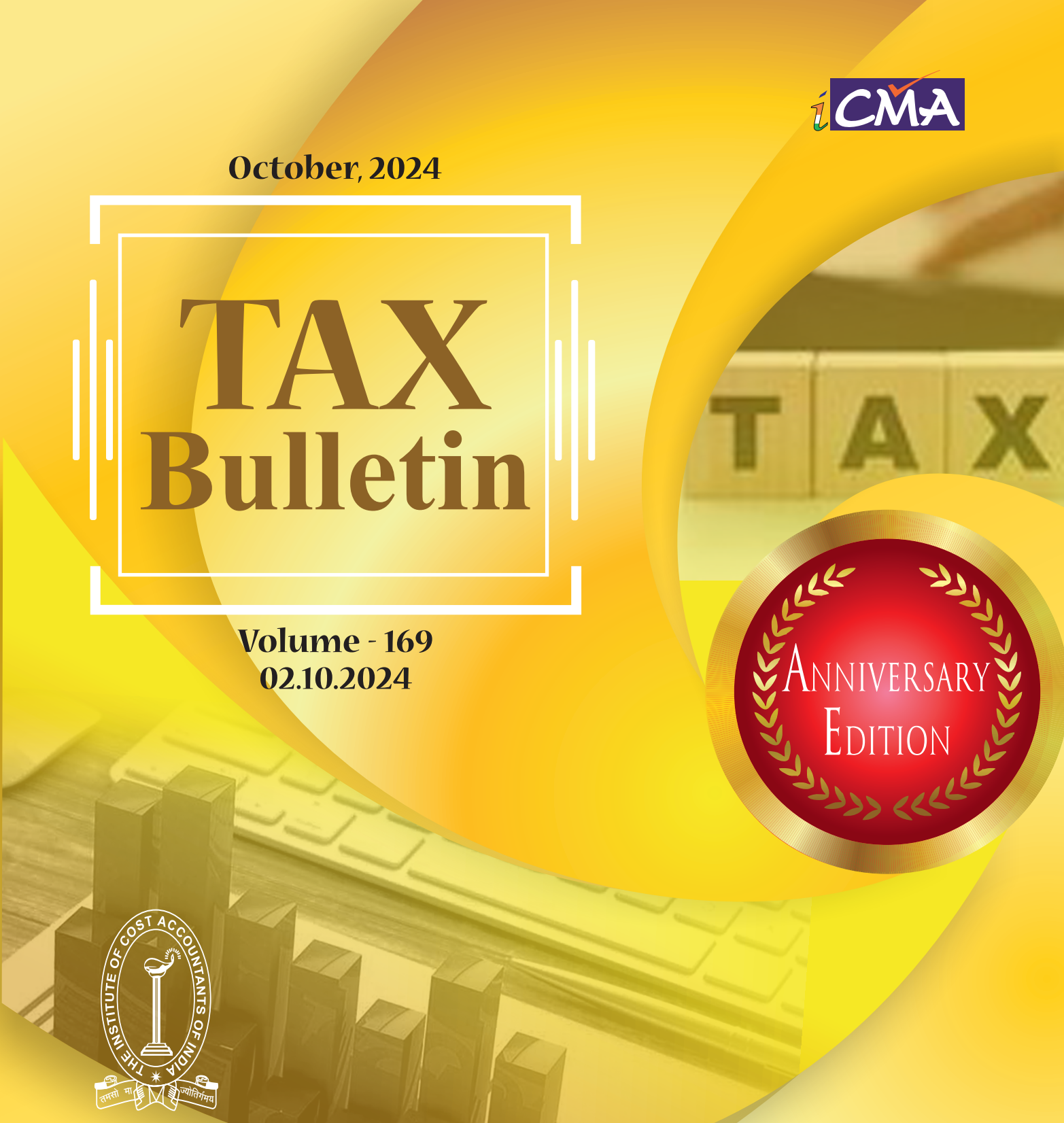
October, 2024

TAX Bulletin

Volume - 169
02.10.2024



ANNIVERSARY EDITION

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12, Sudder Street, Kolkata - 700016
Ph: 091-33-2252 1031/34/35/1602/1492
Delhi Office: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi - 110003
Ph: 091-11-24666100

MISSION STATEMENT

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

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Objectives of Taxation Committees:

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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Certificate Courses Offered by the Tax Research Department

1. Certificate Course on GST (CCGST)
2. Advanced Certificate Course on GST (ACCGST)
3. Advanced Certificate Course on GST Audit and Assessment Procedure (ACGAA)
4. Certificate Course on TDS (CCTDS)
5. Certificate Course on Filing of Returns (CCFOF)
6. Advanced Course on Income Tax Assessment and Appeals (ACIAA)
7. Certificate Course on International Trade (CCIT)

Admission Link - ***https://eicmai.in/advscc/DelegatesApplicationForm-new.aspx***

Modalities

Description	Course Name						
	CCGST	ACCGST	ACGAA	CCTDS	CCFOF	ACIAA	CCIT
Hours	72	40	30	30	30	30	50
Mode of Class	Offline/ Online	Online					
Course Fee* (₹)	10,000	14,000	12,000	10,000	10,000	12,000	10,000
Exam Fee* (₹)	1,000 per attempt						
Discounts	20% Discount for CMA Members, CMA Qualified and CMA Final Pursuing Students						

**18% GST is applicable on both Course fee and Exam fee*

Eligibility Criteria for Admission

- Members of the Institute of Cost Accountants of India
- Other Professionals (CA, CS, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students including CMA Qualified and CMA Pursuing

On passing the examination with 50% marks a Certificate would be awarded to the participant with the signature of the President of the Institute

Course Details

https://icmai.in/TaxationPortal/OnlineCourses/index.php

Courses for Colleges & Universities by the Tax Research Department

Eligibility

- B.Com/ BBA pursuing or completed
- M.Com/ MBA pursuing or completed

Modalities

Description	Courses for Colleges and Universities	
	GST Course	Income Tax
Batch Size	Minimum 50 Students per Batch per course	
Course Fee* (₹)	1,000	1,500
Exam Fee* (₹)	200	500
Duration (Hrs)	32	32

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

**18% GST is applicable on both Course fee and Exam fee*

Behind every successful business decision, there is always a CMA

President's Message

CMA Bibhuti Bhusan Nayak

President, The Institute of Cost Accountants of India

I am delighted to present the 7th Anniversary Edition of the Tax Bulletin, released by the Tax Research Department of the Institute. Over the past seven years, this publication has consistently served as a vital resource for our members, stakeholders, and the broader financial community. It has contributed to informed discourse on tax policy, economic trends, and regulatory changes, reinforcing our commitment to advancing knowledge and excellence in the field of taxation.

Here we have to acknowledge that, Taxation is an ever changing and complex field, influenced by legislative changes, economic fluctuations, and global trends. The Tax Bulletin has been a ready handbook as one passes through the intricacies in the field of Taxation and help the businesses and individuals to make informed decisions, ensuring compliance, and optimizing their financial strategies.

We learn from the past and walk towards the future and in this process we acknowledge the challenges and opportunities that we face while walking through. The tax landscape is non-static, influenced by technological advancements, environmental concerns, and the need for fiscal responsibility. Our Tax Bulletin is committed to being your reliable source for staying ahead in this dynamic environment.

Heartiest congratulations to the Direct and Indirect Taxation Committees for systematically publishing this engaging bulletin. The consistent and dedicated efforts towards the deliverables are appreciated from Team Tax Research. Every activity is a team activity and surely the resource persons, the members of the Taxation Committees and the esteemed members bestow all their support and blessing to this publication.

Regards,

CMA Bibhuti Bhusan Nayak

President

The Institute of Cost Accountants of India

02.10.2024

Vice President's Message

CMA T C A Srinivasa Prasad

Vice President, The Institute of Cost Accountants of India

It gives me immense pleasure to take this opportunity to present this 7th Anniversary Edition of "Tax Bulletin" for the financial year 2024-25 by the Tax Research Department (TRD) of the Institute. My personal gratitude to the Council and Direct & Indirect Taxation Committees for their relentless efforts in publishing this Anniversary Edition as well as the regular fortnightly Edition of tax bulletin.

The Tax Bulletin published by the Tax Research Department of the Institute is a pioneering publication which is surely a must read publication of the Institute and is appreciated by the members, industry, Government and other stakeholders.

The articles published in the Tax Bulletin are authored by industry experts and senior members in practice. These articles are interpretations and explanations on various contemporary issues in the field of Direct & Indirect tax matters that are being faced the assesses as well as the possible way outs to tackle it based on the relevant provisions of tax laws of the country. We believe that the readers of the tax bulletins are hugely benefited from the rich contents of the publication by acquiring knowledge and expertise which can be utilized in their professional field of work.

Publication of 7th Anniversary Edition proves the importance and foresights of this publication from Tax Research Department of the Institute to the readers over the last 7 years. The fortnightly tax bulletin not only includes articles, but also contains notifications, circulars, press releases and judgments of both direct and indirect taxes in a complied manner to serve relevant reference points to the readers at one go.

It may be mentioned at this juncture that along with the Anniversary Edition of the Tax Bulletin other special Editions namely "Income Tax Special Edition" and "GST Special Editions" are also published by the Tax Research Department of the Institute on various occasions in the recent past commemorating special occasions.

To conclude, we appreciate the efforts of all the resource persons, experts and the team of Tax Research Department of the Institute for their efforts and inputs in making the Tax Research publications reaching to the readers across the country and abroad also. We are thankful to all the readers in supporting and appreciating the various publications of the Institute from time to time without which our success cannot be achieved.

All the best.

Regards

CMA T C A Srinivasa Prasad

Vice President

The Institute of Cost Accountants of India

02.10.2024

Chairman's Message

CMA Rajendra Singh Bhati

Chairman Direct Taxation Committee

Tax Bulletin is a special publication of the Tax Research Department which is solely dedicated to keep a track of the changes in the Tax environment. I am happy to understand that the Tax bulletin has covered 8 years and we are here presenting the 7th anniversary edition of the Bulletin.

Today as I write my message, it is to express my sincere gratitude for the exceptional support and motivation that has been provided by the readers of the bulletin and my colleagues at the Council to me for undertaking this activity. I would like to thank each one of my Council colleagues individually for their guidance, patience and encouragement that has played a pivotal role in helping me navigate through the challenges that I have faced during my work.

The last fortnight has been quite fruitful and new efforts have been made to effectively submit suggestions on Comprehensive Review of Income Tax Act,1961 to the Government. Under this activity we, CMA B B Nayak, President, myself, CMA M K Anand, Chairman, PD & CPE Committee, ICMAI and CMA Shailendra Bardia attended the stakeholders meet at New Delhi on 18.09.2024. The discussion was headed by Shri Sanjay Malhotra, Revenue Secretary, Ministry of Finance, Government of India and Shri Ravi Agarwal, Chairman, CBDT. The meeting has been highly successful with exchange of valuable inputs.

Apart from this to contribute positively in this endeavor two more activities have been undertaken:

- The "CMA Tax Volunteer Scheme", has been launched for CMAs, CMA Students and the public at large to provide their inputs on the changes suggested on the new Income Tax Act, 1961
- Chapters of the Institute has also been requested to contribute their views and suggestions in this regards.

Coming back to the Tax Bulletin Anniversary Edition, I would like to acknowledge the time and effort that the resource persons have undertaken to mentor this Bulletin and has helped it to flourish professionally.

And last but not the least, I would like to appreciate the efforts of my very own Team – TRD for all that they do to bring this publication together. Their dedication is instrumental in the day to day betterment of this bulletin and I thank all the readers for their appreciations that has showered on this bulletin.

Thank You

CMA Rajendra Singh Bhati
Chairman – Direct Taxation Committee
The Institute of Cost Accountants of India
02.10.2024

Chairman's Message

CMA Dr. Ashish P. Thatte

Chairman Indirect Taxation Committee

Tax Bulletin holds a special place in my heart. I personally fall back on this publication for any clarifications or understanding related to the matters of Taxation. Here I find the articles which explicitly deciphers the provisions and also provides with case references which help us in our daily professional commitments. I am elated that this supreme publication has completed its eight year of publishing and it celebrating its 7th Anniversary.

Herein I would also like to express my sincere appreciation for the support, opportunities and experiences that my esteemed colleagues have provided during my stint with the Council of the Institute. From my very first day I have felt welcomed, valued and supported by the entire team. I have always been provided with opportunities for the development of my skill sets and contributing professionally for the members of the Institute.

The bulletin, released every fortnight, not only consists of articles, but also concisely presents the notifications, circulars, press releases, judgements and Tax calendars covering both Direct and Indirect Tax. Bringing out such an all-encompassing publication on such regular intervals is surely a commendable achievement.

I would also like to thank the Resource Persons of the Tax Research Department for their guidance, encouragement and mentorship towards all the bulletin which has played a significant role in the success of the publication.

I also acknowledge the efforts of Team – TRD in their commitment towards excellence, innovative thoughts and their unwavering support for all the activities of the department, which makes me feel special to be at the helm and guide them. Their values and mission align with my own and has a positive impact on dissemination of knowledge among the seekers. I wish all the best for the future.

Thank You

Ashish Thatte

CMA (Dr) Ashish P Thatte

Chairman – Indirect Taxation Committee

The Institute of Cost Accountants of India

02.10.2024

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CONTENTS

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.ad2@icmai.in

Furtherance of business & Its Importance

Introduction to "Furtherance of Business" under GST

The term "furtherance of business" is pivotal in determining the taxability of transactions under the Goods and Services Tax (GST). As per Section 16(1) of the CGST Act, input tax credit (ITC) can be claimed if goods or services or both are used "in the course or furtherance of business." Although it is not explicitly defined in the Act, its interpretation relies on judicial precedents and advance rulings.

CMA Vishwanath Bhat

Practicing Cost Accountant

In essence, "furtherance of business" refers to any activity undertaken to promote or advance a business. This broad concept includes activities that directly or indirectly contribute to a business's objectives.

Definition

"Furtherance of business" typically means any activity that supports, promotes, or advances a business. It includes any ancillary activities that assist the core business operations.

Implications under GST

1. **Supply of Goods & Services:**

   Supplies made in the course or furtherance of business are taxable under GST. Sales, leases, transfers, and even donations made by a business can attract GST if they are considered to further business interests.

2. **Input Tax Credit (ITC):**

   ITC can be claimed on inputs, input services, and capital goods used in the course or furtherance of business. This allows businesses to reduce GST liability for expenses incurred for business purposes.

Examples

Direct Activities:

- Manufacturing goods for sale.
- Providing consultancy services.
- Operating a retail store.

Incidental Activities:

- Transporting goods to market.
- Engaging in marketing and advertising.
- Hiring consultants to improve business processes
- Purchase of Air conditioner in office
- Purchase of furniture for employees

Exclusions

Certain activities do not qualify as being in the furtherance of business, such as:

- Personal expenses or transactions.

- Activities unrelated to business objectives.
- Purely charitable activities (unless the charity itself operates as a business).

Legal Framework

The interpretation of "furtherance of business" stems from various provisions in the CGST Act, 2017, along with judicial rulings. Section 2(17) of the CGST Act provides a broad definition of "business," which includes trade, commerce, manufacturing, services, and any incidental or ancillary activities carried out with the intention of making a profit.

Importance of "Furtherance of Business" in GST

This concept is crucial for the following reasons:

- It determines the eligibility to claim ITC.
- It affects the taxability of transactions—only those made in the course or furtherance of business are taxable.
- Supplies not made in furtherance of business may not be liable to GST.

Scope of "Furtherance of Business" in Various Scenarios

1. **Procurement of Capital Goods:**

   Machinery or office equipment purchased to enhance business operations falls under "furtherance of business."

2. **Gifts to Employees:**

   Gifts to employees, if exceeding ₹50,000 in a year, may not be considered furtherance of business. The intention behind the transaction is key.

3. **Charitable Activities:**

   Charitable activities may not be considered furtherance of business if no consideration is received. However, sales by charitable organizations can fall under this scope.

4. **CSR (Corporate Social Responsibility) Expenses:**

   Advance rulings and court judgments have recognized that CSR expenses, when mandated by law, can be considered in furtherance of business, allowing ITC claims.

