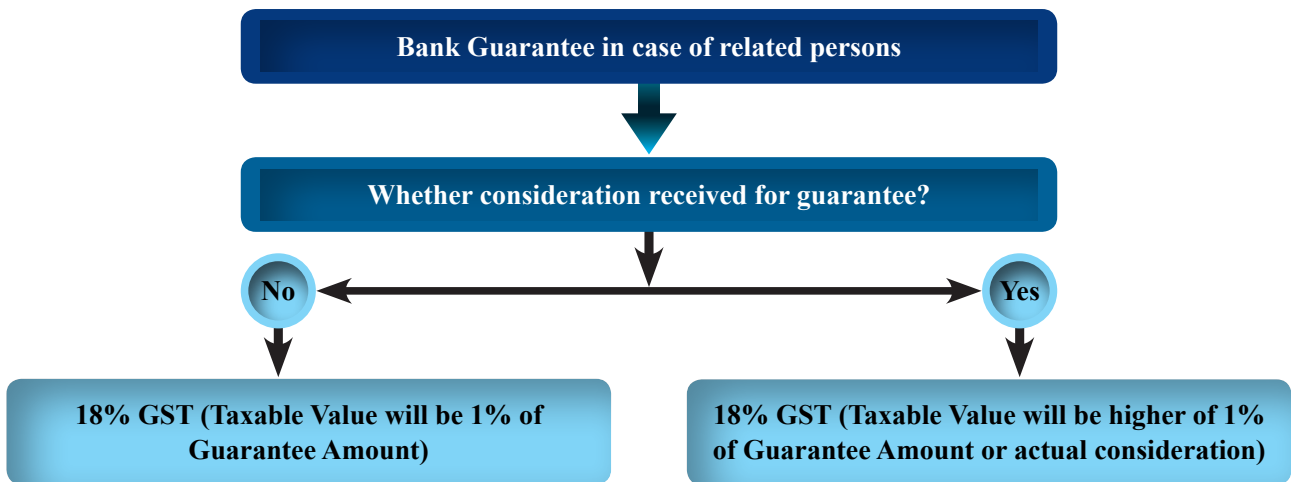
- As per Rule 28(2) of CGST Rules, 2017, the taxable value of supply of services of corporate guarantee provided between related parties would be 1% of the guaranteed amount or the actual consideration whichever is higher.
- Here, it must be noted that Rule 28(2) shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/financial institutions for securing the credit facilities.

Key Points of the GST on Corporate Guarantees

- Recipient of the Services:** When a company/

holding/parent company provides the Corporate Guarantee to the bank/financial institution for its subsidiary or other company as related persons, the subsidiary company or the other company against whom Corporate Guarantee issued will be considered as the recipient of the services. Here, Section 2(93) of the CGST Act,2017 can be referred as a ready reference for the meaning of recipient of the services with or without consideration.

- Location of the recipient of the services:** For the identification of the location of the recipient of the services, Section 2(70) of the CGST Act,2017 can be referred.
- Applicable rate of GST:** The applicable rate of GST for Corporate Guarantee with or without consideration is 18%.
- Valuation Rule:** Notification No.52/2023-Central Tax dated 26.10.2023 has inserted Sub Rule 2 of Rule 28 for valuation of corporate guarantee.



- Input Tax Credit:** Where the services of issuance of the corporate guarantee is used by the registered entity (say subsidiary company) for the purpose of taxable supplies, then input tax credit will be eligible and if the same is used for exempt supplies, then such credit will not be eligible.

If the same is used for both the taxable supplies and exempt supplies, then input tax credit will be availed only on the proportionate basis.

Conclusion:

The confusion regarding the imposition of the GST on the Corporate Guarantees by a company/holding/parent company to other company/subsidiary company as a related persons with or without the consideration is cleared with the Circular No.204/16/2023-GST dated 27.10.2023. Besides that, the valuation mechanism is also clearly ensured with the Notification No.52/2023-Central Tax dated 26.10.2023 (Sub Rule 2 of Rule 28).

A Deep-dive into the Notification No. 28/2024 Dated 7th March 2024

CMA Varun V

Practicing Cost Accountant



Abstract

The Central Government, vide its Notification No. 28/2024 Dated 7th March 2024, has exercised its powers conferred to it under Section 197A(1F) of the Income Tax Act, 1961, to notify that no Tax needs to be deducted at source on payments made to a Unit of International Financial Services Centre.

Extract of the Notification for reference:

“In exercise of the powers conferred by sub-section (1F) of section 197A read with sub section (1A) and sub-section (2) of section 80LA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred as the Income-tax Act), the Central Government hereby notifies that no deduction of tax shall be made under the provisions of the Income-tax Act as specified in column (4) of the Table below in respect of the payments, as specified in column (3) of the said Table, made by any ‘payer’ to a person being a Unit of International Financial Services Centre, (hereinafter referred as ‘payee’), as specified in column (2) of the said Table:-“

This Article attempts a deep-dive into the said Notification, exploring the various inter-connected provisions of the Income Tax Act, 1961 related to the Notification.

Introduction

Chapter XVII of the Income Tax Act, 1961 deals with ‘Collection and Recovery of Tax’. The Chapter is divided into 8 Sub-Chapters namely:

- A. General – Sections 190 & 191
- B. Deduction at Source – Section 192 - 206AA
- BB. Collection at Source

- C. Advance Payment of Tax
- D. Collection and Recovery
- E. Tax payable under Provisional Assessment
- F. Interest chargeable in certain cases
- G. Levy of fee in certain cases

Section 197A, the focal point of this Article, is covered under ‘B. Deduction at Source – Section 192 - 206AA’. This Section has been made effective with and as on the 1st of June 1982.

Section 197A covers the situation or cases where no Tax needs to be Deducted. Let us take a brief look at its sub-sections:

197A (1) - No Tax to be deducted u/s 194 or 194EE in case the Recipient is a Resident Individual and declares that the Tax on his Estimated Total Income of the Previous Year in which such Income is to be included in computing his Total Income will be Nil.

