

March, 2022

# TAX Bulletin

★ ★ VOLUME - 107 ★ ★



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

Statutory Body under an Act of Parliament

[www.icmai.in](http://www.icmai.in)

**Headquarters:** CMA Bhawan, 12 Sunder Street, Kolkata - 700016

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

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## MISSION STATEMENT

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

## VISION STATEMENT

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

## Objectives of Taxation 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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# The Institute of Cost Accountants of India

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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/advsc/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/<br>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

### Modalities

### Eligibility

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

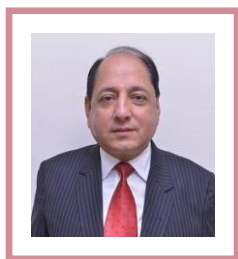
| Description     | Courses for Colleges and Universities    |            |
|-----------------|--|------------|
|                 | GST Course                               | Income Tax |
| Batch Size      | Minimum 50 Students per Batch per course |            |
| Course Fee* (₹) | 1,000           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

For enquiry about courses, mail at: [trd@icmai.in](mailto:trd@icmai.in)

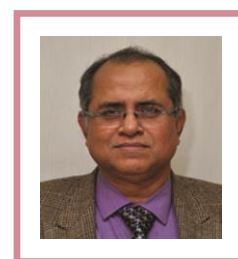
\*18% GST is applicable on both Course fee and Exam fee

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





**CMA Rakesh Bhalla**  
Chairman, Direct Taxation Committee



**CMA Chittaranjan Chattopadhyay**  
Chairman, Indirect Taxation Committee

## FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

Greetings from the Tax Research Department...!!!

**A**s we enter the last month of the Financial Year 2021-22, we are overwhelmed to understand the Key Highlights of Economic Survey 2021-22. The Government present the following points in the Key Highlights:

- 9.2 percent growth expected in real terms in 2021-22
- GDP projected to grow 8.0-8.5 percent in 2022-23
- CAPEX grows by 13.5 percent (YOY) during April - November, 2021
- Foreign Exchange reserves touched US\$ 633.6 billion on 31<sup>st</sup> December, 2021
- Macro - economic stability indicators suggest economy is well placed to take on challenges of 2022-23 massive growth in revenue receipts
- Social Sector: Expenditure on social services as proportion of GDP increases to 8.6 percent in 2021-22 (be) as compared to 6.2 percent in 2014-15
- With revival of economy, employment indicators bounced back to pre-pandemic levels during last quarter of 2020-21
- Bank credit accelerates to 9.2 percent as on 31<sup>st</sup> December, 2021
- Rs 89,066 crore raised via 75 IPOs; significantly higher than in any year in last decade
- CPI-C inflation moderates to 5.2 percent in 2021-22 (April - December)
- Agriculture: GVA registers buoyant growth of 3.9% in 2021-22
- Railways: Capital expenditure sees substantial increase to Rs. 155,181 crore in 2020-21; budgeted to further increase to Rs. 215,058 crore in 2021-22, a five times increase compared to 2014 level
- Per day road construction increases to 36.5 kms in 2020-21 – rise of 30.4 percent compared to the previous year

The main updates as presented by the Apex bodies in Taxation in this regard for the last fortnight is:

Updates by CBIC:

- The E-invoicing mandate has been extended for taxpayers with an annual turnover of Rs. 20 Cr. or more. It has now been made mandatory for registered taxpayers with annual turnover of 20 Cr. or

more in any FY from 2017-18 onwards with effect from 1st April 1, 2022 onwards as per GST. (Notification 1/2022 – Central Tax)

Exclusion of SEZ units (but not SEZ developers) and certain classes of taxpayers such as banks & financial institutions, GTA, etc. shall be continued.

The Notification does not apply to B2C transactions – only registered persons having turnover in excess of ₹500 crores are required to generate dynamic QR code.

- The GSTN department has allowed the taxpayers to file LUT for FY 2022-23 and this facility is available on the GST government portal. The application of LUT is needed to be fulfilled by 31<sup>st</sup> March 2022 or before supply for SEZ and exports.
- Window to opt in for composition for the FY 2022-23 is made available at GST Portal. The eligible taxpayers, who wish to avail the composition scheme may opt in for composition before 31st March 2022.
- Continuous enhancements & technology improvements in GSTR-1/IFF have been made from time to time to enhance the performance & user-experience of GSTR-1/IFF, which has led to improvements in Summary Generation process, quicker response time, and enhanced user-experience for the taxpayers.