Key Case Laws

1. **M/s. Safari Retreats Pvt. Ltd. v. Chief Commissioner of Central Goods & Service Tax (2019):**
   - **Issue:** Can ITC be claimed for constructing a mall for leasing out space?
   - **Ruling:** The Orissa High Court held that construction for leasing purposes is in the course of business, making ITC claimable.
   - **Impact:** The ruling expanded the definition of "furtherance of business" to include indirect business facilitation.
2. **M/s. Biocon Ltd. (Karnataka Advance Ruling):**
   - **Issue:** Can ITC be claimed on free samples distributed to doctors?
   - **Ruling:** Since the goods are distributed without consideration and not directly linked to business promotion, ITC is disallowed.
   - **Impact:** Emphasized that activities without direct business intent do not qualify as furtherance of business.

Notable Advance Rulings

1. **M/s. Dwarikesh Sugar Industries Ltd. (Uttar Pradesh Advance Ruling):**
   - **Facts:** The company sought clarity on whether ITC could be availed for tree planting and landscaping expenses.
   - **Ruling:** Such expenses, made to meet legal obligations and indirectly promote the business, qualify for ITC.

2. M/s. Caltech Polymers Pvt. Ltd. (Kerala Advance Ruling):

- **Facts:** The company provided free canteen services to employees and sought to claim ITC.
- **Ruling:** Free canteen services, being without consideration, do not qualify as furtherance of business, disallowing ITC claims.

Conclusion

"Furtherance of business" is a dynamic and broad concept under GST, encompassing any activity that directly or indirectly contributes to business operations. Its scope must be evaluated on a case-by-case basis, with judicial precedents and advance rulings providing valuable guidance. The determination of whether a transaction qualifies for ITC or GST exemption depends on the nature of the activity and its alignment with business objectives. Careful consideration is needed to ensure compliance with GST provisions.

Circulars which are straight enough

The spirit of Goods and Service Tax Acts (GST) is to simplify the indirect taxes and to provide "ease of doing business" environment in the country. It is supposed to be a 'good and simple tax' so that consumer can be benefited at last. Uniformity in rates across the country, elimination of cascading effect of taxes, reduction in number of tax rate slabs, seamless flow in credits (ITC), elimination of octroi/check posts, one nation one market, etc. are some of the main features of GST which made the laws effective and efficient. In GST regime the collection of revenue from indirect taxes has increased many folds. With the help of Information Technology (IT) and Artificial Intelligence (IA) systems and procedures under indirect taxes has improved a lot and made the work of professionals effective and result oriented.

CMA Anil Sharma

Practicing Cost Accountant

On the other side of the coin, frequent changes in the GST laws that too with retrospective dates has made it nightmare for all the stake holders. Drafting and redrafting of provisions, introduction or deletion of sections, proviso, and procedures some times without their implementation, merging and demerging of sections and procedures, ambiguities in tax rates, mapping and plugging of business transactions without proper data/information, unwarranted litigation with an objective to enhance revenue of the exchequer has become main feature of GST law today. It has made the laws so complex and cumbersome and it has killed the basic spirit of GST law. It also shows that ground work was not complete before implementation of such laws.

In spite of all catastrophe of GST laws, the policy makers have issued clarifications and guidelines from time to time which have made life good and simple under GST. Such clarifications for pending issues are needed on regular basis and at larger frequency. Some of the circulars/clarifications issued by the concerned offices which are straight enough to simplify the procedures and has eliminated the unwarranted litigation. After such circulars and clarifications stake holders get clear cut way out to deal with the transactions without dispute and litigation to the extent.

Some of the issues emerged under GST Acts are simple but has complicated the process are discussed over here. On scrutinizing such issues policy makers have given clarifications and have issued circulars which helped the industry and stake holders at large.

1. How to deal with difference in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A?

Circular No. 183 dt 27.12.2022 read with circular 193/05/2023-GST dt 17.07.2023

Reconciliation of accounts is a normal and daily life phenomenon in accounting profession. Accounting professionals are used to reconcile Bank accounts, Debtors, Creditors and such other accounts and till the time balance sheet is completed numerous accounts are reconciled every year. With Information Technology (IT) reconciliation of accounts has become easier.

But in GST, reconciliation of GSTR-3B and GSTR-2A/2B has become a national issue. Finding of non-eligible Input Tax Credits (ITCs) is basic purpose of such reconciliations. So, special procedure is laid down in law which has been clarified by above said circular. It has solved the problems of CGST/SGST officials and business entities and has reduced the litigation to the extent. Circular has guided the officials and tax payers how to deal with such differences. It says:

- The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A

- He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:
  - (i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
  - (ii) that he has received the goods or services or both;
  - (iii) ithat he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier
  - (iv) the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act
  - (v) the proper officer shall also check if the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act
- In case, where difference in a financial year exceeds ₹ 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier,
- In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is up to ₹ 5 lakh, the proper officer shall ask the recipient to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him and tax has been discharged.
- These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.
- Since rule 36(4) came into effect from 09.10.2019 only, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, in toto, for the period from 01.04.2019 to 08.10.2019.
- From 09.10.2019 onwards ITC is available as under:

Wef 09.10.2019 to 31.12.2019*	20% OF Eligible ITC
Wef 01.01.2020 to 31.12.2020*	10% OF Eligible ITC
Wef 01.01.2021 to 31.12.2021*	5% OF Eligible ITC
Wef 01.01.2022 till date	As per GSTR-2B only

It was a great relief for the industry and department officials to deal such cases accordingly otherwise it was a bone of contention for all the stake holders.

2. GST liability on replacement of Goods or it's parts and free services during warranty period:

Circular No. 195/07/2023-GST dt 17th July, 2023 read with Circular No. 216/10/2024-GST dt 26th June, 2024

Beauty of the GST acts is that it has identified maximum business transaction and brought the same under its ambit. With the increase in the operations, business model, strategies and transactions the indirect taxes have taken their shape accordingly. In GST transactions related to e-commerce, online services, free supplies etc are dealt effectively. Issues related with replacement of goods, spare parts thereof and free repair services covered under warranty and extended warranty to customer have been clarified through above mentioned circulars and have resolved the issues effectively.

The said circulars mentioned that:

- The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of goods or its parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.
- where the manufacturer provides replacement of

parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of goods or its parts and/ or repair service during warranty period.

- if any additional consideration is charged by the manufacturer from the customer, either for replacement of any goods or its part or for any service, then GST will be payable on such supply with respect to such additional consideration.
- The value of original supply of goods includes the cost of replacement of goods or its parts and / or repair services, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.
- If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.
- In case where a consumer enters into an agreement of extended warranty at any time after the original supply, with manufacturer or third party then the same is a separate contract and GST would be discharged by the service provider.

3. Refund of additional Integrated Tax (IGST) paid on account of upward revision in price of the goods subsequent to exports.

Circular No. 226/20/2024-GST Dated the 11th July, 2024

There was no mechanism in law to get a refund of IGST paid on exported goods or services if there is any Debit Note is issued for said supplies after export of such goods or services or both. The said circular has given guidelines to the exporter to get the refund of IGST paid on exported goods or services if a debit note is raised to the recipient after said exports. It's a big-big relief to the exporters and definitely boost up the "Make in India" initiative.

As per above said circular:

- such exporter may file an application for refund of such additional IGST paid in FORM GST RFD-01 electronically on the common portal and such application for refunds would be processed by the jurisdictional GST officer of the concerned exporter. Accordingly, CGST Rules have been amended vide Notification No. 12/2024-CT dated 10.07.2024 to provide for filing of such refund application in FORM GST RFD-01, which shall be dealt with in accordance with provisions of rule 89 of CGST Rules.
- GSTN is in the process of development of a separate category of refund in FORM GST RFD-01, for filing an application of refund of such additional IGST paid.
- By that time exporter may file an application of refund in FORM GST RFD-01 under the category "Any other" with remarks "Refund of additional IGST paid on account of increase in price subsequent to export of goods" along with the relevant documents as prescribed in clause (bb) of sub-rule (2) of rule 89 of the CGST Rules.

To promote the exporters and domestic industry in international market it is submitted if refunds can be regulated through automated systems without any human intervention. It will save cost of working capital of the exporters and will speed up the whole supply chain. It will also curb the corruption to the extent.

4. Taxability of shares held in a subsidiary company by the holding company.

Circular No. 196/08/2023-GST Dated the 17th July, 2023

Equity participation is a common practice in corporate world. Such investments by corporates are subject to dividend and sometimes to interest. Even partnership firms or in other business formats, investment is done for more and more economic activities and more returns. It's basically an activity of providing funds. Though it's a kind of a service but in GST such services are neither treated as goods nor services.

In terms of definition of goods under clause (52) of section 2 of CGST Act and the definition of services

under clause (102) of the said section Securities are neither goods nor services. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.

This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services.

In spite of the above definitions, so many notices were issued to the companies for the payment of tax on such holding in subsidiary companies along with interest and penalty.

In above mentioned circular it is categorically mentioned that:

> It cannot be said that a taxable service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest."

5. Job work under GST Acts

Circular No.38/12/2018 dt dated the 26th March, 2018

Job work in industry specially under manufacturing sector has major share. In each industry so many processes are being conducted through job work. Sometime factory is located at one place and job work is being performed thousands of kilometre away and that too at different locations. There are so many business models and so is the job work activities which differ from business to business. As mentioned, that GST has mapped each and every business transaction, so many issues emerged under GST which hampered the working of industry and the job worker.

Clarification as given in above said circular made the life easy as for as job work activities are concerned and eliminate the litigation to the extent. As per the circular:

- Job work, as contained in clause (68) of section 2 of the CGST Act, entails that the job work is a treatment or process undertaken by a person on goods belonging to another registered person. Further, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.
- A job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.
- The Principal can supply goods from the place of job-worker and said supply of goods by the principal from the place of business / premises of the job worker will be regarded as supply by the principal and not by the job worker as specified in section 143(1)(a) of the CGST Act.
- The responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal.
- On the basis of challan (in triplicate) principle can send goods to one job worker and from first job worker to another job worker using said challan copies. Need not to mention that in any case e-way bill will be required.
- Cases where principle purchases goods from domestic market or import goods, the same can be moved to job-worker directly from supplier end or port as the case may be.
- In case the goods after carrying out the job work, are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker
- the waste and scrap generated during the job work may be supplied by the registered job worker directly from his place of business or by the principal in case the job worker is not registered as per agreed terms.

6. Inter-state movement of rigs, tools and spares and all goods on wheels like cranes, JCBs, bulldozers, road roller etc

Circular No. 21/21/2017-GST dt.22nd of November, 2017.

People engaged in construction services for building roads, dam, tunnels, canal and other such projects shift their heavy machinery like cranes, rigs, road rollers, JCBs, bulldozer, tools and spares to the respective sites from their current locations. It's a regular feature in that industry. So, movement of such items from one place to other, from one state to another, from one distinct person to another for providing such services need transportation and also to follow the procedure laid down in GST Laws. However, such movement of goods on wheel is neither treated as supply of goods nor supply of services under GST.

GST Council's in its meeting held on 10th November, 2017 clarified that the circular 1/1/2017-IGST dt. 7th of July, 2017 shall mutatis mutandis apply to inter-state movement of such goods, and except in cases where movement of such goods is for further supply of the same goods, such inter-state movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements.

Conclusion

Since GST has been introduced, numerous amendments have taken place. Some of them are with retrospective dates which have made laws complicated and cumbersome. It has raised unwarranted litigation which has demoralized the businesses especially MSMEs and Proprietorship firms. So, laws must be drafted in such a manner that each stakeholder understand it and follow it in toto. When sections, proviso, explanations and rules to sections are not clear, need of issue of circulars arises. To understand the impact of law for a particular transaction, one need to check sections, sub-sections, provisos, explanations, notifications, rules and circulars. The whole process is time consuming and even after that litigation starts.

Analysis of the Writ Petition Challenging Notification No. 56/2023-CT in the High Court of Gauhati

Introduction

CMA Bhogavalli Mallikarjuna Gupta
Co-opted Member, Indirect Taxation Committee
The Institute of Cost Accountants of India

The recent judgment by the High Court of Gauhati in quashing Notification No. 56/2023-CT has far-reaching implications on the governance of the Goods and Services Tax (GST) in India. This notification sought to extend key timelines under Section 73(10) of the Central Goods and Services Tax Act (CGST Act) without the necessary legislative backing. This article delves into the facts of the case, the grounds for filing the writ petition, the contentions raised by both parties, the Court's analysis, and the implications of this landmark judgment.

Facts of the Case

The writ petition emerged from concerns regarding the issuance of Notification No. 56/2023-CT, which extended the time limits for issuing orders under Section 73(10) of the CGST Act without following the proper legislative process. The petitioners, aggrieved by various Order-in-Original passed under Section 73(10) of the CGST Act, contended that these extensions violated the statutory provisions, lacked recommendations from the GST Council, and were an overreach of executive power. The case highlighted the importance of adhering to proper legal channels in modifying GST compliance deadlines.

Grounds for Filing the Writ Petition

Several legal grounds were raised in the petition to challenge Notification No. 56/2023-CT:

1. **Violation of Statutory Provisions:** The petitioners argued that the notification was issued without the recommendation of the GST Council, a requirement under Section 168A of the CGST Act.

2. **Absence of Force Majeure:** The petitioners asserted that the government's justification for invoking force majeure due to the COVID-19 pandemic was unfounded, as the pandemic's impact had subsided.

3. **Misuse of Powers:** The notification was also challenged as a colorable exercise of power, where the government extended deadlines without proper legal backing, undermining legislative processes.

Contentions of the Petitioners

The counsel representing the petitioners made a strong case against the issuance of Notification No. 56/2023-CT:

- **Lack of GST Council Recommendations:** The petitioners argued that the absence of formal recommendations from the GST Council prior to issuing the notification was a violation of the CGST Act.
- **Exceeding Jurisdiction:** The petitioners further contended that the government exceeded its jurisdiction by issuing the notification without necessary checks from the GST Council, infringing upon the principle of cooperative federalism.

- **Non-Existence of Force Majeure:** The petitioners also emphasized that the conditions justifying force majeure had ceased, and the government had no legal grounds to extend the timelines under the guise of the pandemic.

In addressing the challenge to the disputed notifications, the Petitioners brought to the notice of the Court deems it important to consider the provisions of Article 246A of the Constitution. This Article serves as the foundation for granting authority to both the Parliament and State Legislatures to enact laws concerning goods and services tax, whether by the Union or the State. The text of Article 246A of the Constitution is provided below.

"***246A.Special provision with respect to goods and services tax***.—

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce. Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

The petitioners' counsels clarified that Article 246A begins with a non-obstante clause, which overrides both Article 246 and Article 254 of the Constitution. Unlike Article 254, which contains a provision stating that laws made by Parliament will prevail over conflicting state laws in the concurrent list, Article 246A does not include such an incompatibility clause. It is important to note that both Parliament and the State Legislatures have powers under Article 246A, with the exception of Parliament's exclusive authority to legislate on GST matters when goods or services are supplied in the course of inter-State trade or commerce. In the case of Union of India & Others vs. VKC Footsteps India Private Limited (2022) 2 SCC 603, the Supreme Court, while reviewing the changes brought by Article 246A, specifically noted that this Article introduces the principle of simultaneous levy, which differs from the principle of concurrence.

Sub-Article (4) of Article 279A holds significant importance in the present proceedings, as it outlines the areas in which the GST Council is to make recommendations to both the Union and the States. The scope and interpretation of these recommendations will be addressed in detail in the subsequent sections of this judgment.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to, or exempted from, the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;

(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

Sub-Article (6) of Article 279A introduces the

concept of cooperative federalism. According to this provision, the recommendations of the GST Council must be formulated through a process of harmonized deliberation among the federal units.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

A review of Section 168A, reveals that it begins with a non-obstante clause, granting the Government the authority to issue notifications extending the time limits specified, prescribed, or notified in the Act for actions that cannot be completed or complied with due to force majeure. Upon analyzing Section 168A, the following points emerge:

1. The Government is empowered to extend the time limits specified, prescribed, or notified in the Act:

- Based on the recommendation of the GST Council;
- Through the issuance of a notification;
- In relation to actions that cannot be completed or complied with;
- Due to force majeure.