197A (1A) - No Tax to be deducted u/s 192A, 193, 194A, 194D, 194DA, 194-I, 194K wherein the Recipient is not a Company or Firm, and declares that the Tax on his Estimated Total Income of the Previous Year in which such Income is to be included in computing his Total Income will be Nil.

197A (1B) - Sub-Sections (1) & (1A) not applicable in case the Income paid or Payable does not exceed the maximum amount not chargeable to Income Tax.



197A (1C) - This Sub-Section overrides Sub-Sections (1), (1A) & (1B) where the Payee is an Individual who is of age sixty years or more and declares that the Tax on his Estimated Total Income of the Previous Year in which such Income is to be included in computing his Total Income will be Nil.

197A (1D) - An Offshore Banking Unit need not deduct Tax on the Interest Paid on the Deposits made by a Non-Resident or a Person not Ordinarily Resident in India. Also applicable on the Borrowings from a Non-Resident or a Person not Ordinarily Resident in India. Provided, the Deposit/Borrowing should have been made after the 1st Day of April 2005.

197A (1E) - Over-riding the previous Sub-Sections, Tax need not be deducted on payments made to the New Pension Trust referred to in Clause 44 of Section 10.

The 7th of March 2024 Notification refers to two sections and three sub-sections of the Income Tax Act,

1961. The sections mentioned thereon along with their sub-sections are as follows:

- Section 197A (1F)** - Confers powers to Central Government to notify Institutions, Association or Class or Body of Institutions, Associations or Bodies on whom no Tax shall be deducted.
- Section 80LA (1A)** - The amount of eligible deduction from Income that can be availed by an Offshore Banking Unit or a Unit of an International Financial Services Centre subject to the Income being one among those specified U/S 80LA (2)
- Section 80LA (2)** - List of Income eligible for deduction U/S 80LA (1A).

The said Notification tables the list of payments receivable by a Unit of an International Financial Services Centre (IFSC) and the same is reproduced below for reference:

Sl. No.	International Financial Services Centre (IFSC Unit) (Payee)	Nature of Receipt	Relevant TDS provisions as per Income- tax Act, 1961
(1)	(2)	(3)	(4)
1.	Banking Unit	Interest income on External Commercial Borrowings /Loans	Section 195
		Professional fees	Section 194J
		Referral fees	Section 194H
		Brokerage income	Section 194H
		Commission income on factoring and forfaiting services	Section 194H
2.	IFSC Insurance Intermediary office	Insurance commission	Section 194D
3.	Finance Company	Interest income on External Commercial Borrowings /Loans	Section 195/194A
		Dividend income	Section 194
		Commission income on factoring and forfaiting services	Section 194H
4.	Finance Unit	Interest income on External Commercial Borrowings /Loans	Section 195/194A
		Dividend income	Section 194
		Commission income on factoring and forfaiting services	Section 194H

Sl. No.	International Financial Services Centre (IFSC Unit) (Payee)	Nature of Receipt	Relevant TDS provisions as per Income- tax Act, 1961
(1)	(2)	(3)	(4)
5.	Fund Management entity	Professional fee	Section 194J
6.	Broker Dealer	Dividend	Section 194
7.	Investment advisor	Investment advisory fee	Section 194J
8.	Registered Distributor	Distribution fee and Commission fee	Section 194H
9.	Custodian	Professional fee	Section 194J
		Commission fee	Section 194H
10.	Credit rating agency	Credit rating fee	Section 194J
11.	Investment banker	Investment banker fee	Section 194J
12.	Debenture trustee	Trusteeship fee	Section 194J
13.	International Trade Finance Service or "ITFS"	Commission income	Section 194H
14.	FinTech Entity	Technical fee/Professional fee	Section 194J
		Commission income	Section 194H

We would be discussing in detail, in the next sections of this article, as to what is an IFSC, a brief about the various TDS provisions applicable to Banking units of such IFSC and what is it that the Central Government has notified through its 7th of March 2024 Notification.

What is International Financial Service Centre ('IFSC')?

IFSC is set-up to undertake financial services transactions that are currently carried on outside India by overseas financial institutions and overseas branches

/ subsidiaries of Indian financial institutions (IFSC unit is treated as a non-resident under RBI regulations) An IFSC caters to customers outside the jurisdiction of the domestic economy. Such centers deal with the flow of finance, financial products and services across borders.

A financial centre that proffers to customers outside the domestic economy's jurisdiction is known as an international financial service centre. As an international financial service centre, that deals with the flow of financial products, financial services, and finance across borders it is also known as an offshore financial centre.



An international finance service centre is hence a jurisdiction that provides financial services of world-class calibre to residents and non-residents. It does so based on the regulations imposed by a currency that is not a domestic currency. New York is an example of an international financial services centre.

Given the above explanations, we can infer that an IFSC has essentially the following characteristics:

1. It is an Offshore Financial Centre offering Financial Products and Services.
2. An IFSC Unit is a Non-Resident as per RBI Regulations.
3. It offers its Products and Services to Customers outside the Domestic Country's Economic Jurisdiction.
4. Deals with the flow of Financial Products and Services across Borders.

Moving on, let us now understand some of the TDS provisions applicable to such units of an IFSC.

TDS provisions applicable to units of such IFSC

Section 194 - Contains provisions relating to payment of Dividend payable by an Indian Company or a Company which pays Dividend within India. The said section details the circumstances in which Income Tax at Source needs to be deducted and the circumstances in which no Income Tax needs to be deducted at Source.

Section 194A - Comprises provisions relating to payment of Interest other than "Interest on Securities". The said sections details the instances wherein 'Any Person, not being an Individual or a Hindu Undivided Family', is required to deduct Tax at Source.

Section 194D - Contains provisions relating to payment of Remuneration or Reward or Commission for procuring Insurance business and where the pay-out exceeds ₹. 15,000/-.

Section 194H - Comprises provisions relating to payment of Commission or Brokerage exceeding ₹. 15,000/- in a Financial Year provided that the payer's Total Sales or Gross Receipts or Turnover in case of

Business exceeds One Crore Rupees or Fifty Lakh Rupees in case of Professionals.