CBDT has not made any recent changes.

The department has organized a Webinar on 25<sup>th</sup> February, 2022 on “Equalization Levy and its impact on E-Commerce Operators” by CMA S Venkanna. GST course for colleges and universities has commenced in Padmashri Babasaheb Vengurlekar Mahavidhyalaya, Pandurtitha, Sindhudurg, Maharashtra. This course has also been successfully completed in Scottish Church College, Kolkata. The 105th & 106th Tax Bulletin has been released. Classes for all the Taxation Courses are being conducted seamlessly. Taxation Portal is being updated time to time with latest amendments and changes in Direct and Indirect Tax.

We seek any further suggestions/observations from the esteemed readers and urge one and all to stay safe.

Jai Hind.

Warm Regards



(Rakesh Bhalla)

**CMA Rakesh Bhalla**  
2<sup>nd</sup> March 2022



**CMA Chittaranjan Chattopadhyay**  
2<sup>nd</sup> March 2022



## TAXATION COMMITTEES 2021 - 2022

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CMA Vijender Sharma - Vice-President

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3. CMA Ashwin G. Dalwadi  
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7. CMA (Dr.) V. Murali  
8. CMA (Dr.) K Ch A V S N Murthy  
9. CMA Rakesh Bhalla  
10. CA Mukesh Singh Kushwah, Govt. Nominee  
11. CMA V.S. Datey (Co-opted)  
12. CMA Debasis Ghosh (Co-opted)  
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CMA Rajat Kumar Basu, Addl. Director

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9. CMA Rakesh Sinha (Co-opted)  
10. CMA Subhasis Chakraborty (Co-opted)

#### Secretary

CMA Rajat Kumar Basu, Addl. Director

## ACKNOWLEDGEMENTS

|                                   |                         |
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## TEAM - TAX RESEARCH DEPARTMENT

|                      |   |                                    |
|----------------------|---|------------------------------------|
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| CMA Tinku Ghosh Das  | - | Deputy Director - Tax Research     |
| CMA Priyanka Roy     | - | Assistant Director - Tax Research  |
| Ms. Mukulika Poddar  | - | Officer - Tax Research             |
| CMA Debasmita Jana   | - | Associate - Tax Research           |
| CMA Priyadarsan Sahu | - | Research Associate                 |

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

Please send the articles to

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

# E INVOICING IS ULTIMATE TOOL FOR INVOICE MATCHING



**CMA Vishwanath Bhat**  
Practicing Cost Accountant

## Invoice Matching Under Goods and Services Tax.

Every purchase invoice in GST regime must reconcile with sale invoice of the supplier on GST common portal for availing input tax credit. For many businesses, this will also mean a complete overhaul of IT systems and major re-engineering work. Many small and medium businesses will, for the first time, use technological tools for book keeping tax compliance purpose. In this regard Govt has amended the section 16 (2) aa as under

the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37.

It Means assessee will not get any credit if it is not appeared in GSTR2B.

## Why do We Need an IT System under GST for matching?

Continuing the reforms agenda, they have now come up with the concept of invoice matching under Goods and Services. This invoice matching is possible only when both the buyer and the supplier are tightly integrated through an information system, which will enable a seamless flow of information and fool-proof validations. Thus it becomes highly critical for businesses to be highly compliant on a real-time basis and thus needs to have a proper system in place to support it. It's all depends upon the IT System of the company.

## What is e-invoicing?

Electronic invoicing or e-Invoicing is a system of raising invoices, under which invoices generated by one software can be read by any other software, eliminating the need for any fresh data entry or errors. In simpler words, it is an invoice generated using a standardised format, where the electronic data of the invoice can be shared with others, thus ensuring the interoperability of data.

## Is e-invoicing mandatory? To whom will e-invoicing apply?

e-Invoicing is mandatory from 1st October 2020 to all businesses whose aggregate turnover has exceeded the Rs.500 crore limit in any of the previous financial years from 2017-18 to 2019-20. From 1st January 2021, e-invoicing became applicable to businesses exceeding the Rs.100 crore turnover limit in any of the financial years between 2017-18 to 2019-20. Likewise, it is extended to businesses with a total turnover of more than Rs.50 crore from 1st April 2021. From 1/4/2022 it is mandatory those who are having turnover of Rs 20 crore vide Notification No 1/2022 dated 24<sup>th</sup> Feb 2022. Shortly Govt will make mandatory to all the assesses.