The term "force majeure" is defined in the Explanation to Section 168A, encompassing situations such as (i) war, (ii) epidemic, (iii) flood, (iv) drought, (v) fire, (vi) cyclone, (vii) earthquake, or any other natural or otherwise caused calamity that would affect the implementation of provisions under the Act. Therefore, in order to exercise the powers granted under Section 168A, the Government must demonstrate that it was impossible for the authorities to meet the specified/prescribed/notified time limits due to force majeure.

Sub-Section (2) of Section 168A is also noteworthy as it empowers the Government to issue notifications under Sub-Section (1) and to give those notifications retrospective effect, provided the retrospective date does not precede the commencement of the Act.

"Section 168A. Power of Government to extend time limit in special circumstances —

(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation - For the purposes of this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.

The 49th GST Council Meeting did not discuss anything on the extension of the due date for issue of order for FY 2019-20 to 31st August 2024.

The records, particularly the CGST's first affidavit filed in WP(C) No.1229/2024, reveal that although the time period was extended through Notification No. 9/2023-CT, the time limit for issuing a notice under Section 73(2) of the Central Act for the financial year 2018-19 was set to expire on 31.12.2023. Since no GST Council meeting was scheduled, the Central Government issued Notification No. 56/2023-CT, extending the deadline for passing the order under Section 73(9) for the financial year 2018-19 to 30th April 2024, and for the financial year 2019-20 to 31st August 2024.

" Agenda item 4(vii) : Extension of time limit under sub-section (10) of section 73 of CGST Act for FY 2017-18, FY 2018-19 and FY 2019-20.

5.7 Principal Commissioner (GSTPW) informed that there have been requests from tax administrations for further extension of time limit under Section 73 of CGST Act for issuance of Show Cause Notices (SCN) and Orders for financial year 2017-18, 2018-19 and 2019-20, considering that the scrutiny and audit were delayed because of Covid-19 pandemic. He informed

that the issue was discussed by the Law Committee and it was observed that earlier, such extension was given for the F.Y. 2017-18. It was felt by the Law Committee that while there may be a need to provide additional time to the officers to issue notices and pass orders for FY 2017-18, 2018-19 and 2019-20 considering the delay in scrutiny, assessment and audit work due to COVID-19 restrictions, however, the same need to be made in a manner such that there is no bunching of last dates for these financial years as well as for the subsequent financial years. After detailed deliberations, Law Committee recommended that such time limits may be extended for another three months each for the FY 2017-18, 2018-19 and 2019-20. It was discussed in detail in officers meeting where one view was that extension for FY 2017-18 had already been given and further extension may create a perception that it is not a tax friendly measure and against the interest of taxpayers.

5.7.1. The Secretary stated that the Law Committee has recommended the extension of time limit for issuance of SCN and orders. However, the time period for issuance of notices and passing orders for these financial years has already been extended considerably due to extension in due dates of filing annual returns for the said financial years. Further, for FY 2017-18, the date of passing order has already been extended till September 2023. It has been proposed to extend it further from September 2023 to December 2023. He mentioned that while the request of some of the tax administrations was to extend the time limit for a longer period, however, keeping the taxpayers' interest in mind, the Law committee has recommended an extension of only three months for these three financial years. Since all the states have agreed, the said time limits could be extended.

5.7.2. Hon'ble Member from Bihar stated that while this proposal could be considered, however, it should be decided that such an extension in timelines for these financial years under sub-section (10) of section 73 of CGST Act is being made for the last time.

The Council agreed with the recommendation of the Law Committee made in agenda item 4(vii), along with the proposed notification."

It is important to note that, despite the absence of a formal recommendation from the GST Council, Notification No. 56/2023-CT still contained the phrase "on the recommendation of the Council." Additionally, Circular No. FNO.CBIC-20/10/07/2021-GST/516, dated 14.05.2024, issued by the Deputy Commissioner of GST to the Principal Chief Commissioners/Chief Commissioners of Central Tax and Customs, DGRI, and DGGI, clearly stated in Clause 2.8.1 that no recommendation was sought before issuing Notification No. 56/2023-CT dated 28.03.2023. It further mentioned that the request for a recommendation would be placed before the GST Council for ratification at the next meeting. This position was also reflected in the first affidavit filed by the Assistant Commissioner of Law in WP(C) No. 1229/2024. Furthermore, during the hearing, excerpts from the 50th, 51st, 52nd, 53rd, and 54th GST Council meetings were presented, and none of them indicated any recommendation from the Council.

Respondent's Arguments

In response, the government's counsel presented the following defenses:

- **Discretionary Authority:** The government defended its right to issue the notification under Section 168A, claiming that such extensions were within its discretionary authority even in the absence of a GST Council recommendation.
- **COVID-19 as Force Majeure:** The government argued that the pandemic continued to create challenges for taxpayers, warranting extensions to provide compliance relief.
- **Policy Considerations:** The government also cited broader policy reasons, arguing that the extensions were intended to benefit taxpayers and ensure smoother tax compliance and administration.

Court's Analysis

The High Court of Gauhati undertook a detailed examination of the case, focusing on several key aspects:

- **Interpretation of Section 168A:** The Court highlighted that Section 168A allows for extensions only on the recommendation of the GST Council.

The absence of such a recommendation rendered the notification invalid.

- **Force Majeure Considerations:** The Court agreed with the petitioners that the invocation of force majeure was not applicable, as the circumstances no longer justified such an extension.
- **Constitutional Federalism:** The Court emphasized the importance of cooperative federalism, noting that the GST framework relies on the consensus and collaboration of both central and state governments. The absence of GST Council recommendations violated this foundational principle.

Judgment and Reasons Behind the Order

The Court held that tt is undisputed that Notification No. 56/2023-CT was issued without the recommendation of the GST Council. The use of the phrase "on the recommendation of the Council" in Section 168A suggests that the Government's authority under Section 168A is intended to be exercised when a recommendation is made by the GST Council. This raises the question of whether such a recommendation is a sine qua non (an essential condition) for the Government to exercise its power under Section 168A.

The term "recommendation," as defined in Black's Law Dictionary, 11th Edition, refers to: "A specific piece of advice about what to do, especially when given officially. A suggestion that someone should choose a particular thing or person deemed particularly good or meritorious."

The Court has also relied in the case of V.M. Kurian vs. State of Kerala (2001) 4 SCC 215, the Supreme Court was addressing Rule 5 of the Kerala Building Rules. The key issue was whether the State Government could grant an exemption from the application of the Kerala Building Rules for the construction of an eight-storey building without the recommendation of the Greater Cochin Development Authority and the Chief Town Planner. In this judgment, the Supreme Court noted that the word "recommendation" means "a statement expressing commendation or a message of this nature." However, since "recommendation" was not explicitly defined in the Kerala Building Rules, the Court emphasized that the meaning of the word must be understood in the context of the specific provisions and the purpose of the Rules.

In the present case, it is observed that neither the Central Act nor the State Act defines the term "recommendation." Therefore, it becomes essential to interpret the meaning and impact of "recommendation" within the context of the provisions of the Constitution, as well as the Central and State Acts. In earlier sections of this judgment, this Court has examined Articles 246A and 279A of the Constitution.

Article 246A grants both Parliament and State Legislatures concurrent power to legislate on Goods and Services Tax (GST), which can be exercised notwithstanding the provisions of Articles 246 and 254 of the Constitution. This legislative power is not subject to Article 279A, except in the case of GST on petroleum, crude oil, high-speed diesel, motor spirit (petrol), natural gas, and aviation turbine fuel, where the power is contingent upon the date recommended by the GST Council.

Furthermore, this Court has thoroughly examined Article 279A, which outlines the GST Council's power to make recommendations to both the Union and the States, as stated in Article 279A(4). The recommendations must aim at creating a harmonized GST structure and promoting a unified national market for GST, in line with Article 279A(6). Additionally, Article 279A(9) defines the voting structure within the GST Council, assigning one-third of the votes to the Central Government and two-thirds to the State Governments.

The role of the GST Council is succinctly explained by the Supreme Court in the case of **Mohit Minerals Pvt. Ltd. (supra)** at paragraph No.50 and the same is quoted herein below:

"50. Article 246-A vests Parliament and the State Legislatures with a unique, simultaneous law-making power on GST. It is in this context that the role of the GST Council gains significance. The recommendations of the GSTPage No.# 59/73 Council are not based on a unanimous decision but on a three-fourth majority of the members present and voting, where the Union's vote counts as one-third, while the States' votes have a weightage of two-thirds of the total votes cast. There are two significant attributions of the voting system in the GST Council. First, the GST Council has an

unequal voting structure, where the States collectively have a two-third voting share and the Union has a one-third voting share; and second, since India has a multi-party system, it is possible that the party in power at the Centre may or may not be in power in various States. Therefore, the GST Council is not only an avenue for the exercise of cooperative federalism but also for political contestation across party lines. Thus, the discussions in the GST Council impact both federalism and democracy. The constitutional design of the Constitution Amendment Act, 2016 is sui generis since it introduces unique features of federalism. Article 246-A treats the Centre and States as equal units by conferring a simultaneous power of enacting law on GST. Article 279-A in constituting the GST Council envisions that neither the Centre nor the States can act independent of the other."

Another critical aspect to consider regarding the role of the GST Council is that Article 246A of the Constitution grants simultaneous legislative power to both Parliament and the State Legislatures, and this power supersedes Article 254 of the Constitution. In light of this, the GST Council is the sole body responsible for harmonizing any inconsistencies between the Union and the States, ensuring the development of a workable fiscal model through cooperation and collaboration. The Court found it pertinent to cite paragraphs 55 and 56 of the Supreme Court's judgment in Mohit Minerals Pvt. Ltd.

From the above analysis, it is evident that the objective behind the inclusion of Articles 246A and 279A, as well as the overriding effect of Article 254, is to promote fiscal federalism and cooperative federalism. In this context, any recommendation required from the GST Council, as per the provisions of the Central or State Act, must be considered a sine qua non (an essential condition) for the exercise of power by the Union or the State Government. In other words, whenever the Central or State Act stipulates that an action must be taken based on the recommendation of the GST Council, such action can only proceed if there is an actual recommendation in place.

As observed by the Supreme Court in V.M. Kurian (supra), the term "recommendation" implies a "favorable report" rather than an unfavorable one. This interpretation, in the view of this Court, applies equally to the reading of Section 168A, meaning that the GST Council must provide a favorable recommendation for the Government to exercise its powers under Section 168A.

The power exercised by the Government under Section 168A is a form of delegated power, allowing it to issue a notification, which can be classified as delegated or secondary legislation. The primary legislation, in this case, is the Central Act or the State Act. In the Mohit Minerals Pvt. Ltd. case, the Supreme Court, particularly in paragraph 66, observed that when the Government exercises its power to enact secondary legislation for implementing a uniform taxation system, the recommendations of the GST Council are binding. Regardless of whether the recommendations are technically binding, the critical question is whether the Government can exercise power under Section 168A without such recommendations. The answer is clearly no.

Additionally, the power granted to the Government under Section 168A to extend timelines is based on the legislative authority of both the Central Act and the State Act. This delegated legislative power must adhere to the stipulations outlined in the parent Act, which, in this case, includes the requirement of recommendations from the GST Council as outlined in Section 168A of the Central Act.

The Central Government was aware that no recommendation had been made by the GST Council, a fact that has been openly admitted. However, in Notification No. 56/2023-CT, the Central Government inexplicably stated that the notification was issued "on the recommendations of the Council." This misrepresentation suggests that the exercise of power in issuing Notification No. 56/2023-CT constitutes a colorable exercise of authority, rendering the notification a form of colorable legislation.

After considering all the arguments, the Court quashed Notification No. 56/2023-CT for the following reasons:

1. **Ultra Vires:** The notification was deemed ultra vires, or beyond the powers granted under the CGST Act, as it was issued without GST Council recommendations.

2. **Failure to Meet Legal Standards:** The Court found that the government's reliance on force

majeure was unsubstantiated, and the failure to adhere to the GST Council's role was a breach of statutory requirements.

3. **Precedent for Future Actions:** The judgment set a clear precedent that any future notifications extending compliance timelines must strictly adhere to the legal provisions, including obtaining the necessary GST Council recommendations.

Implications of the Judgment

The High Court's ruling has significant implications for both taxpayers and the government:

- **Reinforcement of Legislative Oversight:** The judgment reaffirms the need for strict adherence to statutory processes in GST governance. The government cannot unilaterally modify compliance deadlines without following the proper legal framework.
- **Clarification of GST Council's Role:** The ruling reinforces the GST Council's crucial role in guiding tax administration, ensuring that federal principles are respected.
- **Impact on Future Notifications:** This judgment will serve as a key reference for future cases involving extensions of tax compliance deadlines, ensuring that the government exercises its powers within the legal bounds.

Conclusion

The Gauhati High Court's judgment serves as a critical reminder of the importance of adhering to statutory frameworks in the administration of GST. It underscores the significance of cooperative federalism and the need for government actions to be backed by legal authority. This ruling will have lasting effects on the governance of GST in India, promoting accountability and ensuring that administrative actions remain within the boundaries of the law.

Disclaimer

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Synopsis of Thin Capitalization Rules, Indian tax perspective

Background

The term "Thin capitalization" refers to the situation in which a company is financed through a relatively high level of debt compared to equity. Thinly capitalized companies are sometimes referred to as highly leveraged or highly geared. In other words thin capitalization implies a capital structure consisting of a larger proportion of debt as compared to equity. A debt involves a finance cost or interest. Such interest expenses are claimed as a deduction from taxable corporate profits resulting in reduction of tax payable of thinly capitalized company. Though, at a group level, intra-group financing equipoise the interest expenditure with corresponding income in another company. But if companies are resident of different tax jurisdiction, the thin capitalized company can generate tax advantages.

CMA Pramod Kumar Agarwal

Dy.General Manager | Finance & Accounts- Taxation
GAIL (India) Ltd

The concept of thin capitalization has been put through by the Organization for Economic Co-operation and Development (OECD). Under the recommendations from the OECD, CBDT vide the Finance Bill 2017, introduced the concept of "Thin Capitalisation" based on the "fixed ratio rule" in its Income-tax Act, 1961 effective from 1st of April 2018.

For the sake of convenience, the relevant section 94B(As amended by the Finance Act 2020) is being reproduced below :-

Limitation on interest deduction in certain cases-

94B. (1) Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :

***Provided that** where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.*

(1A)	*Nothing contained in sub-section (1) shall apply to interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident, being a person engaged in the business of banking.*
(2)	*For the purposes of sub-section (1), the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, **whichever is less**.*

(3)	*Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.*
(4)	*Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2):* ***Provided that** no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.*
(5)	*For the purposes of this section, the expressions—* *(i) "associated enterprise" shall have the meaning assigned to it in sub-section (1) and sub-section (2) of section 92A;* *(ii) "debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession";* *(iii) "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on."*

Further, explanatory memorandum to the Finance Bill 2017 states " Under the initiative of the G-20 countries, the Organization for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) project had taken up the issue of base erosion and profit shifting by way of excess interest deductions by the MNEs in Action plan 4.

Concise Overview of the provision

- **Applicability**

The section is applicable to an Indian company or PE of an overseas company (excluding companies engaged in banking and insurance) which pays interest or similar consideration in respect of funds borrowed from a non-resident associated enterprises (AE).

The section applies where interest or similar consideration is in excess of one crore rupees. Also, such interest paid by the borrower is to be tax deductible.

- **Threshold for interest deduction**

The section disallows interest expense paid by an Indian company or permanent establishment (PE) of an overseas company in India to its AE to the lesser of:

a.	excess of total interest paid over 30 percent of its earnings before interest, taxes, depreciation and amortization (EBITDA) or,
b.	interest paid or payable to associated enterprises

- **Carry forward of interest not allowed as deduction**

The balance portion of such interest not allowed as tax deduction will be carried forward for eight assessment years immediately succeeding the year in which the excess interest income was first not allowed as a deduction.