Section 194J - Contains provisions relating to Fees for Professional or Technical Services. Tax to be deducted in case where 'Any Person, not being an Individual or a Hindu Undivided Family' who is responsible for paying to a Resident any Fees for Professional Services or Technical Services or any Remuneration or Fees or Commission other than those on which Tax is Deductible u/s 192 or Royalty or Non-Compete Fees under any agreement or any sum received or receivable towards non-sharing of Know-how, Patent, Copyright, Trademark, License etc where the amount or aggregate of such amounts paid or likely to be credited during the Financial Year exceeds ₹. 30,000/- in case of Professional Services, Technical Services or other sums as described above.

Section 195 - Comprises provisions dealing with payment of Interest or any other sum other than Salaries to a Non-Resident not being a Company shall deduct Tax at Source at the rates in force. The second leg of the Notification, Section 80LA of the Income Tax Act, 1961 talks about Deduction in respect of certain Incomes of Offshore Banking Units and International Financial Services Centre.

Section 80LA (1A) - Contains provisions where the Gross Total Income of an unit of an IFSC (includes any sums referred to in Sub-Section (2) of this Section), a deduction equal to 100% of such Income for any ten consecutive Assessment Years out of fifteen years beginning with the Assessment Year relevant to the Previous Year in which the approvals from the relevant Competent Authorities have been obtained.

Section 80LA (2) - Containing provisions detailing the Incomes referred to in Sub-Section (1) & (1A) of this Section. The Income shall be:

- a. From an Offshore Banking Unit in a Special Economic Zone or
- b. From a Business of Banking engaged in other forms of Business referred to u/s 6(1) of the Banking Regulation Act, 1949 or
- c. From any Unit of an IFSC for which approval has been obtaining for setting up in a SEZ

- d. On transfer of an Aircraft or Ship which was leased to an unit of IFSC referred to in clause ((C) above; provided that such unit has commenced operations before the 31st day of March 2025.

Let us now get to know the practical aspects of this Notification

Practical aspects involved in implementing the Notification

In this section of this Article, let us delve into the practical aspects covering the implementation of this Notification.

The Notification covers the obligations of the Payee and the Payer, the Forms to be submitted to the relevant Authorities and so on.

The Payee is required to furnish a Statement cum Declaration in Form No. 1 to the Payer detailing the Previous Years relevant to ten consecutive Assessment Years for which the Payee opts to avail the Deductions u/s 80LA (1A) & (2).

In turn, the Payer is obligated not to deduct Tax on payment made to such Payee after the receipt of the Statement cum Declaration. Also, the Payer is mandated to furnish the details of payments to such Payees who have furnished the Statement cum Declaration in the Statement of Deduction of Tax as referred to u/s 200 (3) of the Income Tax Act, 1961.

(a) The ‘Payee’ shall –

- (i) Furnish a Statement-cum-Declaration in Form No. 1 to the ‘Payer’ giving details of Previous Years relevant to the ten consecutive Assessment Years for which the ‘Payee’ opts for claiming deduction under Sub-Sections (1A) and (2) of section 80LA of the Income-tax Act 1961 and
- (ii) Such Statement-cum-Declaration is to be furnished and verified for each Previous Year relevant to the ten consecutive Assessment Years for which the ‘Payee’ opts for claiming deduction under sub-sections (1A) and (2) of section 80LA of the Income-tax Act, 1961.

(b) The ‘Payer’ shall –

- (i) Not deduct Tax on payment made or credited to ‘Payee’ after the receipt of the Statement- cum Declaration in Form No. 1 from the ‘Payee’; and
- (ii) also furnish the particulars of all the payments made to ‘payee’ on which tax has not been deducted in view of this notification in the statement of deduction of tax referred to in sub-section (3) of section 200 of the Income-tax Act read with rule 31A of the Income-tax Rules, 1962.

Conclusion

To conclude, an International Financial Services Centre, in addition to being a Non-Resident regulated by the Reserve Bank of India, deals with the cross-border flow of Financial Information & Services.

The two legs of this Notification, namely Section 197A and Section 80LA of the Income Tax Act, 1961, deals with circumstances in which no Tax needs to be deducted at Source (Sub-Section (1F) providing the Central Government the power to notify persons not required to deduct Tax at Source) and circumstances in which Deduction in respect of certain Incomes of Offshore Banking Units and International Financial Services Centre is available, respectively.

The Central Government, through this Notification has attempted to give an impetus to Companies desirous of setting up shop in an International Financial Services Centre by exempting Withholding Taxes on payments to a Unit of an IFSC.

References

1. international-financial-service-centre.pdf (pwc.in)
2. Everything you need to know about International Finance Centre Authority Act, 2019 - iPleaders



PRESS RELEASE

DIRECT TAX

CBDT releases new functionality in AIS for taxpayers to display status of information confirmation process in real-time

Taxpayers can now check whether their feedback is acted upon by the Source/ Reporting Entities

Posted On: 13 MAY 2024 7:42PM by PIB Delhi

The Annual Information Statement (AIS) is available to all registered Income Taxpayers through the compliance portal, accessible through the e-filing website (www.incometax.gov.in). AIS provides details of a large number of financial transactions undertaken by the taxpayer which may have tax implications. AIS is populated based on the financial data received from multiple information sources.

In AIS, taxpayer has been provided with a functionality to furnish feedback on every transaction displayed therein. This feedback helps the taxpayer to comment on the accuracy of the information provided by the Source of such information. In case of wrong reporting, the same is taken up with the Source for their confirmation, in an automated manner. It may be noted that, information confirmation is currently made functional with regard to information furnished by Tax Deductors/Collectors and Reporting Entities.

The Central Board of Direct Taxes (CBDT) has now rolled out a new functionality in AIS to display the status of information confirmation process. This will display, whether the feedback of the taxpayer has been acted upon by the Source, by either, partially or fully accepting or rejecting the same. In case of partial or full acceptance, the information is required to be corrected by filing a correction statement by the Source. The following attributes shall be visible to the taxpayer for status of Feedback confirmation from Source.

- **Whether feedback is shared for confirmation:** This will let the taxpayer know if the feedback has been shared with the Reporting Source for confirmation or not.
- **Feedback Shared On:** This will let the taxpayer know the date on which the feedback has been shared with the Reporting Source for confirmation.
- **Source Responded On:** This will let the taxpayer know the date on which the Reporting Source has responded on the feedback shared with it for confirmation.
- **Source Response:** This will let the taxpayer know the response provided by the Source on the taxpayer's feedback (if any correction is required or not).