## How will the system of e-invoicing be integrated with GST returns?

An e-Invoice will be uploaded into the relevant GST return only once it has been validated and registered by the invoice registration system. After the validation has been done, it will be visible to the taxpayer for viewing and editing in the GSTR-1 return. From the supplier's GSTR-1 return, the data will be further auto-populated into the recipient's (buyer's) GSTR-2A/2B/4A or 6A as applicable.

## Conclusion.

*The main aim of the tax department is to enable the pre-population of GST returns, which will reduce reconciliation-related problems. Once e-Invoicing has been implemented, the data in the invoices can be pre-populated into the relevant tables of the tax returns without the need for fresh data entry. As a whole may be stakeholders shortly free from all the hurdles of matching process & reversal of input tax.*

# TRANSFER PRICING IN INDIA - AN OVERVIEW



*CMA Harsh Satish Udeshi  
Cost Accountant*

## **Introduction**

Transfer Pricing was introduced vide Sections 92 to 92F of the Indian Income Tax Act, 1961 (the Act) which covers intra-group cross-border transactions. The sections became applicable from 1<sup>st</sup> April 2001 for cross border transactions and from 1<sup>st</sup> April 2012 for specified domestic transactions.

After the introduction of these sections, transfer pricing has become the most significant international tax issue affecting multinational enterprises operating in India. The regulations are broadly based on the Organisation for Economic Co-operation and Development (OECD) Guidelines. It describes the various transfer pricing methods, imposing far-reaching annual transfer pricing documentation requirements, and contains severe penal provisions for non-compliance of the rules and regulations.

## **Statutory rules and regulations**

The rules prescribe that income arising from cross border transactions or specified domestic transactions between associated enterprises should be computed having regard to the arm's-length price.

Further, it goes on to specify that any allowance for an expenditure or interest or allocation of any cost or expense arising from an cross border transaction or specified domestic transaction also shall be determined having regard to the arm's-length price. The Income Tax Act defines the terms 'international transactions', 'specified domestic transactions', 'associated enterprises' and 'arm's-length price'.

## **Type of transactions covered**

Section 92B of the Act defines the term 'international transaction' to mean a transaction between two (or more) associated enterprises involving the sale, purchase or lease of tangible or intangible property; provision of services; cost-sharing arrangements; lending/borrowing of money; or any other transaction having a bearing on the profits, income, losses or assets of such enterprises. The associated enterprises could be either two non-residents or a resident and a non-resident; furthermore, a permanent establishment (PE) of a foreign enterprise also qualifies as an associated enterprise. Accordingly, transactions between a foreign enterprise and its Indian PE are within the ambit of the code.

Even the term "Intangible property" has been explained to include marketing intangible, customer-related intangible, human capital intangible, location-related intangible, etc.

Till the sections were not notified in the Act, transfer pricing regulations were not applicable to domestic transactions. However, the Finance Act 2012 has extended the application of transfer pricing regulations to 'specified domestic transactions', being the following transactions with certain related domestic parties, if the aggregate value of such transactions exceeds INR 5 crore:

- Any expenditure with respect to which deduction is claimed while computing profits and gains of business or profession.



- Any transaction related to businesses eligible for profit-linked tax incentives, for example, infrastructure facilities (Section 80-IA) and SEZ units (section 10AA).
- Any other transactions as may be specified.

### Associated enterprises

The relationship of associated enterprises (AEs) is defined by Section 92A of the Act to cover direct/ indirect participation in the management, control or capital of an enterprise by another enterprise. It also covers situations in which the same person (directly or indirectly) participates in the management, control or capital of both the enterprises.

For the purposes of the above definition, certain specific parameters have been laid down based on which two enterprises would be deemed as AEs. These parameters include:

- Direct/indirect holding of 26% or more voting power in an enterprise by the other enterprise or in both the enterprises by the same person.
- Advancement of a loan, by an enterprise, that constitutes 51% or more of the total book value of the assets of the borrowing enterprise.
- Guarantee by an enterprise for 10% or more of total borrowings of the other enterprise.
- Appointment by an enterprise of more than 50% of the board of directors or one or more executive directors of the other enterprise or the appointment of specified directorships of both enterprises by the same person.
- Complete dependence of an enterprise (in carrying on its business) on the intellectual property licensed to it by the other enterprise.
- Substantial purchase of raw material/sale of manufactured goods by an enterprise from/to the other enterprise at prices and conditions influenced by the latter.
- The existence of any prescribed relationship of mutual interest.