- **Debt by a non-AE deemed to be issued by an AE in certain case**

The debt issued by a non-AE (lender) shall be deemed to have been issued by an AE where:

a.	AE provides implicit or explicit guarantee to such lender, or
b.	Deposits a corresponding and matching amount of funds with the lender

Applied Aspect

A company is typically financed or capitalized through a mixture of debt and equity. The way a company is capitalized often has a significant impact on the amount of profit it reports for tax purposes as the tax legislations of countries typically allow a deduction for interest paid or payable in arriving at the profit for tax purposes while the dividend paid on equity contribution is not deductible.

Therefore, the higher the level of debt in a company, and thus the amount of interest it pays, the lower will be its taxable profit. For this reason, debt is often a more tax efficient method of finance than equity. Multinational groups are often able to structure their financing arrangements to maximize these benefits. Prior to this section, there was no clarity in maintaining mix of debt & equity in a company. Introduction of Section 94B was a welcome step towards bringing uniformity, in fact, the stance of the government of the day towards removal of ambiguity regarding thin capitalization or capital structuring becomes clear.

Pursuant to Section 94B, there are limitations on the allowance of deductions for interest paid or payable on loans obtained from a non-resident associated enterprise. The aforementioned limitation is not enforceable with regards to the remuneration of interest on loans obtained from domestic parties. It is plausible that the apprehension regarding the erosion of profits via debt financing is solely applicable within the framework of cross-border financing or lending.

OECD objectives

The prime goal of BEPS Action Plan 4 was to prevent profit shifting by way of substantial interest payments from affiliated entities. The objective thus was to mitigate the transfer of profits across borders by means of exorbitant interest payments, thereby safeguarding the tax base of a jurisdiction. It is conceivable that the rationale behind the placement of section 94B in the Act pertains to the special provisions concerning the avoidance of tax.

As a result, it is imperative that the aforementioned provision, which serves as an anti-avoidance measure, be interpreted in a positive manner.

Recent amendment in Section 94B

The Finance Bill 2024 proposes to amend Section 94B of the Income Tax Act (IT Act) to expand the scope of exclusion from the "Thin Capitalization Rule" to include "Finance Companies" located in any IFSC.

The "Thin Capitalization Rule" limits the deduction of interest expenses for any debt issued by a non-resident to its Associate Enterprise (AE). This section applies to non-banking financial companies (NBFCs) because interest expenses are a major cost component for these companies. If an NBFC breaches the threshold limits set by the section, its interest expenses may be disallowed for tax purposes.

The proposed amendment would take effect for the AY 2025-2026.

This amendment has specifically brought in to encourage entities to set up their presence in GIFT IFSC, Gujarat.

Summing-up

It is pertinent to note though that the disallowance on account of thin capitalization should only be on the capital account and should not extend to a current account business relationship such as a debtor/ creditor, even though the same is between Associated Enterprises which fall into the realm of transactions of thin capitalization.

However, the application of section 94B in conjunction with Chapter X-A of the Income Tax Act 1961 (GAAR) is an untested area till now, since, there is every possibility that, thin capitalization, could be used for under taxation in a group structure, more particularly when the ultimate destination of the funds is a low tax or nil tax regime.

Concluding Thoughts

India is making all out efforts to partake in the BEPS project. Inclusion of the finer recommendations of the Action Plan and consideration of the nuances of each sector will reduce tax burden. Overall, India is trying to ensure to implement base erosion and profit shifting at its heart.

Vivaad Se Vishwas Scheme - 2024

Vivaad Se Vishwas

CMA Niranjan Swain
Advocate & Tax Consultant

1. Background:

The government had launched the first Direct Tax Vivad se Vishwas Scheme, 2020 (in short DTVSV 2020) which was applicable for appeals filed before 31 January 2020. When the scheme DTVSV 2020 was launched around 4.83 lakh direct tax appeals were pending across different levels, including the Commissioner (Appeals), ITAT, High Courts, and the Supreme Court, with the unresolved disputed amount at ₹ 4.96 trillion. DTVST resulted to resolve 1.46 lakh appeals (i.e. about 30% of total pendency) and tax collected out of the settlement was at ₹ 0.54 trillion approximately.

2. Why Further DTVSV 2024:

The pendency of the appeal did not reduce volume of litigations rather increased day by day. As per the data available, Appeals pending before Commissioner (Appeals) level is over 5.44lakh, before ITAT about 20,266/-, before High Court about 37,436 and before the Supreme Court about 5,544. The amount of disputed tax is estimated at ₹ 10.40 trillion approximately, which is almost 5.6% of India's GDP. **(Source for statistical data: https://www.pdicai.org & https://www2.deloitte.com/)**. Looking at the good response in first DTVSV 2020, the finance minister announced DTVSV 2024 while presenting the Finance Bill (No.2) 2024 with a scheme aims to settle disputed issues and reduce litigation efficiently.

3. Notification of DTVSV Scheme 2024:

Accordingly, the DTVSV Scheme, 2024 was enacted vide Finance (No. 2) Act, 2024. Further, the Rules and Forms for enabling the Scheme have also been notified the Central Board of Direct Taxes (CBDT) vide Notification No. 104/2024 in G.S.R 584(E) dated 20.09.2024. The said Scheme shall come into force with effect from 1st Oct. 2024. The DTVSV Scheme provides for lesser settlement amounts for a 'new appellant' in comparison to an 'old appellant'. The DTVSV Scheme 2024 also provides for lesser settlement amounts for taxpayers who file declaration on or before 31.12.2024 in comparison to those who file thereafter.

Details of the provisions related to Scheme DTVSV 2024 are covered under section 88 to section 99 of the Finance (No. 2) Act, 2024. The Scheme is applicable on disputes involving tax, interest, penalty and / or reduction in loss / unabsorbed depreciation / MAT Credit. The following forms are involved in the Scheme:

i. **Form-1:** Form for filing declaration and Undertaking by the declarant

ii. **Form-2:** Form for Certificate to be issued by Designated Authority

iii. **Form-3:** Form for Intimation of payment by the declarant

iv. **Form-4:** Order for Full and Final Settlement of tax arrears by Designated Authority

For detailed provisions of the DTVSV Scheme, 2024, section 88 to section 99 of the Finance (No. 2) Act, 2024 may be referred to along with Direct Tax Vivad Se Vishwas Rules, 2024. The details of scheme, related provisions and proceeds as provided are given below in brief.

4. Who is Eligibility for the DTVSV Scheme, 2024:

The following taxpayers are eligible to opt for the VSV Scheme, 2024:

1	Taxpayers in whose case an appeal, writ petition or special leave petition (whether filed by such taxpayer or by the income-tax authorities) is pending before Commissioner of Income Tax (Appeals) ("CIT(A)") or Income Tax Appellate Tribunal ("ITAT") or High Court or Supreme Court (collectively referred to as "Appellate Forums") as on July 22, 2024.
2	Taxpayers who have filed objections against the draft assessment order before the Dispute Resolution Panel ("DRP") under section 144C of the Income-tax Act, 1961 ("IT Act") and the DRP has not issued any directions to the Assessing Officer ("AO") on or before July 22, 2024.
3	Taxpayers in whose case the DRP has issued directions to the AO under section 144C(5) of the IT Act and the AO has not passed the final assessment order on or before July 22, 2024.
4	Taxpayers who have filed revision application under section 264 of the IT Act and such application is pending as on July 22, 2024.

5. Who is not eligible for the DTVSV Scheme 2024: Scheme is not applicable in following cases:

(i) In cases where assessment has been completed under section 143(3)/ 144/ 147/ 153A/ 153C on the basis of search initiated under section 132 or 132A of the Act. In DTVsV 2020, search cases wherein amount of disputed tax is up to 5 crores were covered.

(ii) Relating to an assessment year in respect of which prosecution has been instituted or launched on or before the date of filing of declaration.

(iii) Relating to any undisclosed income/ asset from a source located outside India i.e., related to black money.

(iv) Relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90/ 90A of the Act, if it relates to any tax arrears.

(v) Cases where person is notified under following Acts:

a. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

b. Unlawful Activities (Prevention) Act, 1967

c. The Narcotic Drugs and Psychotropic Substances Act, 1985

d. The Prevention of Corruption Act, 1988

e. The Prevention of Money Laundering Act, 2002

f. The Prohibition of Benami Property Transactions Act, 1988

g. Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

6. Tax payable under the DTVSV Scheme, 2024 (Section 90):

(a) A taxpayer may opt for the DTVSV Scheme 2024 by paying the amount computed as follows:

Tax Arrears	Appeal filing Period	Amount payable (if paid before 31.12.2024)	Amount payable (if paid after 31.12.2024)	Amount of Waived
Disputed Tax + Interest & Penalty charged / chargeable on said tax	01-02-2020 to 22-07-2024	Disputed Tax only	Disputed Tax + 10% of such tax only	Interest and penalty waived

Tax Arrears	Appeal filing Period	Amount payable (if paid before 31.12.2024)	Amount payable (if paid after 31.12.2024)	Amount of Waived
Disputed Tax + Interest & Penalty charged/ chargeable on said tax	Up to 31-01-2020	Disputed Tax + 10% of such tax only	Disputed Tax + 20% of such tax only	Interest and penalty waived
Disputed Interest, Penalty or Fee	01-02-2020 to 22-07-2024	25% of disputed Interest, Penalty or Fee	30% of disputed Interest, Penalty or Fee	Rest of the amount waived
Disputed Interest, Penalty or Fee	Up to 31-01-2020	30% of disputed Interest, Penalty or Fee	35% of disputed Interest, Penalty or Fee	Rest of the amount waived

(b) In case the appeal filed by income tax authority; or favourable higher court order available in appellant's own case which is not subsequently reversed in case of appeal before CIT(A), DRP and ITAT

Period to which Appeal relates	Appeal or writ or SLP filed by Income tax Authority on any disputed issue before appellate forum	Appeal filed before CIT(A) or objection filed before DRP by appellant, on any issue on which he has got decision in his favour from Income Tax Appellate Tribunal (ITAT) [decision on such issue not reversed by High Court (HC) or Supreme Court (SC)]	Appeal filed by appellant before ITAT, on any issue on which he has got decision in his favour from HC [decision on such issue not reversed by SC]
Appeal filed after 31 Jan 2020 but before 22 July 2024	50% of disputed tax (up to 31 Dec 2024) OR 55% of disputed tax (after 1 Jan 2025)		
Appeal filed before 31 Jan 2020	55% of disputed tax (up to 31 Dec 2024) OR 60% of disputed tax (after 1 Jan 2025)		
Appeal filed after 31 Jan 2020 but before 22 July 2024 in respect to disputed interest / penalty / fee	12.5% of disputed interest / penalty / fee (up to 31 Dec 2024) OR 15% of disputed interest / penalty / fee (after 1 Jan 2025)		
Appeal filed before 31 Jan 2020 in respect to disputed interest / penalty / fee	15% of disputed interest / penalty / fee (up to 31 Dec 2024) OR 17.5% of disputed interest / penalty / fee (after 1 Jan 2025)		

The Scheme offers incentive to "new appellants" as compared to "old appellants" by way of lower settlement amount. A new appellant refers to the taxpayer where appeal has been filed after the 31st January,2020 but on or before the specified date. The old appellant refers to the taxpayers where appeal has been filed on or before the 31 January, 2020. (Rule 2(e) and 2(f) of the notification104/2024 in G.S.R 584(E) dated 20.09.2024)

7. What is the meaning of the tax arrears?

As per S.89(1)(o) the tax arrears means (i) The total amount of disputed tax, interest on that tax, and any penalties. (ii) Disputed interest. (iii) Disputed penalty. (iv) Disputed fee.

Disputed Tax	Disputed Interest	Disputed Penalty	Disputed Fee
The taxes that would be payable if the assessee loses the appeal, by any authority including the application made u/s 264. (S. 89(1)(j))	Interest determined under the Income-tax Act even when the same has not been charged or the interest is charged against which the assessee has filed an appeal. (S. 89(1)(h))	Penalty determined under the Income-tax Act even when the same has not been levied or the penalty is levied against which the assessee has filed an appeal. (S. 89(1)(i))	Fee determined under the Income-tax Act against which the assessee has filed an appeal. (S. 89(1)(f))

8. Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced. -

(1) Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, 1961 the declarant shall have an option to –

(i) include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation; or

(ii) carry forward the reduced amount of loss or unabsorbed depreciation.

(2) Where the declarant exercises the option as provided in clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward the reduced amount of loss or unabsorbed depreciation in subsequent years

Note:

(i) the written down value of the block of asset on the last day of the year, in respect of which unabsorbed depreciation has been reduced, shall not be increased by the amount of reduction in unabsorbed depreciation.

(ii) in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.

Explanation:

For the purposes of this rule MAT credit means the tax credit as provided in section 115JAA or section 115JD of the Income-tax Act, 1961 (43 of 1961).

9. Manner of computing disputed tax in cases where Minimum Alternate Tax ("MAT" in short) credit is reduced.-

(1) Where the dispute in relation to an assessment year relates to reduction in MAT credit to be carried forward, the declarant shall have an option to –

(i) include the amount by which MAT credit to be carried forward is reduced in disputed tax and carry forward the MAT credit by ignoring such amount of reduction, or

(ii) carry forward the reduced MAT credit.

(2) Where the declarant exercises the option as provided in clause (ii) of sub-rule (1), he shall be liable to pay tax, including

surcharge and cess, along with interest, if any, as a consequence of carrying forward reduced MAT credit in subsequent years

Note:

(i) in computing the reduced amount of MAT credit to be carried forward in clause

(ii) of sub-rule (1), one-half of the amount by which MAT credit is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.

Explanation:

For the purposes of this rule MAT credit means the tax credit as provided in section 115JAA or section 115JD of the Income-tax Act, 1961 (43 of 1961).

10. Procedures to be followed in settlement of the Disputed Tax and Forms used:

The declaration is to be submitted to an authority not below the rank of Commissioner of Income Tax as specified by the Principal Commissioner of Income Tax (Section 89(1)(e))

Form -1	**Form of declaration and undertaking:** the declaration for any dispute shall be made in Form-1 to the designated authority and shall be filed separately in respect of each order: where the appellant and the income-tax authority have both filed an appeal or writ petition or special leave petition in respect of the same order, single Form-1 shall be filed by the appellant. the declaration and the undertaking shall be verified by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961. The designated authority, on receipt of declaration, shall issue a receipt electronically in acknowledgement thereof.
Form -2	**Form of certificate by Designated Authority:** The Designated Authority shall issue a certificate referred to in sub-section (1) of section 92 electronically in Form-2.
Form -3	**Intimation of payment:** The intimation of payment as referred to in sub-section (2) of section 92, made pursuant to the certificate issued by the designated authority shall be furnished along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, or claim filed by the declarant to the designated authority in Form-3.
Form-4	**Order by designated authority:** The order by the designated authority under sub-section (2) of section 92, in respect of payment of amount payable by the declarant as per certificate issued under sub-section (1) of section 92, shall be in Form-4.

11. Time frame is the process of dispute resolution:

	Steps	Time frame
1	Filing of declaration and undertaking by the declarant in Form 1	
2	Determination of amount payable by the declarant	Within period of 15 days from date of receipt of declaration
3	Grant of certificate to declarant containing particulars of tax arrear and amount payable after such determination in such form as may be prescribed	

	Steps	Time frame
4	Payment by declarant of the amount determined	Within period of 15 days from date of receipt of certificate
5	Intimation of details of payment to designated authority	
6	Designated authority to pass an order stating that the declarant has paid the amount	

12. Important points to be noted: As per Section 91, the assessee must comply & submit the information in the prescribed form and manner. However, following are some of important points to be noted while opting for the scheme 2024

(i) Rule 8 of VSV Rules 2024 entrusts the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) with laying down the procedure for filing, verifying, and managing the forms and declarations electronically. This includes the security, archival, and retrieval of all relevant documents, ensuring smooth and transparent handling of cases.

(ii) Once the declaration is submitted, any pending appeal before CIT(A) / ITAT will be deemed to have been withdrawn from the date of issue of a certificate under section 92(1).

(iii) Once the declaration is submitted, any pending appeal the High Court or Supreme Court must be withdrawn. Proof of withdrawal, along with payment details, must be submitted to the designated authority.

(iv) In addition, assessee must provide an undertaking for not pursuing any further legal action with reference to disputed tax.