This new functionality is expected to increase transparency by displaying such information in AIS to the taxpayer. This is another initiative of the Income Tax Department towards ease of compliance and enhanced taxpayer services.

NOTIFICATIONS

INDIRECT TAX

CUSTOMS (TARIFF)

Notification No. 24/2024-Customs

New Delhi, the 03rd May, 2024

G.S.R.(E). - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 124 of the Finance Act, 2021 (13 of 2021), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby amends the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, to the extent specified in the corresponding entries in column (3) of the said Table, namely:-

Table

S. No.	Notification No. and Date	Amendments								
(1)	(2)	(3)								
1.	27/2011-Customs, dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 153(E), dated the 1st March, 2011	In the said notification, in the TABLE, against S. No. 1, in column (4), for the entry, the entry “40%” shall be substituted;								
2.	48/2021-Customs, dated the 13th October, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 733(E), dated the 13th October, 2021	In the said notification, in the TABLE, after S. No. 6 and the entries relating thereto, the following S. No. and entries relating thereto shall be inserted, namely:-								
		<table border="1"> <thead> <tr> <th>(1)</th> <th>(2)</th> <th>(3)</th> <th>(4)</th> </tr> </thead> <tbody> <tr> <td>“7.</td> <td>0713 20 20</td> <td>Bengal gram (desi chana)</td> <td>Nil”;</td> </tr> </tbody> </table>	(1)	(2)	(3)	(4)	“7.	0713 20 20	Bengal gram (desi chana)	Nil”;
(1)	(2)	(3)	(4)							
“7.	0713 20 20	Bengal gram (desi chana)	Nil”;							
3.	49/2021-Customs, dated the 13th October, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 734(E), dated the 13th October, 2021	In the said notification, in the Table, after S. No. 4 and the entries relating thereto, the following S. No. and entries relating thereto shall be inserted, namely:-								
		<table border="1"> <thead> <tr> <th>(1)</th> <th>(2)</th> <th>(3)</th> <th>(4)</th> </tr> </thead> <tbody> <tr> <td>“5.</td> <td>0713 20 20</td> <td>Bengal gram (desi chana)</td> <td>Nil”;</td> </tr> </tbody> </table>	(1)	(2)	(3)	(4)	“5.	0713 20 20	Bengal gram (desi chana)	Nil”;
(1)	(2)	(3)	(4)							
“5.	0713 20 20	Bengal gram (desi chana)	Nil”;							
4.	64/2023-Customs, dated the 07th December, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 884(E), dated the 07th December, 2023	In the said notification, in the Table, against Sl. No. 1, in Column (4), for the words and figures “30th day of June, 2024”, the words and figures “31st day of October, 2024” shall be substituted.								



2. This notification shall come into force from the 4th day of May, 2024.

[F. No. CBIC-190354/241/2023-TO(TRU-I)]

Note:

1. The principal notification No. 27/2011-Customs, dated the 1st March, 2011, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 153(E), dated the 1st March, 2011, and was last amended vide notification No. 62/2023-Customs, dated the 28th October, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 805(E), dated the 28th October, 2023.
2. The principal notification No. 48/2021-Customs, dated the 13th October, 2021, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 733(E), dated the 13th October, 2021, and was last amended vide notification No. 02/2024-Customs, dated the 15th January, 2024, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 40(E), dated the 15th January, 2024.
3. The principal notification No. 49/2021-Customs, dated the 13th October, 2021, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 734(E), dated the 13th October, 2021, and was last amended vide notification No. 02/2024-Customs, dated the 15th January, 2024, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 40(E), dated the 15th January, 2024.
4. The principal notification No. 64/2023-Customs, dated the 07th December, 2023, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 884(E), dated the 07th December, 2023, and was last amended vide notification No. 23/2024-Customs, dated the 05th April, 2024, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 244(E), dated the 05th April, 2024.

Notification No. 25/2024 -Customs

New Delhi, the 6th May, 2024

G.S.R.(E). - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 50/2017- Customs, dated the 30th June, 2017, published in the Gazette of India , Extraordinary , Part II, Section 3 , Sub-section (i), vide number G.S.R 785 (E), dated the 30th June 2017, namely:-

In the said notification, in the Annexure to the Table, for List 34A and List 34B, and the entries relating thereto, the following Lists and entries shall respectively be substituted, namely:

“ List 34A (See S. No. 359A of the Table) - with effect from 1st April, 2024 and valid upto 31st March,

2025 :

1. Axis Bank Limited
2. Federal Bank Limited
3. HDFC Bank Limited
4. Industrial and Commercial Bank of China Limited
5. ICICI Bank Limited
6. IndusInd Bank Limited
7. Kotak Mahindra Bank Limited
8. Karur Vysya Bank Limited
9. RBL Bank Limited
10. State Bank of India
11. Yes Bank Limited

List 34B (See S. No. 359A of the Table) - with effect from 1st April, 2024 and valid upto 31st March,

2025 :

1. Indian Overseas Bank
2. Punjab National Bank
3. Union Bank of India”.

[F No. CBIC-190354/35/2023-TO(TRU-I)]

CUSTOMS (NON-TARIFF)

Notification No. 34/2024 - Customs (N.T.)

New Delhi, dated the 2nd May, 2024

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 30/2024-Customs(N.T.), dated 18th April, 2024 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 3rd May, 2024, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a) (For Imported Goods)	(b) (For Export Goods)
1.	Australian Dollar	55.70	53.30
2.	Bahraini Dinar	236.90	208.95
3.	Canadian Dollar	61.80	59.85
4.	Chinese Yuan	11.75	11.35
5.	Danish Kroner	12.15	11.80
6.	EURO	91.00	87.90
7.	Hong Kong Dollar	10.85	10.55
8.	Kuwaiti Dinar	279.75	262.40
9.	New Zealand Dollar	50.60	48.30
10.	Norwegian Kroner	7.65	7.45
11.	Pound Sterling	106.35	102.90
12.	Qatari Riyal	23.65	22.25
13.	Saudi Arabian Riyal	22.80	21.65
14.	Singapore Dollar	62.40	60.40
15.	South African Rand	4.65	4.35
16.	Swedish Kroner	7.75	7.55
17.	Swiss Franc	92.75	89.35
18.	Turkish Lira	2.65	2.50



Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
19.	UAE Dirham	23.45	22.05
20.	US Dollar	84.35	82.60

SCHEDULE-II

Sl. No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	54.30	52.70
2.	Korean Won	6.25	5.90

[F.No. 468/01/2024-Cus.V]

Notification No. 35/2024-CUSTOMS (N.T.)