(v) As per Section 92(5), the declaration will be considered invalid if any information provided by the assessee is found to be false, or if the taxpayer violates any conditions, the matter related to disputes under the income tax act against the assessee shall be deemed to have been reviewed.

(vi) The designated authority will determine the tax payable and issue the certificate to the assessee within 15 days of receiving the declaration (S. 92(1))

(vii) The assessee is required to pay the amount within 15 days of receiving the certificate. (S.92(2))

(viii) The matters covered by this order cannot be reopened again. (S. 92(3))

(ix) Acceptance of the scheme does not bind either party to accept the resolution for similar issues arising in subsequent years (Section 92(4)).

(x) No legal proceedings will be initiated for the tax arrears covered under this Scheme. (S. 92(5))

(xi) Any payment made under a declaration as per section 91 is non-refundable.

(xii) Assessee is entitled to a refund of the excess amount without any interest on such excess amount paid- Section 94(2))

13. The DTVSV Scheme 2024 does not address following issues which needs more clarification:

(i) Whether disputed tax includes, wealth tax, Gift Tax Act, 1958, Equalization Levy under respective Acts.

(ii) Whether the cases where time limit of filing appeal before appellate forum has not been expired as on specified date i.e., 22 July 2024 (considering filing application for condonation of delay)

(iii) Whether the cases where prosecution proceedings have been initiated but not instituted/ launched are allowed to settled under the Scheme.

(iv) Whether cases pending before Arbitration/ Conciliation/ Mediation are covered under the Scheme or not.

(v) The Scheme is not available for disputes pending before Authority of Advance Ruling/ Board for Advance Ruling. Whether, if order has been passed by the authority or board and pending before High Court are eligible for the Scheme.

(vi) Whether cases where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Act are covered under old scheme.

Conclusions

DTVSV 2024 expected to reduce tax litigation, offering financial relief to taxpayers with quick resolutions of disputes. Its success will depend on effective execution and active participation from taxpayers likewise in earlier scheme. Taxpayers having brought forward of losses which shall lapse in Assessment Yer 2024-25 and subsequent AYs being 8th year i.e., last year of losses, have to carefully evaluate the benefits of the scheme. Before opting for the scheme, a cost-benefit analysis should be done by the taxpayer for all the pending litigations. However, the CBIC should come with a FAQ on the relevant points particularly on the computation of the disputed tax under different scenario to have more clarity.

Face Less Assessment Scheme till date and Way Forward

Faceless Assessment – Way Forward

CMA Ajith Sivadas

Cost Accountant

I. ASSESSMENT

Assessment means determination of income and tax as it is a process commencing with the filing of returns of income or the issuance of notice or with the culmination of an order. Assessment takes into purview the entirety of proceedings which are taken in regard to it. It not only means computation of the income of the assessee, but also the determination of tax payable by him. The word assessment has to be understood as including not only levy, assessment and collection of tax but also the entire process of law.

The word "assessment" is used in a comprehensive sense and covers all proceedings resulting in computation of income and determination of tax payable by the assessee. The term assessment must be understood in different purviews with reference to the context in which it is used. Sometimes it refers to computation of income, sometimes to determination of tax payable and sometimes to the whole gamut of procedure prescribed in the Act for imposing tax liability on the taxpayer.

It includes all proceedings starting with the filing of the Income Tax Return or issue of notice and ending with determination of tax payable by the assessee. Although in some sections, the word assessment is used in respect to computation of income; in other sections it has to be viewed to have a more comprehensive meaning.

In the earlier era almost, all returns filed were taken for scrutiny. The assessee or authorized representatives had to wait at the income tax offices with bulky files and documents for long hours. This process had various transparency issues also. Gone are those days of distress, mental agony, corruption and other innumerable hindrances and a welcome and radical change in assessment procedure had been introduced from the year 2015 on pilot basis and 2020 on comprehensive basis.

II. ERA OF FACELESS ASSESSMENT.

The Faceless Assessment Scheme (the Scheme) under the Income Tax Act, 1961 (the IT Act) was launched by the Government of India in 2019. Later the Scheme was amended by a notification of the Central Board of Direct Taxes (CBDT) in 2021 vide Notification No. 6 of 2021 [F. No. 370149/154/2019- TPL] / SO 741(E), dated 17.02.2021.

The Scheme aims at enhancing the efficiency, transparency and accountability in the income tax assessment procedure, and is a major step towards achieving 'Transparent Taxation-Honoring the Honest', a platform launched by the Prime Minister in 2020. Phase I of the Scheme was inaugurated in October, 2019 and

the Scheme has been fully implemented from August, 2020.

Hitherto, cases for assessment under the IT Act were chosen manually, subject to approval by the Commissioner of Income Tax, which was later replaced by selection via Computer Aided Selection for Scrutiny (CASS). The Income Tax Department (the Department) pivoted to testing e-assessment in five metro cities on a pilot basis. Based on the experience and learning from the same, the Scheme was launched in 2019, whereby assessments would be done completely electronically, right from issuance of notice to the Assessee. The aim for introduction of the Scheme was to cut back human interface in the process to the greatest possible extent.

This has now taken the form of a full-fledged electronic assessment, which not only eliminates direct in-person interface between Assessees and the Department, but also aims to efficiently and optimally use available resources and achieve team-based assessment of cases with dynamic jurisdiction. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, (the 2020 Amendment) inserts Section 144B in the IT Act thereby amending the IT Act to make necessary provisions for the Scheme.

A regular assessment would include all assessments including assessment under section 143(3) or 144 of the Act. The expression 'best judgment assessment' refers to an assessment made ex parte or on estimate basis. Ex-parte assessment is an expression used in respect of an assessment made under section 144 of the Act. All the assessments other than for international taxation and raid assesments are now made electronically. Income escapement assessment under sec 147, issuance and procedure of Sec 148 and 148 A notices are also paperless now. Recent online servicing of 133(6) notices and reply also serves transparency and avoids complex long pending procedures for honest and genuine tax payers.

III. ROLE OF DISPUTE RESOLUTION PANEL

The DRP serves as a specialized body to resolve disputes arising from the assessment process, providing an additional review layer before the final assessment order is issued. This ensures fairness and transparency while minimizing litigation and expediting dispute resolution.

The operational framework of the DRP in a faceless assessment system begins with the taxpayer initiating DRP proceedings if they disagree with the draft assessment order issued by the faceless assessment unit. The taxpayer submits objections through the online faceless assessment portal within the prescribed timeframe, usually 30 days from receiving the draft order. The DRP, composed of three Commissioners of Income Tax, conducts the entire process through the faceless assessment portal, maintaining the faceless nature of the system. Hearings are conducted via video conferencing, allowing taxpayer representation and ensuring a fair hearing process.

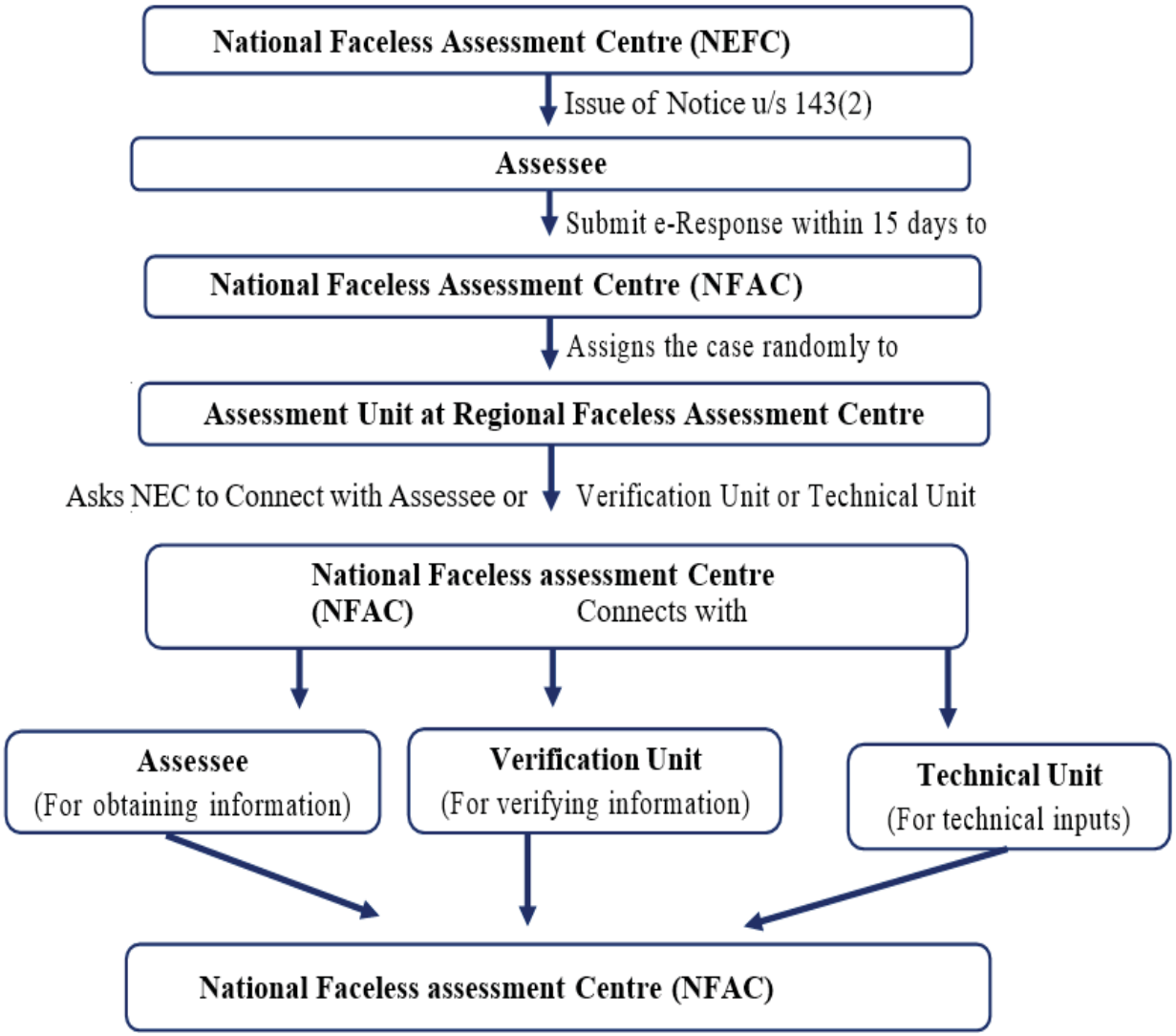
Document submission and review are integral parts of the DRP process. All relevant documents and evidence are submitted electronically through the portal by taxpayers and assessment units. The DRP thoroughly reviews the draft assessment order, taxpayer objections, and additional documents before making a decision. The DRP is required to issue its directions within nine months from the end of the month in which the draft order was forwarded to the taxpayer. These directions are binding on the assessment unit, which then incorporates them and issues the final assessment order, communicated to the taxpayer through the online portal.

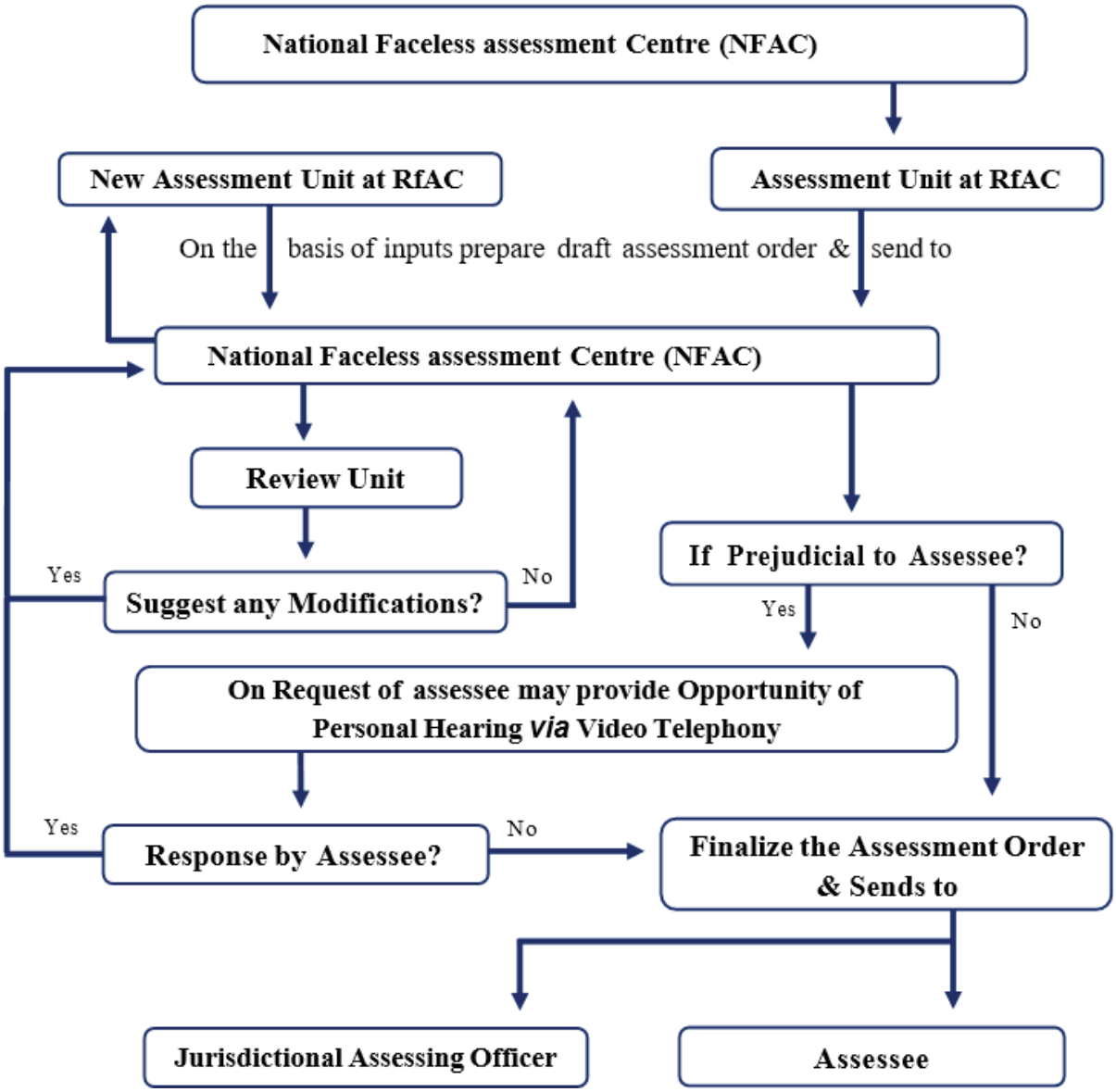
To support the faceless DRP, technological and procedural enhancements are crucial. A secure and robust faceless assessment portal is essential, capable of handling sensitive information and high data volumes. Advanced technologies like AI and ML can assist in the review process by identifying patterns and providing data-driven

insights. Training programs for DRP members and taxpayer education initiatives, such as webinars and tutorials, are necessary to ensure smooth operation and participation. Enhanced communication channels, including reliable video conferencing tools for virtual hearings and real-time updates on the status of DRP proceedings, further streamline the process.

Integrating the DRP within the faceless assessment system offers numerous benefits. It ensures transparency and fairness by providing an impartial mechanism for dispute resolution and protecting taxpayer rights. The streamlined process reduces delays and backlog, facilitating quicker dispute resolution and benefiting both taxpayers and the tax administration. By encouraging resolution at the assessment stage, it minimizes the need for prolonged litigation and reduces the burden on appellate authorities and courts. Furthermore, the DRP ensures consistency in decision-making, providing uniform handling of complex tax disputes across different cases.

PROCEDURE IN FACELESS ENVIRONMENT





It's almost five years after implementation of the electronic / faceless assessment and this article details about , the preparations by assessee , suggestions and way forward.

IV. ASSESSEE – TO DO LIST.

- Update email id and mobile number in use to income tax web portal.
- Prompt and timely compliance regarding returns, advance tax, TDS, audit etc.
- Knowledge about risk-based parameters of the department to have diligence about the transaction to and not to indulge with.
- Regularly check the Income-tax portal for updates and notices to ensure timely responses.
- Maintain comprehensive evidences and vouchers for positions taken in tax returns and substantiating claims.
- Ensure consistency between data submitted during assessments and data provided to other authorities.
- Written submissions should be detailed but in brevity covering factual and legal aspects.

- Maintain proper books of accounts to facilitate explanations when required.
- Respond promptly to pre-assessment enquiries to avoid detailed assessments.
- Adhere to specified timelines and if the time not sufficient to file proper reply request for adjournment.
- Proper reply to be given to all points mentioned in the notice backed with proper documents.
- Reconciliation of accounts with 26AS, GST returns, Ice-gate, reporting portal, AIS – TIS information should be ready all time.
- Previous assessment orders / appellate orders if any in favour of assessee may be uploaded in case of any interpretational issues.

V. SUGGESTIONS

1. The web portal is having technical stringencies and limits in uploading documents. This proves to be difficult for taxpayers with extensive documentation.
2. Video conferencing option may be given at earlier stages of notices itself to avoid complexities and the same is available after issuing final SCN.
3. Along with sending notices and correspondences via mail, SMS and in portal, physical notices may be sent at least for 5 more years. Many of assesses are technologically illiterate and in some cases, they know the procedure only when recovery proceedings are initiated. Thereby notices may be sent physically to increase transparency and to avoid prolonged litigations.
4. Reasonable time must be given for the assessees to give the reply especially at the end period of assessment. Barely 2-3 days are seen to be provided to reply for lengthy notices.
5. Measures must be taken to ensure, adopt and consider the Jurisdictional high court and tribunal decisions.
6. During Video conferencing stages instances have been communicated by the assessing officers regarding non accessibility of documents uploaded by the assessee in the form uploaded. Measures may be adopted to clear such technical issues.
7. There is a gap of at least of 24 hours between documents uploaded by assessees and received by the officers. Measures may be taken to shorten the same.
8. Protecting sensitive taxpayer information from cyber threats is a major concern. Adequate measures must be in place to safeguard against data breaches and cyberattacks. And thereby use advanced encryption, multi-factor authentication, and other security measures to protect taxpayer data. Regularly audit the system for vulnerabilities and address any potential threats promptly.
9. Ensuring that the system is accessible to all taxpayers, including those who are not proficient in English or have disabilities, is essential. Educate taxpayers about the faceless assessment process through webinars, workshops, and informational materials in multiple languages.
10. A robust system for receiving and addressing feedback from taxpayers is necessary to continuously improve the process. Use the findings from audits and feedback to implement continuous improvement programs and enhance the efficiency of the faceless assessment system. Ensure that there is a transparent and efficient system in place for addressing grievances and resolving disputes.
11. Providing a transparent and efficient mechanism for grievance redressal is essential to maintain trust in the system.

VI. WAY FORWARD

A hybrid system viz. the option to choose between faceless scheme and in person resolution is under consideration as per the sources familiar

with the matter. And thereby in circumstances where in physical assessment is required due to complexity of situations thereby implementation challenges can be tackled and compliances can be simplified. This proposal of the Government of India is noteworthy taking into consideration the recent SC remark regarding the difficulty to accept the faceless assessment to be a vested right.

A hybrid system proposal aims to maximize efficiency, transparency, and taxpayer satisfaction while mitigating the challenges of a fully digital system. The hybrid system offers a balanced approach, leveraging the advantages of both faceless and traditional assessment methods. By providing flexibility, enhancing efficiency, and maintaining transparency, this system aims to meet the diverse needs of taxpayers while ensuring effective tax administration. Continuous monitoring, user feedback, and technological advancements will be key to its success.

Press Release

Union Budget 2024-25 provided for an enhanced monetary limit for filing appeals related to Direct Taxes, Excise and Service Tax in various judicial fora

Hon'ble Supreme Court today disposed off 573 direct tax cases in view of the revised monetary limit of filing of appeals

The measures are expected to significantly reduce the burden of tax litigation and expedite the resolution of tax disputes in alignment with Government's efforts to promote 'Ease of Living' and 'Ease of Doing Business'

CBDT and CBIC had issued necessary orders for implementation of the amendment

Posted On: 24 SEP 2024 6:09PM by PIB Delhi

The Hon'ble Supreme Court today disposed off 573 direct tax cases where the tax effect is less than ₹5 crore, in view of the revised monetary limit of filing of appeals.

This significant milestone aligns with the government's efforts to reduce tax litigation and promote Ease of Doing Business.

The Union Budget 2024-25 provided for an enhanced monetary limit for filing appeals related to Direct Taxes, Excise and Service Tax in the Tax Tribunals, High Courts and Supreme Court and the limits were increased to ₹60 lakh, ₹2 crore and ₹5 crore respectively.

In pursuant to the Budget 2024-25 announcement, the CBDT and CBIC had issued necessary orders to enhance the monetary limit for filing appeals in their respective domains. As a result, it is expected that the cases pending before various appellate fora will come down and reduce tax litigation.

Direct Tax

As per the announcements in the Union Budget 2024-25, **the monetary thresholds for filing tax dispute appeals by the department were enhanced** as follows:

- **For Income Tax Appellate Tribunal (ITAT):** Increased from ₹50 lakh to ₹60 lakh.
- **For High Courts:** Increased from ₹1 crore to ₹2 crore.
- **For Supreme Court:** Increased from ₹2 crore to ₹5 crore.

As a result of these revised limits, it is estimated that around 4,300 cases will be withdrawn from various judicial forums over the course of time:

- **ITAT:** 700 cases
- **High Courts:** 2,800 cases
- **Supreme Court:** 800 cases

Indirect Taxes

Similarly, the limit for filing appeals for the specified **legacy Central Excise & Service Tax cases** was increased:

- For CESTAT (Customs Excise and Service Tax Appellate Tribunal), the limit was increased to ₹60 lakh from ₹50 lakh
- For the High Court, the limit was increased to ₹2 crore from ₹1 crore.
- For the Supreme Court, the limit was increased to ₹5 crore from ₹2 crore.

As a result of these revised limits, it is estimated that around 1,050 cases pertaining to specified legacy Central Excise & Service Tax cases are estimated to be withdrawn from various judicial forums:

- **Supreme Court:** 250 appeals
- **High Courts:** 550 appeals

- **CESTAT:** 250 appeals

Along with Direct Tax Vivad Se Vishwas Scheme, a measure introduced recently to reduce pending litigation, these measures on the Direct tax and Indirect tax front are expected to significantly reduce the burden of tax litigation and expedite the resolution of tax disputes.

In addition, **steps have been taken to deploy more officers dedicated to hearing and deciding income tax appeals, particularly those involving significant tax amounts.** These initiatives reflect the government's commitment to improve the 'Ease of Living' and 'Ease of Doing Business' across the country by reducing pending litigation.

INDIRECT TAX

CBIC allows export-related benefits on Courier Shipments from 12th Sept. 2024

New amendments provide level-playing field for growth of exports through courier mode and seeks to enhance the competitiveness for MSME exporters

Initiative will give a major boost to exports through courier and strengthen India's position in emerging global e-commerce sector

As per estimates, India's e-commerce exports are likely to rise to $400 billion by 2030

Posted On: 13 SEP 2024 8:51PM by PIB Delhi

In a significant fillip to courier exports and with an aim to encourage e-commerce industry in India, the Central Board of Indirect taxes and Customs (CBIC) has extended export related benefits under Duty Drawback, RoDTEP and RoSCTL schemes for exports made through Courier mode w.e.f. 12.09.2024.

The move aims to provide level playing field and a conducive environment for inclusive and harmonious growth of exports through courier mode and seeks to enhance the competitiveness of MSME exporters. This initiative is expected to give a major boost to Courier exports and strengthen India's position in the era of emerging global e-commerce sector.

To provide further stimulus to e-commerce exports, CBIC has approved amendments to the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 which will enable exporters to claim Duty Drawback, RoDTEP, and RoSCTL benefits for exports made through courier mode. A Notification No. 60/2024-Customs (N.T.) amending the Courier regulations and a Circular No. l5/2024-Customs explaining the said amendments and informing the stakeholders about the modalities involved in the process have been issued on 12.09.2024.

The Courier import and export shipments are handled on the ECCS for clearance at the notified lCTs. ECCS has certain limitations in processing Drawback, RoDTEP, and RoSCTL claims of exporters. Hence, as a major step towards trade facilitation, it has been decided to use the Indian Customs EDI System (ICES) at the ICTs to process the aforesaid claims, as ICES has the requisite facilities, such as scroll generation and integration with PFMS. Thus, while the logistics of Courier terminal will be used for physical handling and examination purposes, the customs clearance will be handled on ICES. Live trials at ICTs will be conducted for a week to identify and resolve issues, if any.

Over the recent years, the Government of India through various policy initiatives, digital reforms and regulatory measures has revolutionised and streamlined India's E-commerce export ecosystem. A chapter- 'Promoting Cross Border Trade in Digital Economy' exclusively dedicated to cross border E-commerce trade has been introduced in the Foreign Trade Policy 2023 which provides a framework for cross-border trade in goods and services in the digital economy and promotion of E-commerce using the means of Courier, Post, E-commerce Export Hubs, Dak Niryat Kendras etc.

The e-commerce business in India has seen exponential growth over the last decade and is expecting to witness a steep increase in revenues in the coming years. As per estimates, India's e- commerce exports are likely to

rise to $400 billion by 2030. As far as courier exports are concerned, in FY 2022-23, total value of Courier exports stood at ₹. 7,995 crore with e-commerce exports accounting for ₹. 3,510 crore. The figures are expected to further increase significantly given the global trends and impetus provided to E-commerce industry through various Government initiatives.

There are 14 International Courier Terminals (ICTs) notified under Section 7 of the Customs Act, 1962. CBIC has specifically undertaken a slew of measures to promote cross border E-commerce through courier and postal mode. It issued the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 thus enabling the electronic processing of import and export declarations for goods transported through courier mode. The Express Cargo Clearance System (ECCS), an electronic system was launched and is presently operational at 9 major ICTs which simplifies and streamlines customs clearance process for courier consignments. Auto LEO facility for export through Courier mode and the facility of advance assessment of Courier Shipping Bills were also introduced on the ECCS last year. Benefit of IGST refund is already available for Courier exports through ECCS.

In collaboration with the Department of Posts, CBIC had launched in December 2022 an innovative 'Hub and Spoke' model to promote E-commerce exports leveraging the extensive network of post offices across the country to facilitate seamless export processes, particularly benefiting MSMEs and small exporters in remote areas. Under this model, 1,015 Dak Niryaat Kendras have been designated so far across the country for facilitating booking and collection of export parcels.

DIRECT TAX

CBDT notifies Rules and Forms for Direct Tax Vivad Se Vishwas (DTVSV) Scheme, 2024

The Scheme to come into force with effect from 1st Oct. 2024

DTVSV Scheme provides for lesser settlement amounts for a 'new appellant' in comparison to an 'old appellant'

Posted On: 21 SEP 2024 1:40PM by PIB Delhi

In pursuance of the announcement in Union Budget 2024-25 by Union Minister for Finance and Corporate Affairs Smt. Nirmala Sitharaman, the Central Board of Direct Taxes (CBDT) has notified the Direct Tax Vivad Se Vishwas Scheme, 2024 (referred as DTVSV, 2024) to resolve pending appeals in the case of income tax disputes. The said Scheme shall come into force with effect from 1st Oct. 2024.

The DTVSV Scheme, 2024 was enacted vide Finance (No. 2) Act, 2024. Further, the Rules and Forms for enabling the Scheme have also been notified vide Notification No. 104/2024 in G.S.R 584(E) dated 20.09.2024.

The DTVSV Scheme provides for lesser settlement amounts for a 'new appellant' in comparison to an 'old appellant'. The DTVSV Scheme also provides for lesser settlement amounts for taxpayers who file declaration on or before 31.12.2024 in comparison to those who file thereafter.

Four separate Forms have been notified for the purposes of the DTVSV Scheme. These are as under:

i. **Form-1:** Form for filing declaration and Undertaking by the declarant

ii. **Form-2:** Form for Certificate to be issued by Designated Authority

iii. **Form-3:** Form for Intimation of payment by the declarant

iv. **Form-4:** Order for Full and Final Settlement of tax arrears by Designated Authority

The DTVSV Scheme also provides that Form-1 shall be filed separately for each dispute provided that where

appellant and the income-tax authority, both have filed an appeal in respect of the same order, single Form-1 shall be filed in such a case.

The intimation of payment is to be made in Form-3 and is to be furnished to the Designated Authority alongwith proof of withdrawal of appeal, objection, application, writ petition, special leave petition, or claim.

Forms 1 and 3 shall be furnished electronically by the declarant. These Forms will be made available on the e- filing portal of Income Tax Department i.e. www.incometax.gov.in.

For detailed provisions of the DTVSV Scheme, 2024, section 88 to section 99 of the Finance (No. 2) Act, 2024 may be referred to alongwith Direct Tax Vivad Se Vishwas Rules, 2024.

This is another initiative by the Government towards litigation management.

CBDT extends specified date for filing of various reports of audit for the Assessment Year 2024-25

Posted On: 30 SEP 2024 6:15PM by PIB Delhi

In view of difficulties reported by taxpayers and other stakeholders in filing of audit reports for AY 2024-25 under the Income-tax Act, 1961, the CBDT has extended the specified date for filing of audit reports for AY 2024-25 from 30th September, 2024 to 07th October, 2024.

CBDT Circular No. 10/2024 in F.No. 225/205/2024-ITA-II dated 29.09.2024 issued. The said Circular is available on www.incometaxindia.gov.in.

NOTIFICATIONS

INDIRECT TAX

GST (Central Tax)

Notification No. 17/2024–Central Tax

New Delhi, dated the 27th September, 2024.

S.O (E).—In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance (No. 2) Act, 2024 (15 of 2024), the Central Government hereby appoints. —

(a) the date of publication of this notification in the Official Gazette, as the date on which the provisions of sections 118, 142, 148 and 150 of the said Act shall come into force; and

(b) the 1st day of November, 2024, as the date on which the provisions of sections 114 to 117, 119 to 141, 143 to 147, 149 and 151 to 157 of the said Act shall come into force.

[No.CBIC-20006/20/2023-GST]

Customs (Tariff)

Notification No. 43/2024-Customs

New Delhi, the 13th September, 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 "20%" shall be substituted;
2.	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	In the said notification, in the TABLE,- i. against S. No. 57, in column (4), for the entry, the entry "20%" shall be substituted;

S. No.	Notification No. and Date	Amendments
(1)	(2)	(3)
		ii. against S. No. 61, in column (4), for the entry, the entry "20%" shall be substituted; iii. against S. No. 70, in column (4), for the entry, the entry "20%" shall be substituted;
3.	11/2021-Customs, dated the 1st February, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i), vide number G.S.R. 69(E), dated the 1st February, 2021	In the said notification, in the Table, - i. against S. No. 7, in column (4), for the entry, the entry "5%" shall be substituted; ii. against S. No. 8, in column (4), for the entry, the entry "5%" shall be substituted;
4.	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, S. Nos. 1, 2, 3, 4, 5, 6 and the entries relating thereto shall be omitted;
5.	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, S. Nos. 1, 2, 3 and the entries relating thereto shall be omitted;
6.	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 "31st day of October, 2024", the words and figures "31st day of December, 2024" shall be substituted;

2. This notification shall come into force from the 14th day of September, 2024.

[F. No. 190354/145/2024-TRU]

Notification No. 45/2024-Customs

New Delhi, the 30th September, 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), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby directs that each of the notification issued by the Government of India in the Ministry of Finance (Department of Revenue) as specified in column (2) of the Table below, shall be amended in the manner specified in the corresponding entries in column (3) of the said Table, namely: -.....

The entire notification can be read at: https://taxinformation.cbic.gov.in/view-pdf/1010165/ENG/Notifications

Customs (Non-Tariff)

Notification No. 62/2024-Customs (N.T.)