New Delhi, 15th May, 2024

S.O. ... (E).— In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to

do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-

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

“TABLE-1

Sl. No.	Chapter/ heading / sub-heading / tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	892
2	1511 90 10	RBD Palm Oil	907
3	1511 90 90	Others – Palm Oil	900
4	1511 10 00	Crude Palmolein	919
5	1511 90 20	RBD Palmolein	922

Sl. No.	Chapter/ heading / sub-heading / tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
6	1511 90 90	Others – Palmolein	921
7	1507 10 00	Crude Soya bean Oil	935
8	7404 00 22	Brass Scrap (all grades)	5587

TABLE-2

Sl. No.	Chapter/ heading / sub-heading / tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	758 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	919 per kilogram
3.	71	<p>(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi- manufactured forms of silver falling under sub-heading 7106 92;</p> <p>(ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage.</p> <p>Explanation - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.</p>	919 per kilogram
4.	71	<p>(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other</p>	758 per 10 grams



Sl. No.	Chapter/ heading / sub-heading / tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
		than imports of such goods through post, courier or baggage. Explanation - For the purposes of this entry, “gold findings” means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	

TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Ton)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	6033 (i.e., no change)”

2. This notification shall come into force with effect from the 16th day of May, 2024.

[F. No. 467/01/2024-Cus.V]

Notification No. 36/2024 - Customs (N.T.)

New Delhi, dated the 16th May, 2024

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 34/2024-Customs(N.T.), dated 2nd

May, 2024 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 17th May, 2024, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a) (For Imported Goods)	(b) (For Export Goods)
(1)	(2)	(3)	
1.	Australian Dollar	57.10	54.70
2.	Bahraini Dinar	230.05	213.35

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
(1)	(2)	(3)	
		(For Imported Goods)	(For Export Goods)
3.	Canadian Dollar	62.40	60.40
4.	Chinese Yuan	11.80	11.35
5.	Danish Kroner	12.35	12.00
6.	EURO	92.50	89.35
7.	Hong Kong Dollar	10.85	10.55
8.	Kuwaiti Dinar	280.70	263.25
9.	New Zealand Dollar	52.35	50.05
10.	Norwegian Kroner	7.95	7.75
11.	Pound Sterling	107.70	104.25
12.	Qatari Riyal	23.65	22.25
13.	Saudi Arabian Riyal	22.65	21.70
14.	Singapore Dollar	63.20	61.20
15.	South African Rand	4.70	4.45
16.	Swedish Kroner	7.95	7.75
17.	Swiss Franc	94.55	91.05
18.	Turkish Lira	2.65	2.50
19.	UAE Dirham	23.45	22.05
20.	US Dollar	84.35	82.65

SCHEDULE-II

Sl. No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
		(a)	(b)
(1)	(2)	(3)	
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	55.05	53.4
2.	Korean Won	6.40	6.00

[F.No. 468/01/2024-Cus.V]



CUSTOMS (ANTI-DUMPING DUTY)

NOTIFICATION No. 08/2024-Customs (ADD)

New Delhi, the 16th May, 2024

G.S.R. ... (E).- Whereas, in the matter of “Pentaerythritol” (hereinafter referred to as the subject goods), falling under tariff item 2905 42 90 of the First Schedule of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from China PR, Saudi Arabia and Taiwan (hereinafter referred to as the subject countries) and imported into India, the designated authority in its final findings, vide notification F. No. 06/04/2023-DGTR, dated the 20th February, 2024, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 20th February, 2024, has come to the conclusion, inter alia that-

- (i) the product under consideration has been exported to India at a price below normal value, thus resulting in dumping;
- (ii) the domestic industry is suffering material injury;
- (iii) the material injury suffered by the domestic industry has been caused by the dumped imports from subject countries,

and has recommended imposition of anti-dumping

duty on imports of the subject goods, originating in, or exported from the subject countries and imported into India, in order to remove injury to the domestic industry.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under the tariff item of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (7), in the currency as specified in the corresponding entry in column (9) and as per unit of measurement as specified in the corresponding entry in column (8) of the said Table, namely :-

TABLE

S. No.	Tariff item	Description of goods	Country of origin	Country of export	Producer / exporter	Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	2905 42 90	Pentaerythritol	China PR	Any country including China PR	Any	345.15	MT	USD
2.	2905 42 90	Pentaerythritol	Any country other	China PR than China PR	Any	345.15	MT	USD
3.	2905 42 90	Pentaerythritol	Saudi Arabia	Any country including Saudi Arabia	Any	300.15	MT	USD

S. No.	Tariff item	Description of goods	Country of origin	Country of export	Producer / exporter	Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
4.	2905 42 90	Pentaerythritol	Any country other than Saudi Arabia	Saudi Arabia	Any	300.15	MT	USD
5.	2905 42 90	Pentaerythritol	Taiwan	Any country including Taiwan	Any	499.01	MT	USD
6.	2905 42 90	Pentaerythritol	Any country other than Taiwan	Taiwan	Any	499.01	MT	USD

2. The anti-dumping duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

Explanation- For the purposes of this notification, rate of exchange applicable for the purpose of calculation of such anti-dumping duty shall be the rate which is

specified in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.

[F. No. CBIC-190354/56/2024-TRU Section-CBEC]

CENTRAL EXCISE (TARIFF)

Notification No. 14/2024-Central Excise

New Delhi, the 15th May, 2024

G.S.R.....(E).—In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of the Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2022-Central Excise,

dated the 19th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 584 (E), dated the 19th July, 2022, namely:-

In the said notification, in the Table, -

- (i) against S. No. 1, for the entry in column (4), the entry “₹. 5700 per tonne” shall be substituted;
2. This notification shall come into force on the 16th day of May, 2024.