New Delhi, the 19th September, 2024

S.O. .... (E).— In exercise of the powers conferred by

sub-section (1) of section 11A 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 First Schedule of the Customs Tariff Act, 1975, namely :—

1. In the First Schedule of the Customs Tariff Act -

In Chapter 98, for chapter note 3, the following shall be substituted, namely :—

"3. For the purpose of Heading 9802, "laboratory chemicals" means all chemicals, organic or inorganic, whether or not chemically defined, imported and intended only for own use (i.e. other than purposes like trading, further sale etc.) in packings not exceeding 500 gms or 500 millilitres and which can be identified with reference to the purity, markings or other features to show them to be meant for use solely as laboratory chemicals."

2. This notification shall come into force from the date of publication in the Official Gazette.

[F. No. 528/05/2024-STO(TU)]

CIRCULARS

INDIRECT TAX

Customs

Circular No. 16 /2024-Customs

F.No. 450/28/2016-Cus-IV

Dated: 17th September, 2024

Subject: Implementation of automation in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 in respect of EOUs– reg.

Reference is drawn to the Circular No. 11/2024-Customs dated 25.08.2024 and Circular No. 13/2024-Customs dated 04.09.2024 on the above subject.

2. Representations have been received from several EOUs and Export Promotion Council for EOUs and SEZs regarding problems faced by EOUs in registration, generation of IIN details and utilising continuity bonds which may lead to delay in the clearance of the goods.

3. Considering the request of stakeholders, Board has decided to implement the above Circular No. 11/2024-Customs dated 25.08.2024 in relation to EoUs with effect from 25.09.2024.

4. Suitable Public Notice etc. may kindly be issued for guidance. Any difficulties faced or doubts arising in the implementation of this Circular may please be brought to the notice of Board.

Circular No. 17/2024-Customs

F. No. 468/1/2011-SO (Cus5)

Dated 18th September, 2024

Subject: Amendment of Circular 07/2024-Customs to further ease the process of publication of automated exchange rate-reg

The exchange rate automated module came into effect from 4th July, 2024. To further streamline the module and ensure that appropriate action is taken in case of contingency, the following amendments have been made in the Circular 07/2024-Customs dated 25th June, 2024-

(a) At the end of Paragraph 4.1, the following sentence is inserted:

"Where a due date, i.e. 1st or 3rd Thursday, falls on a holiday, the last/latest received rates from SBI would be published on ICEGATE website on the 1st or 3rd Thursday itself."

(b) Point (iii) of Paragraph 7 of the aforesaid Circular is substituted with:

"(iii) Where a due date, i.e., 1st or 3rd Thursday, falls on a public holiday or due to any error in API integration or where an incomplete message is received at ICEGATE, since the exchange rates from SBI would not be available, the last/latest rates received from SBI would be published on the ICEGATE Website as well as integrated in the ICES system on that day and will be published by 6 PM on that day on the ICEGATE Website to be effective from 00:00 hrs of the next day."

(c) Point (iv) of Paragraph 7 of the aforesaid Circular is substituted with:

"(iv) Where, on a due date i.e., 1" or 3" Thursday of a month or when there is +/- 5% variation in the rates of any of the foreign currencies requiring publication of the revised rates, the exchange rates received from SBI fail to get integrated tin ICES by 6 PM, an automated mail and SMS alert will be sent to all the Nodal officers at 6 PM to notify that the rates received

from SBI have not been automatically updated in ICES. Accordingly, the rates received from SBI would not be discarded but would be updated in the ICES system through manual intervention using the "Admin" interface by the Nodal of freer at ICD (Patparganj) after 6 PM and before 00:00 hrs on the same day to be effective from (10:00 hrs. of the next day."

(d) Point (v) of Paragraph 7 of the aforesaid Circular is deleted.

Circular No. 18/2024-Customs

F. No. 528/05/2024-STO(TU)

Dated: 23rd of September, 2024

Subject: Classification of laboratory chemicals–reg.

Reference is drawn to the Notification No.62/2024-Customs (N.T.) dated 19.09.2024 notifying amendment in note 3 of chapter 98 of the First Schedule to the Customs Tariff Act, 1975. The notification has come into force with effect from 19.09.2024.

2. After the coming into force of the said notification, note 3 of chapter 98 reads as under:

"3. For the purpose of Heading 9802, "laboratory chemicals" means all chemicals, organic or inorganic, whether or not chemically defined, imported and intended only for own use (i.e. other than purposes like trading, further sale etc.) in packings not exceeding 500 gms or 500 millilitres and which can be identified with reference to the purity, markings or other features to show them to be meant for use solely as laboratory chemicals."

3. Consequent to the above amendment, in order to classify goods under heading 9802, the goods have to be imported and intended only for own use (i.e. other than purposes like trading, further sale etc.). On the other hand, laboratory chemicals imported for purposes like trading, further sale, etc. are out of the scope of heading 9802 irrespective of the quantity/volume and packing size and thus, are classifiable under their appropriate chapter/heading in the First Schedule. Further, in case of packings exceeding 500 gms or 500 millilitres, the goods will be classifiable under their appropriate chapter/heading in the First Schedule.

4. Suitable Public Notice etc. may kindly be issued for guidance. Any difficulties faced or doubts arising in the implementation of this Circular may please be brought to the notice of Board.

Circular No. 19/2024-Customs

F. No. 484/03/2015-part1

New Delhi, the 30th of September, 2024

Subject: Digitization of Customs Bonded Warehouse procedures relating to obtaining Warehouse License, Bond to Bond Movement of warehoused goods, and uploading of Monthly Returns - reg.

To facilitate ease of doing business in respect of the Customs Bonded Warehouses, CBIC has introduced a Warehouse Module on ICEGATE to enable —

(i) online filing of application for obtaining a Warehouse License;

(ii) online submission and processing of requests for transfer of warehoused goods to another person arid/or another warehouse; and

(iii) uploading Monthly returns for the Customs Bonded Warehouse.

The entire notification can be read at:

https://taxinformation.cbic.gov.in/view-pdf/1003237/ENG/Circulars

DIRECT TAX

Notification No. 103 /2024

F.No.370142/17/2024-TPL

New Delhi, the 19th September, 2024

S.O. 4016(E).—In exercise of the powers conferred by sub-section (2) of section 88 of the Finance (No. 2) Act, 2024 (15 of 2024), the Central Government hereby appoints the 1st day of October, 2024 as the date on which the Direct Tax Vivad Se Vishwas Scheme, 2024 shall come into force.

Notification No. 104/2024

F. No. 370142/16/2024-TPL

New Delhi, the 20th September, 2024

G.S.R. 584(E).–In exercise of the powers conferred by section 99 of the Finance (No. 2) Act, 2024 (15 of 2024), the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.–

(1) These rules may be called the Direct Tax Vivad se Vishwas Rules, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions – (1) In these rules, unless the context otherwise requires,–

(a) "Act" means the Finance (No.2) Act, 2024 (15 of 2024);

(b) "dispute" means appeal, writ or special leave petition filed by the declarant or the income-tax authority before the Appellate Forum, or objections filed before the Dispute Resolution Panel under section 144C of the Income-tax Act, 1961 (43 of 1961) and the Dispute Resolution Panel has not issued any direction, or Dispute Resolution Panel has issued direction under sub-section (5) of section 144C of the said Act and the Assessing Officer has not completed the assessment under sub-section (13) of that section, or application filed under section 264 of the said Act;

(c) "Form" means the Forms annexed to these rules;

(d) "issues covered in favour of the declarant" means issues in respect of which –

(i) an appeal or writ or special leave petition is filed by the income-tax authority before the appellate forum; or

(ii) an appeal is filed before the Commissioner (Appeals) or the Joint Commissioner (Appeals), or objections is filed before the Dispute Resolution Panel, by the declarant, on which he has already got a decision in his favour from the Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court); or

(iii) an appeal is filed by the declarant before the Income Tax Appellate Tribunal on which he has already got a decision in his favour from the High Court (where the decision on such issue is not reversed by the Supreme Court);

(e) "new appellant case" means any case other than an "old appellant case" where the declarant is an appellant after the 31st January, 2020 but on or before the specified date;

(f) "old appellant case" means where the declarant is an appellant on or before the 31st January, 2020, in respect of any tax arrear and continues to be an appellant at the same appellate forum on the specified date in respect of such tax arrear; and

(g) "section" means section of the Finance (No. 2) Act, 2024 (15 of 2024) as included in Chapter IV of the said Act.

(2) the words and expressions used in these rules and not defined but defined in the Act or the Income-tax Act, 1961, shall have the meanings respectively assigned to them in those Acts.

3. Amount payable by declarant:

(1) Where a declarant files a declaration to the designated authority under sub-section (1) of section 91 of the Act, on or before the 31st December, 2024, the amount payable by the declarant under the Act shall be as mentioned in column (3) of the Table specified in section 90 of the Act, subject to the conditions as provided in the First, Second and Third provisos of the said Table.

(2) Where a declarant files a declaration to the Designated Authority under sub-section (1) of section 91 of the Act, on or after the 1st January, 2025 but on or before the last date, the amount payable by the declarant under the Act shall be as provided in column (4) of the Table specified in section 90 of the Act, subject to the conditions as provided in the First, Second and Third provisos of the said Table.

(3) Where the dispute includes issues covered in favour of declarant, the disputed tax in respect of such issues shall be the amount, which bears to tax, including surcharge and cess, payable on all the issues in dispute, the same proportion as the disputed income in relation to issues covered in favour of declarant bear to the disputed income in relation to all the issues in dispute.

4. Form of declaration and undertaking:

(1) The declaration for any dispute referred to in sub-section (1) of section 91 and the undertaking referred to in sub-section (4) of the said section shall be made in Form-1 to the designated authority and shall be filed separately in respect of each order:

Provided that where the appellant and the income-tax authority have both filed an appeal or writ petition or special leave petition in respect of the same order, single Form-1 shall be filed by the appellant.

(2) The declaration and the undertaking under sub-rule (1) shall be verified by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961 (43 of 1961).

(3) The designated authority, on receipt of declaration, shall issue a receipt electronically in acknowledgement thereof.

5. Form of certificate by Designated Authority:

The Designated Authority shall issue a certificate referred to in sub-section (1) of section 92 electronically in Form-2.

6. Intimation of payment:

The intimation of payment as referred to in sub-section (2) of section 92, made pursuant to the certificate issued by the designated authority shall be furnished along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, or claim filed by the declarant to the designated authority in Form-3.

7. Order by designated authority:

The order by the designated authority under sub-section (2) of section 92, in respect of payment of amount payable by the declarant as per certificate issued under sub-section (1) of section 92, shall be in Form-4.

8. Laying down of procedure, formats and standards:

(1) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for furnishing and verifying the declaration and undertaking in Form-1, under sub-rule (1) of rule 4, issuance of certificate in Form-2 under rule 5, intimation of payment and proof of withdrawal in Form-3 under rule 6 and issuance of order in Form-4 under rule 7.

(2) The Principal Director General of Income-tax (Systems) or the Director General of Income- tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the said declaration, undertaking, certificate, intimation and order.

9. Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced:

(1) Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, 1961 (43 of 1961), the declarant shall have an option to –

(i) include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation; or

(ii) carry forward the reduced amount of loss or unabsorbed depreciation.

(2) Where the declarant exercises the option as provided in clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward the reduced amount of loss or unabsorbed depreciation in subsequent years:

Provided that the written down value of the block of asset on the last day of the year, in respect of which unabsorbed depreciation has been reduced, shall not be increased by the amount of reduction in unabsorbed depreciation:

Provided further that in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.

10. Manner of computing disputed tax in cases where Minimum Alternate Tax ("MAT" in short) credit is reduced:

(1) Where the dispute in relation to an assessment year relates to reduction in MAT credit to be carried forward, the declarant shall have an option to –

(i) include the amount by which MAT credit to be carried forward is reduced in disputed tax and carry forward the MAT credit by ignoring such amount of reduction, or

(ii) carry forward the reduced MAT credit.

(2) Where the declarant exercises the option as provided in clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward reduced MAT credit in subsequent years:

Provided that in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which MAT credit is reduced shall be considered for reduction, if such reduction is related to issues covered in favour of declarant.

Explanation – For the purposes of this rule MAT credit means the tax credit as provided in section 115JAA or section 115JD of the Income-tax Act, 1961 (43 of 1961).

Circular No. 10/2024

F. No. 225/205/2024/ITA-II

New Delhi, dated 29th September, 2024

Subject: - Extension of timelines for filing of various reports of audit for the Assessment Year 2024-25- reg.

On consideration of difficulties faced by the taxpayers and other stakeholders in electronic filing of various reports of audit under the provisions of the Income-tax Act, 1961 (Act), the Central Board of Direct Taxes (CBDT), in exercise of its powers under Section 119 of the Act, extends the specified date of furnishing of report of audit under any provision of the Act for the Previous Year 2023-24, which was 30th September, 2024 in the case of assessees referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, to 07th October, 2024.

JUDGEMENT

INDIRECT TAX

CBIC has no obligation to issue clarifications on queries regarding taxability of services under GST: Delhi HC

Facts of the case - Association of Power Producers v. Solar Energy Corporation of India Ltd. - [2024] (Delhi)

The petitioner is an Association of Power Producers and it filed a writ petition on behalf of its members. It was prayed that an appropriate writ or order or directions be issued to Solar Energy Corporation of India Limited (SECI) and Ministry of Power to decide on the clarifications sought by the petitioner in a time bound manner. It was also prayed that directions be issued to the Central Board of Indirect Taxes (CBIC) to clarify the applicability of GST on Battery Energy Storage Systems (BESS).

Decision of the case :

The Honorable High Court noted that the petitioner approached the Court on the eve of the opening of the bids which was scheduled for next day. However, there is no provision in the said statutes requiring CBIC to entertain queries from taxpayers or to provide clarifications regarding statutory provisions pursuant to queries posed by taxpayers. In the instant case, the CBIC is not required to clarify applicability of GST on BESS since the bidders have to ascertain whether GST is payable in reference to the relevant GST statutes. Therefore, the Court held that the petition was highly delayed and liable to be dismissed.

Notification No.56/2023 which extended time to pass order u/s 73 wasn't in consonance with provisions of Section 168A: HC

Facts of the case - Jawahar Singh v. Union of India - [2024] (Gauhati)

In the present case, the petitioner has challenged the action on part of the Central Board of Indirect Taxes and Customs in issuance of Notification No. 56/2023-CT dated 28.12.2023. The petitioner contended that the said notification which extended time limit for passing of order under section 73(9) for Financial Year 2018-19 and 2019-20 was issued without recommendation of GST Council which was mandatory requirement under Section 168A.

Decision of the case :

The Honorable High Court noted that Notification No. 56/2023 was not in consonance with provisions of Section 168A since the GST Council has not made any recommendation to extend the time limit for passing of order. Therefore, the Court held that if said notification could not stand scrutiny of law, all consequential actions taken on basis of such notification would also fail. Thus, the Court granted interim protection and directed that no coercive action shall be taken on the basis of impugned assessment order.

HC grants interim protection to assessee as notification extending time limit for passing order lacks GST Council's approval

Facts of the case - Pallab Kumar Pandit v. Union of India - [2024] (Gauhati)

The petitioner was aggrieved by the action on the part

of the Central Board of Indirect Taxes and Customs in issuance of Notification No. 56/2023 dated 28.12.2023 extending time limit for passing order under section 73(9) for financial years 2018-19 & 2019-20. It filed writ petition and challenged the notification on ground that there was no recommendation of GST Council, which was mandatory requirement for issuance of said notification.

Decision of the case :

- The Honorable High Court noted that there was no recommendation insofar issuance of said notification was concerned. Therefore, it was held that prima facie it appeared that the notification was not in consonance with provisions of Section 168A. However, the Central government was further taking steps for purpose of getting GST council ratification, which was yet to take place.
- Therefore, the Court was of the view that the notification could not stand scrutiny of law and all consequential actions so taken on basis of such notification would also fail. Thus, the Court held that no coercive action would be taken on basis of impugned assessment order and department was directed to file affidavit.

Appeal against penalty can't be rejected merely because tax wasn't challenged: HC

Facts of the case : Aatral Associates v. State Tax Officer - [2024] (Madras)

In the present case, the department issued show cause notice (SCN) to the petitioner and thereafter, the impugned assessment order was passed by imposing tax and penalty. The petitioner paid the tax but challenged the imposition of penalty by filing appeal. However, the Appellate Authority rejected appeal on ground that penalty alone could not be challenged. Therefore, the petitioner filed writ petition against it.