[F. No. 354/15/2022-TRU]



CIRCULARS

CUSTOMS

Circular No 04/2024-Customs

F. No. 605/13/2023-DBK

New Delhi, dated 7th May, 2024

Subject: Amendments to the All Industry Rates of Duty Drawback effective from 03.05.2024.

Government has made certain amendments in the All Industry Rates (AIRs) of Duty Drawback published vide notification No. 77/2023-Customs (N.T.) dated 20.10.2023, vide Notification No. 33/2024-Customs (N.T.) dated 30.04.2024. These changes are effective from 03.05.2024. The notification may be downloaded from www.cbic.gov.in and perused.

2. The changes made are briefly summed up as follows:

- (a) Representation from trade were received for the clarification for unit of “counts” mentioned in Chapter 52 in respect of cotton yarn. In this context, a new Para (13A) is inserted in the Notes and conditions of the notification No. 77/2023-Customs (N.T.) dated 20.10.2023 clarifying that the term “counts” used in Chapter 52 shall mean “counts in New English (Ne)”. It is also clarified that since the inception of the drawback schedules, the unit of counts was taken in “New English (Ne)”, hence in the all schedules of drawback notifications issued earlier, the counts were meant to be counts in New English (Ne) only.
- (b) AIRs/caps of Duty Drawback have been enhanced for the following items:
 - (i) certain marine products covered under Chapters 3 and 16;
 - (ii) certain goods bags, hand bags, trunks, suit-cases and others, under Chapters 42;

(iii) articles of bed linen, table linen, toilet linen and kitchen linen under Chapter 63;

(iv) radar apparatus, radio navigational aid apparatus and radio remote control apparatus and others under Chapter 85 and

(v) unmanned aircraft under Chapter 88.

(c) Cap of Duty Drawback have been rationalized for “Golf Gloves made of leather in combination with textile materials” under TI 420304.

(d) Certain new tariff items have been created to allow better differentiation of export product viz. “Breaded shrimp/prawn” (TI 16050101), “Breaded Squids” (TI 16050501), “Sports gloves, other than Golf gloves, made of leather” (TI 420311) and “Sports gloves, other than Golf gloves, made of leather in combination with textile materials” (TI 420312).

(e) Descriptions of Tis 420303 and 420304 pertaining to Golf Gloves have been changed as “Golf Gloves made of leather” & “Golf Gloves made of leather in combination with textile materials” respectively. Unit for the both Tis have also been changed to “piece”.

(f) To promote export of goods of defense sector, AIRs of duty drawback have been provided to the specified products of defense sector by creating new Tis in Chapter 72,75,81,87,88 and 93.

3. Suitable Public Notice/Standing Order should be issued for guidance of the trade/field formations. Difficulties faced, if any, in implementation of the changes may be brought to the notice of the Board.

JUDGEMENT

INDIRECT TAX

Appellate authority can condone delay in filing appeal beyond prescribed period under GST Act: Calcutta HC

Facts of the case - S.K. Chakraborty & Sons v. Union of India - [2024] (Calcutta)

In the present case, the petitioner, a partnership firm, received a show cause notice alleging suppression of sales. It submitted reply and assessment order was passed against it. It had preferred an appeal against the order on date which was beyond 60 days and appeal was rejected by Appellate Authority on the ground of limitation. It filed writ petition against the order rejecting appeal.

Decision of the case :

- The Honorable High Court noted that the Appellate Authority had not assessed the quality of the claim of the appellant for condonation of delay. It had proceeded on the basis that it did not possess any power to condone the delay beyond the period of 60 days from the date of communication of the adjudication order.
- The Court further noted that the provisions of Section 5 of Limitation Act, 1963 have not been expressly or impliedly excluded by Section 107 of CGST Act, 2017. Therefore, the period for filing appeal can be extended based on facts and circumstances by Appellate Authority. Thus, the Court set aside order rejecting appeal and directed Appellate Authority to decide application for condonation of delay on merits.

Penalty shouldn't be levied if there was no evasion of tax and only Part B of the E-Way Bill was not filled mistakenly: HC

Facts of the case - Abilities Pistons and Rings Ltd. v. Additional Commissioner, Circle-2

(Appeal) Commercial Tax - [2024] (Allahabad)

The petitioner had imported goods from China and paid IGST at rate of 28% at the time of import. The vehicle and goods were detained and the invoice and the E-Way Bill were accompanying the goods and the description of the goods matched with the invoice but it was found that Part B of the E-Way Bill was not filled up at the time of interception.

The department levied penalty since Part B of the E-Way Bill was not filled. It filed writ petition and contended that IGST had already been paid and there was no involvement whatsoever of any mens rea for evasion of tax.

Decision of the case :

- The Honorable High Court noted that the goods were imported from China and IGST was paid at the time of import. It was further noted that when IGST had already been paid to the custom authorities while the goods were being imported, no further tax was leviable under GST Act.
- Moreover, the petitioner filled up Part B of the E-Way Bill immediately after the interception, that is, much before the order of detention was passed. Thus, the Court held that the impugned detention order was to be quashed and set aside since IGST had already been paid and there was no evasion of tax.

HC directs dept. to accept appeal filed by assessee through physical mode due to non-availability of portal

Facts of the case - King Confectionary v. State of Madhya Pradesh - [2024] (Madhya Pradesh)

In the present case, the petitioner filed a writ petition since it could not be able to file appeal against assessment



orders passed against it. It was contended that it was unable to file an appeal against an assessment order due to the non-availability of the portal and requested the Court to direct the competent authority to accept the appeal if it was filed through the physical mode.

Decision of the case :

The Honorable High Court noted that the petitioner could not file appeal against assessment orders due to non-availability of portal. However, the provision for physical/offline filing of appeal to Commissioner was available but same was subject to notification issued under Rule 108 of CGST Rules, 2017 but no such notification had been issued. Therefore, the Court directed the Competent Authority to accept appeal submitted through physical mode if filed within ten days from the date of order and decide on merits.