Decision of the case :

The Honorable High Court noted that in the instant case, the petitioner had already paid the entire tax amount and filed an appeal only against the penalty imposed. It was not proper for the Appellate Authority to reject the said appeal merely because tax wasn't challenged. Therefore, the Court directed the Appellate Authority to take the appeal on record and pass appropriate orders on merits and in accordance with law.

HC remanded matter as lower authority passed ex-parte order and SCN wasn't contested by assessee

Facts of the case - IL and FS Solar Power Ltd. v. State of Karnataka - [2024] (Karnataka)

The department issued a Show Cause Notice (SCN) to the petitioner but the petitioner did not submit any reply and the same culminated in an ex-parte order. It filed rectification application along with additional written statement and the same was rejected. It filed writ petition against the ex-parte order and subsequent rectification order.

Decision of the case :

- The Honorable High Court noted that the petitioner had not submitted any reply to the SCN and the impugned order was an ex-parte order. The Court also noted that several contentions have been urged by the petitioner for the purpose of contending that the impugned order was illegal, arbitrary and without jurisdiction or authority of law.
- However, without expressing any opinion on the merits/demerits of the rival contentions, the Court held that it was just and appropriate to set aside the impugned orders and remit the matter back to the department for reconsideration afresh in accordance with law.

DIRECT TAX

Explanation to Sec. 14A inserted by FA 2022 is applicable prospectively: Gauhati HC

Facts of the case - Williamson Financial Services Limited vs. CIT - [2024] (Gauhati)

The assessee, a company engaged in the business of Lease Financing, Financial Advisory, and Capital Market Operations, had filed its return of income for the relevant assessment year showing a loss. The case was selected for scrutiny, and a notice under section 143(2) was issued.

During the assessment proceedings, the assessee made a disallowance under section 14A not by following any systematic or specific calculation method but based on the disallowance made in assessment orders of earlier assessment years.

The Assessing Officer (AO) contended that the assessee had made only estimated disallowance and had accepted the fact that disallowance under section 14A was required to be made in its case. The AO made disallowance under section 14A based on the method of disallowance as provided under Rule 8D(1)(b)(ii).

Aggrieved by the order, the assessee preferred an appeal to the CIT(A), wherein the CIT(A) partly allowed the appeal. The matter then reached the Guwahati Tribunal.

The Tribunal held that the Explanation inserted in Section 14A by the Finance Act 2022 is applicable prospectively. Therefore, the disallowance under Section 14A cannot exceed the income claimed exempt. The Tribunal relied on the decisions of the Delhi High Court in the case of Era Infrastructure (India) Ltd. [2022] 448 ITR 674 and the High Court of Calcutta in the case of Avantha Realty Ltd. [2024] 164 taxmann.com 376. The assessee filed an appeal before the Gauhati High Court.

Decision of the case :

- The High Court held that the Explanation to Section 14A of the Income Tax Act, 1961 is inserted vide Finance Act, 2022. The Ministry of Finance, Union of India, issued a Memorandum Explaining the Provisions in the Finance Bill 2022. It explicitly stipulates that the amendment made to Section 14A will take effect from 1st April 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years.
- Furthermore, the Supreme Court in Sedco Forex International Drill. Inc. v. CIT, (2005) 12 SCC 717 has held that a retrospective provision in a tax act that is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used if it alters or changes the law as it earlier stood. Therefore, the Explanation to Section 14A of the Income Tax Act, 1961, inserted vide Finance Act 2022, is applicable prospectively.

No reassessment to disallow bogus purchases if tax payable on same was less than tax paid under section 115JB

Facts of the case - Adani Wilmar Ltd. vs. Assistant Commissioner of Income-tax - [2024] (Gujarat)

The assessee-company was regularly assessed. The assessee's case was selected for scrutiny, and assessment orders were passed under section 143(3). Thereafter, the Assessing Officer (AO) issued a notice under section 148 seeking to reopen the completed assessment on the basis of the information received on account of a search conducted at the premises of another person under section 132.

Pursuant to the search, based on another person's statement, it was found that the assessee was providing accommodation entries to the various beneficiaries with the help of approximately 39 shell or papers concerns, which do not exist at the address provided, and the assessee was one of the beneficiaries.

Aggrieved by the order, the assessee filed a writ petition before the Gujarat High Court.

Decision of the case :

- The High Court held that it was apparent that the assessee was assessed under the provisions of section 115JB and paid tax at the rate specified under the said section. Adding the amount calculated by the AO towards the escaped income to the amount computed under the ordinary provisions of the Act, the aggregate amount would be less than the amount of tax paid by the assessee on being assessed under section 115JB.
- Therefore, when the tax payable, as per the reasons recorded, is less than the amount paid by the assessee under the assessment framed under section 143(3), the question of any assessed income would not arise. Thus, the reasons recorded would indicate that, in fact, no income had escaped assessment to form such a belief.
- The basic precondition for reopening the assessment under section 147, which is that the AO should have 'reason to believe' that income has escaped assessment, was not satisfied. Therefore, the AO could not have assumed the jurisdiction to issue impugned notices under section 148, and the impugned notices and the proceedings to that effect cannot be sustained.

Profits of PE are to be independently evaluated & ascertained; not dependent upon overall financials of Co.: HC

Facts of the case - Hyatt International Southwest vs. Additional Director Of Income Tax - [2024] (Delhi)

In the given case, the Full Bench of Delhi High Court was constituted as a consequence of a Division Bench of the Court doubting the correctness of the view expressed in Commissioner of Income-tax (international taxation) vs. Nokia Solutions and Networks OY [2023] (Delhi).

The question before the Court was whether the profits of a foreign company having a PE in India are taxable in India on the basis that the foreign company is earning income in India through its PE, irrespective of whether the foreign company is earning profits or losses globally.

Decision of the case :

- The Delhi High Court held that the concept of a PE is based upon the undertaking of economic activity in a particular State irrespective of the residence of an enterprise and the same being understood to be in the nature of a conglomerate or an entity which may have many arms or independent functional units situate in various fiscal jurisdictions. Any entrepreneurial activity that gives rise to income or profit thus becomes liable to be taxed at the source, irrespective of the ultimate recipient or owner of that income. Source here would mean the location which gives rise to the accrual of profits or income or which is the location where the same arises.
- The PE concept creates a functional relationship and connects the principal entity and the place of business whose activities give rise to income or profit. This fictional creation of an independent economic center in a Contracting State informs the allocation of taxing rights. Once the DTAA confers an independent identity upon the PE, it would be wholly erroneous to answer the question of taxability based on either the activities or profitability of the parent or the entity that seeds and sustains the PE.
- The Contracting State in which this imagined entity is domiciled and undertakes business thus becomes identified as an independent profit or revenue earning center liable to be taxed. The activities of PE are liable to be independently evaluated and ascertained. The taxability of income earned by a PE existing in a Contracting State is not even remotely linked or coupled to the overall operations of the enterprise of which it may be a part. The argument of worldwide income is thus rendered wholly untenable. Article 7 of the DTAA postulates that the profits of an enterprise shall be taxable only in that State.
- Accordingly, the profits attributable to the assessee's PE in India must be determined as if the PE were a distinct and independent entity. Profits can be attributed to the PE even if the enterprise has never generated profits.

DRP was justified in assuming jurisdiction under sec. 154 to rectify its earlier direction: HC

Facts of the case - Principal Commissioner of Income-tax vs. Stanley Black and Decker India Ltd. - [2024] (Karnataka)

Assessee-company was engaged in trading power tool products. During the year under consideration, it entered into international transactions, and the matter was referred to the Transfer Pricing Officer (TPO) for determination of the arm's length price (ALP) in respect of the international transactions. The TPO, after analysing the advertisement and sales promotion expenditure incurred by the comparables, suggested a transfer pricing adjustment. Thereafter, a draft order under section 144C was passed.

The assessee raised objections to the draft order, which the DRP rejected in its order on the ground that the specific details with relevant information had not been furnished to enable them to examine the matter.

On appeal, the assessee submitted that it had placed on record specific details and facts on the nature of alleged expenses before the TPO as well as during a personal hearing before the DRP. The DRP, in its order passed under section 154, accepted the contention of the assessee and rectified its order directing the TPO to exclude trade discounts, sales discounts, warranty expenses and packing expenses from the ambit of advertisement and marketing and promotion (AMP) expenses for transfer pricing comparison and adjustment.

ITAT also upheld the rectification order passed by the DRP. The matter then reached before the Karnataka High Court.

Decision of the case :

- The Court held that Section 154 empowers the Income-tax Authority referred to in section 116 to rectify any mistake apparent from the record. It was not disputed that the assessee, though, had not filed any objection or explanation before the TPO while raising objections to the draft order under section 144(c) had placed before the DRP, the necessary and specific details on the nature of alleged AMP expenses, selling expenses such as trade and other discount on sales, sales discounts, warranty expenses and packing expenses, which should be excluded in the determination of AMP expenses.
- If an order is passed without taking note of the materials on record and subsequently, if it is brought to the notice of the Income-tax Authority under section 154, it would be open for the Income-tax Authority to rectify such mistake apparent from the record. While considering the application under section 154, if the material that was not considered while passing the original order is considered, the Authority would be at liberty to arrive at a just conclusion considering such material.
- In the instant case also, the authority, i.e., DRP, on consideration of materials that were not considered earlier, has concluded that it was a case to exclude trade discounts as well as discount warranty expenses and packing expenses from the ambit of advertisement and marketing and promotion expenses for transfer pricing comparison. The Appellate Tribunal, on examination of the entire material, has concluded that it is a case of non-consideration of material on record, which would constitute a mistake apparent from the record and has held that the DRP was justified in assuming jurisdiction under section 154.
- Accordingly, the revenue's appeal failed, and substantial questions of law were answered in favour of the assessee.

Appeal filed u/s 377 Cr. P.C. against conviction order passed u/s 276B lies in Sessions Court: Karnataka HC

Facts of the case - Income-tax Department vs. Jenious Clothing (P.) Ltd. - [2024] (Karnataka)

The Special Court for Economic Offences convicted the assessee accused of offences under section 276B, read

with section 278B. The Department had filed the instant appeal under section 377 of Cr.P.C. against the sentence for its inadequacy.

The matter reached before the Karnataka High Court.

Decision of the case :

- The Court held that the offences under Chapter XXII of the I.T. Act, 1961, are non-cognizable offences in view of section 279-A. As per the first schedule of Cr.P.C. classification of offence against other laws, if an offence is punishable by imprisonment for less than 3 years or with a fine only, it is classified as non-cognizable, bailable and triable by any Magistrate. As the offences stated in section 279-A are non-cognizable within the meaning of Cr.P.C., they are triable by a Magistrate.
- Offences registered by or against elected representatives are now tried by Special Courts established, and it is presided over by a Sessions Judge. That Special Court presided over by a Sessions Judge can be said to come under clause (b) - 'any other Court'. The Special Court for economic offences, Bangalore, is presided over by an officer of the rank of Magistrate and does not come under clause (b) - `any other Court'. The appeal against convictions for the offence under Chapter XXII of I.T. Act, 1961 lies to the Sessions Judge under section 374 of Cr.P.C.
- It was submitted that the assessee-accused had challenged the judgment of conviction passed by the Special Court, and the said criminal appeal is pending before the Sessions Court. If the appeal has been tried against the judgment of conviction by the Sessions Court and if the High Court deals with the appeal against the inadequacy of the sentence, it may lead to the passing of conflicting judgments.
- In case of an appeal against conviction, if the Sessions Court reverses the judgment of conviction and acquits the accused and the High Court allows the appeal filed against the inadequacy of sentence, then the decisions are conflicting against the same judgment of conviction passed by the Special Court. To avoid such conflicting judgments, the appeal against conviction and appeal against inadequacy of the sentence are to be dealt with by the same Court.
- Further, it was argued that in an appeal filed against the sentence on the ground of inadequacy under section 377 of Cr.P.C., the accused may plead for his acquittal or for reduction of sentence as provided under sub-section (3) of section 377 of Cr.P.C. The right of appeal is provided to the accused to challenge the judgment of conviction and order on sentence under sub-section (3) of section 374 of Cr.P.C. So also sub-section (3) of section 377 of Cr.P.C. provides for the accused to plead for his acquittal or reduction of sentence.
- The accused who has been convicted need not wait till the State files an appeal under section 377 of Cr.P.C. to plead for his acquittal or for reduction of sentence. The accused has a statutory right under sub-section (3) of section 374 of Cr.P.C. to challenge the judgment of conviction and order on sentence passed by the Special Court. If the accused has not challenged the judgment of conviction and order on sentence by filing an appeal under sub-section (3) of Section 374 of Cr.P.C., then in the appeal filed under Section 377 of Cr.P.C., he can plead for his acquittal or reduction of sentence under sub-section (3) of section 377 of Cr.P.C.
- Accordingly, the appeals preferred by the Income Tax Department under section 377 of Cr.P.C. were not maintainable and accordingly, all the appeals were dismissed.

TAX CALENDAR

INDIRECT TAX

Due Date	Returns
Oct 7th, 2024	FEMA-ECB [ECB 2]
Oct 10th, 2024	GSTR-7 (GST-TDS)
	GSTR-8 (GST-TCS)
Oct 11th, 2024	GSTR-1-Other than QRMP scheme
Oct 13th, 2024	GSTR-1-QRMP-Invoice Furnishing Facility
	GSTR-5-Non-Resident Taxable Person
	GSTR-6-Input Service Distributor

DIRECT TAX

Due Date	Returns
Oct 7th, 2024	Due date for deposit of tax deducted/collected for the month of September, 2024. However, all sum deducted/collected by an office of the Government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
	Due date for deposit of TDS for the period July 2024 to September 2024 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H
Oct 15th, 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M and 194S (by specified person) in the month of August 2024
	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of September, 2024 has been paid without the production of a challan
	Quarterly statement of TCS deposited for the quarter ending September 30, 2024
	Upload declarations received from recipients in Form No. 15G/15H during the quarter ending September, 2024
	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of September, 2024

List of Rank Holders - 04.02.2024

ADVANCED CERTIFICATE COURSE IN GST

SUVANJAN GHOSH

Regn No. 310235196700556

HARSHIT DHANSUKHLAL THAKER

Regn No. 19234962700821

PRASHANT KUMAR

Regn No. 49234968300871

ADVANCED COURSE ON GST AUDIT AND ASSESSMENT PROCEDURE

MIDHUN V

Regn No. 27235534500405

PANKAJ

Regn No. 47235195000986

KATIKE NAGALAXMI

Regn No. 17235308200778

KUSHAL AGARWAL

Regn No. 27235319800306

CERTIFICATE COURSE ON FILING AND FILLING OF RETURN

SABITA KONERU

Regn No. 210235227000334

SHIVANI

Regn No. 110235202100029

KONA NAVEEN KUMAR

Regn No. 210235332300789

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SWAMINATHAN MASANAM KONAR

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K THEJASWINI

Regn No. 210235305300719

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SUBHANKAR DUTTA

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Regn No. 14235206500690

KIRAN RANJITH K

Regn No. 24235262200279

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Regn No. C47235307900617

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TASVIR

Regn No. 414235295600037

RAHUL SHYAMSUNDAR SINGH

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Manish Rastogi

Regn No. 45245614100607

Anil Komban Varghese

Regn No. 25235530500110

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NASIM AHMED

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AMAR NATH JHA

Regn No. 311245616900199

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ANUBHAV KRISHNAN

Regn No. 47235198800266

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MAHENDRA PRABHAKAR TIWARI

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NAVRITI KARAKOTI

Regn No. 27235299500046

List of Rank Holders - 01.09.2024

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ADITI VERMANI

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Regn No. 315245617300218

SAHADEV BAYEE

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Regn No. 115245591400194

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Anniversary Edition

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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.
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Contact Details:

Tax Research Department

12, Sudder Street, KolKata - 700016

Phone: +91 33 40364717/ +91 33 40364711

E-mail: trd@icmai.in

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12, Sudder Street, Kolkata - 700016
Ph: 091-33-2252 1031/34/35/1602/1492
Delhi Office: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi - 110003
Ph: 091-11-24666100