HC directed assessee to file request before dept. to provide documents required to file proper reply to SCN

Facts of the case - Pooppally Coir Mills v. State Tax Officer - [2024] (Kerala)

The petitioner was served with show cause notices issued by department alleging wrong availment of IGST Refund. It filed writ petition against show cause notice on ground that it was not able to ascertain with certainty basis for issuance of show cause notices.

Decision of the case :

- The Honorable High Court noted that the petitioner was right in contending that it was not entitled to materials on basis of which show cause notices had been issued and without such materials, it might not be possible for petitioner to file a proper reply to show cause notices.

- Therefore, the Court disposed of writ petition by directing that the petitioner or an authorized representative of petitioner should appear before department who issued show cause notices at designated time and it was open to petitioner to file a request detailing documents that were required by petitioner for purposes of filing a proper reply to show cause notices.

100% Penalty can't be imposed if notice was issued under section 73 and not under section 74: Madras HC

Facts of the case - K.S.Janarthanam v. Deputy State Tax Officer - [2024] (Madras)

In present case, the petitioner was a civil works contractor and a registered person under the GST laws. It received a notice in Form GST-ASMT-10 with regard to discrepancies in the return filed by the petitioner followed by a notice under Section 73. Thereafter, an assessment order was issued and it filed writ petition against it by contending that 100% penalty was imposed although show cause notice was issued under section 73.

Decision of the case :

The Honorable High Court noted that the notice was issued under Section 73 and not under Section 74. Therefore, the impugned order would call for interference as regards the imposition of penalty at 100% on the dues. Thus, the Court held that matter to be remanded and directed the assessing officer to reconsider the penalty and provide a reasonable opportunity to the petitioner. After providing a reasonable opportunity to the petitioner, this exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

DIRECT TAX

Rectification order disallowing carry forward of loss without granting hearing opportunity to assessee is invalid: HC

Facts of the case - Apollo Speciality Hospitals (P.) Ltd. v. DCIT - [2024] (Telangana)

The petitioner filed a writ petition before the High Court challenging the order passed under section 154. The brief facts of the case are that a scheme of amalgamation

between Apollo Bangalore Cradle Limited and Apollo Specialty Hospitals Private Limited was approved by the National Company Law Tribunal (NCLT).

As a consequence of the amalgamation, Apollo Bangalore Cradle Limited was dissolved, and all assets, properties, rights, and liabilities to transfer were vested into Apollo Specialty Hospitals Private Limited.

Apollo Bangalore Cradle Limited was a public company incorporated in 2011. The said company had filed its return for the Assessment Year 2016-17 on 14.10.2016, declaring loss. The return of income was subject to scrutiny, and an order of assessment was passed, making disallowance and recomputing the total loss. The order of assessment was not further challenged, and the same attained finality.

Later, the petitioner received an order of rectification under section 154 disallowing the carrying forward of the loss reflected in the Assessment Year 2016-17. The petitioner contended that the impugned order was passed without issuing any show cause notice and, therefore, liable to be quashed.

■ Decision of the case :

- The High Court held that the order was passed under section 154 disallowing the carrying forward of the loss reflected in the Assessment Year 2016-17. By disallowing the carrying forward of the loss, the petitioner would be deprived and denied to carry forward the said loss of the previous year into the Books of Account of the next financial year.
- Thus, the said action on the part of the Assessing Officer (AO) had an adverse bearing and impact on the interest of the petitioner. Section 154(3) clearly envisages that in the event of effect of rectification resulting in an enhancement of assessment, reducing a refund, or increasing the liability of the assessee, it is incumbent upon AO to issue a notice to the assessee and grant reasonable opportunity of hearing before the order of rectification is passed.
- The said provision has to be read in a manner where it means that, in the event of any order which has a detrimental effect upon the assessee in those circumstances, firstly a notice and secondly a reasonable opportunity of hearing becomes mandatory.

- Since the petitioner would suffer a loss due to the disallowance of carrying forward of the loss, the Assessing Officer was required to issue notice and grant a reasonable hearing before passing the order. Therefore, the order passed under Section 154 was in violation of the statutory provision of Section 154(3), and accordingly, the same was unsustainable.

AO can't deny sec. 11 exemption on notional interest income on advance given to specified person: ITAT

Facts of the case - Rastogi Education Society v. Income-tax Officer - [2024] (Raipur - Trib.)

The assessee was a charitable institution registered under sections 12A and 80G. During the relevant assessment year, the assessee made certain advances to a specified person for purchasing land without charging any interest.

Assessing Officer (AO) treated the transaction as a violation of provisions of section 13(1)(c) and section 13(2)(a) and computed notional interest @ 12% on such advances. Accordingly, he denied the exemption claimed under section 11 of the Act and made additions to the income of the assessee.

On appeal, CIT(A) upheld the additions made by AO, and the matter reached the Raipur Tribunal.

■ Decision of the case :

- The Tribunal held that the AO treated the transaction as a violation of section 13(1)(c) and section 13(2)(a) and computed notional interest @ 12% on such advances. Accordingly, he denied the exemption claimed under section 11 of the Act and made additions to the income of the assessee.
- However, it was an admitted fact that the transaction of purchase had been accepted by the department in the earlier years when the advance was actually provided, for which no disallowances were imposed either in the earlier AYs or in the relevant AY.
- Only a notional interest @ 12% was computed on the outstanding advance and added to the assessee's



income. The CIT(E) has specifically examined and characterized the impugned transactions pertaining to advances for land purchase as genuine transactions, thereby dropping the proceedings for withdrawal of the registration under section 12AA.

- Thus, the observations of AO were rendered arbitrary, without basis and bereft of any substance, especially when the transaction was authorized by CIT(E) as commercial in nature. Considering the overall circumstances of the case, since the advances extended to the specified person, pertaining to the purchase transaction, were accepted as a genuine business deal, no adverse inference was drawn, and the proceedings for cancellation of 12AA were dropped. The same cannot be treated as a transaction in violation of section 13(1)(c).
- Regarding adequate security and interest as mandated by the provisions of section 13(2)(a), since the transaction pertains to the purchase of land on which the assessee proposed to conduct its educational activities, the same does not fall under the category of money lent to a specified person.
- The provisions of section 13(2)(a) thus cannot be triggered on such transactions. Thus, additions on account of notional interest were uncalled for, and the AO was directed to vacate the additions.

Assessment order passed after approval of resolution plan by NCLT is not part of claim to be made before RP: HC

Facts of the case - Surya Exim Ltd. v. Union of India - [2024] (Gujarat)

Assessee was subjected to insolvency proceedings under the Insolvency and Bankruptcy Code, 2016. The Committee of Creditor approved the resolution plan, and the NCLT approved the same. The approved resolution plan specifically stated that the resolution applicant would not be liable for any reassessment, reopening, revision, review, or other proceedings under the direct and indirect tax statutes for any period before the effective date.

After the NCLT approval, the CIT(A) passed the assessment order for the relevant assessment year. The assessee contended that the CIT(A) could not have issued the notices for hearing, as the pending proceedings before the CIT (Appeals) after 01.07.2022 would lapse. The CIT(A) could not have passed an order on 13.03.2023 and also could not have issued the notice under section 156 of the Act, 1961 on 23.03.2023 pertaining to the assessment order 2018-19 as the entire reassessment proceedings stand extinguished in view of the provision of section 31 read with section 238 of the IBC.

Decision of the case :

- The Gujarat High Court held that the demand raised pursuant to the order dated 13.03.2023 by issuing the demand notice dated 20.03.2023 cannot be said to be in respect of a claim that is part of the resolution plan. The proceedings continued under section 147, read with section 144 of the Income Tax Act, 1961, by the respondent, and were also not a proceeding with respect to a claim not part of the resolution plan.
- In such circumstances, the notices issued by the CIT(A) and reference for the hearing of the appeals filed by the assessee challenging the assessment order would extinguish on 01.07.2022 as no demand would remain in existence in the absence of any claim raised before the RP by the respondent authority.

SC dismissed review petition against ruling that sum paid towards sale of computer software not taxable as royalty

Facts of the case - CIT v. GE India Technology Centre (P.) Ltd - [2024] (SC)

The Supreme Court, in the case of Engineering Analysis Centre of Excellence Pvt. Ltd., held that the license for use of a product under an EULA cannot be construed as a license spoken of in section 30 of the Copyright Act, as such EULA only imposes restrictive conditions

upon the end-user and does not part with any interest relating to any rights mentioned in section 14(a) and 14(b) of the Copyright Act.

Thus, amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreements, is not payment of royalty for the use of copyright in computer software, and the same does not give rise to any income taxable in India.

Revenue filed a review petition contending that the Court overlooked the provisions of the Income-tax Act and the Copyright Act.

■ Decision of the case :

- The Supreme Court held that there was an inordinate delay of 515 days in filing the review petitions, which had not been satisfactorily explained. Accordingly, the revenue review petition was to be dismissed on the grounds of delay as well as on merits.
- Note: The instant review petition arising from the order passed by the Supreme Court in the *Engineering Analysis Centre of Excellence (P.) Ltd . v. Commissioner of Income-tax [2021] 125 taxmann.com 42 (SC)*

AO can't initiate new controversy in garb of giving effect to order of Tribunal: HC

Facts of the case - Ayyappa Seva Samgham Bombay v. Deputy Commissioner of Income Tax - [2024] (Bombay)

The assessee was a charitable organization registered under section 12A. During the relevant assessment year, the assessee deposited cash in the bank account. The Assessing Officer (AO) completed the assessment by taxing the cash deposited as 'unexplained money' under section 69A. The order of assessment was revised by the AO under section 263, and the exemption under section 11 was denied.

The matter went to the Tribunal, and the Tribunal held that the cash deposited by the assessee was not assessable as 'unexplained money'. The assessee's income should be computed as 'Nil'. The AO was directed to issue a refund to the assessee of all taxes paid for the relevant assessment year.

Pursuant to the directions of the Tribunal, the AO issued an order giving effect to its order. However, he also called upon the assessee to furnish a complete set of Form 10B and to justify why the claim of exemption under section 11 of the Act should be allowed. Aggrieved by the order, the assessee filed a writ petition to the Bombay High Court.

■ Decision of the case :

The High Court held that the AO, in the garb of giving effect to the order of the Tribunal, initiated a new controversy. Since before the Tribunal, there was no controversy as regards the date of filing of return and Form 10B, the AO cannot initiate a new controversy. In these circumstances, the order-giving effect was quashed and set aside.



TAX CALENDAR

INDIRECT TAX

Due Date	Returns
May 20th, 2024	GSTR 3B for April 2024 (Monthly)
May 25th, 2024	GST Challan Payment if no sufficient ITC for Apr 2024 (for all Quarterly Filers)

DIRECT TAX

Due Date	Returns
May 30th, 2024	Form 11 for FY 2023-24 for LLP's
	TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments), 26QE (Crypto Assets) for April 2024
	Issue of TCS Certificates in Form 27D for Jan to March 2024
May 31st, 2024	TDS Return in Form 24Q, 26Q, and 27Q for Jan-Mar 2024
	Due date for filing Form 61A i.e., SFT Filing
	Due date for furnishing of statement u/s 285BA For FY 2023-24 (For Banks etc.)

E-PUBLICATIONS

Of

TAX RESEARCH DEPARTMENT

Guide Book for GST Professionals

Handbook for Certification for difference between GSTR-2A & GSTR - 3B

Impact of GST on Real Estate

Insight into Customs-Procedure & Practice

Input Tax Credit and In depth Discussion

Taxation on Co-operative Sector

Guidance notes on Preparation and Filing of Form GSTR 9 and 9C

Guidance Note on Anti Profiteering

Handbook on GST on Service Sector

Handbook on Works Contract under GST

Handbook on Impact of GST on MSME Sector

Assessment under the Income Tax Law

Impact on GST on Education Sector

International Taxation and Transfer Pricing

Handbook on E-Way Bill

Handbook on Filing of Returns

Handbook on Special Economic Zone and Export Oriented Units

For E-Publications, Please Visit Taxation Portal
<https://icmai.in/TaxationPortal/>

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successfully conduct all Taxation Courses.
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:

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