Furthermore, in certain cases, a transaction between an enterprise and a third party may be deemed to be a transaction between AEs if there exists a prior agreement in relation to such transaction between the third party and an AE or if the terms of such transaction are determined in substance between the third party and an AE.

### The arm's-length principle and pricing methodologies

The term 'arm's-length price' is defined by Section 92F of the Act to mean a price that is applied or is proposed to be applied to transactions between persons other than AEs in uncontrolled conditions. The following methods are prescribed by Section 92C of the Act for determination of arm's-length price:

- Comparable uncontrolled price (CUP) method.
- Resale price method (RPM).
- Cost plus method (CPM).
- Profit split method (PSM).
- Transactional net margin method (TNMM).
- Such other methods as may be prescribed.

In this regard, the Central Board of Direct Taxes [CBDT] has notified that the 'other method' for determination of the arm's-length price in relation to an international transaction shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.

The most appropriate method for a particular transaction would need to be determined having regard to the nature of the transaction, class of transaction or associated persons and functions performed by such persons, as well as other relevant factors.

The regulations provide that where more than one arm's-length price is determined by applying the most appropriate transfer pricing method, the arithmetic mean (average) of such prices shall be the arm's-length price of the international transaction or specified domestic transactions.

However, some flexibility has been extended to taxpayers by allowing a range benefit which would be notified by the Government, not exceeding 3%. Accordingly, if the variation between the arm's-length price and the price at which the transaction has actually been undertaken does not exceed the specified range of the latter, the price at which the transaction has actually been undertaken shall be deemed to be the arm's-length price.

This, in turn, would have the effect of disallowing the benefit to a taxpayer where variation between the arm's-length price and transfer price of the taxpayer exceeds the



specified range, leading to a transfer pricing adjustment even though the transfer price is only marginally outside the range benefit.

In addition, transfer pricing provisions will not apply if the arm's-length price would result in a downward revision in the income chargeable to tax in India.

### Documentation requirements

Assessee/Taxpayers are required to maintain, on an annual basis, a set of broad information and documents relating to international transactions undertaken with AEs or specified domestic transactions. Rule 10D of the Income Tax Rules, 1962 prescribes detailed information and documentation that has to be maintained by the taxpayer. Such requirements can broadly be divided into two parts :

#### First Part

The first part of the rule lists mandatory documents/information that a taxpayer must maintain. The extensive list under this part includes information on ownership structure of the taxpayer, group profile, business overview of the taxpayer and AEs, prescribed details (nature, terms, quantity, value, etc.) of international transactions or specified domestic transactions and relevant financial forecasts/estimates of the taxpayer.

The rule also requires the taxpayer to document a comprehensive transfer pricing study. The requirement in this respect includes documentation of functions performed, risks assumed, assets employed, details (nature, terms and conditions) of relevant uncontrolled transactions, comparability analysis, benchmarking studies, assumptions, policies, details of adjustments and explanations as to the selection of the most appropriate transfer pricing method.

#### Second Part

The second part of the rule requires that adequate documentation be maintained that substantiates the information/ analysis/ studies documented under the first part of the rule. It also includes :

|     |  |
|-----|--|
| (a) | <i>official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise, or of any other country;</i> |
| (b) | <i>reports of market research studies carried out and technical publications brought out by institutions of national or international repute;</i>                    |
| (c) | <i>price publications including stock exchange and commodity market quotations;</i>  |
| (d) | <i>published accounts and financial statements relating to the business affairs of the associated enterprises;</i>   |

|     |  |
|-----|--|
| (e) | <i>agreements and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions or specified domestic transactions, as the case may be</i> |
| (f) | <i>letters and other correspondence documenting any terms negotiated between the assessee and the associated enterprise;</i>   |
| (g) | <i>documents normally issued in connection with various transactions under the accounting practices followed.</i>  |

All prescribed documents and information have to be contemporaneously maintained (to the extent possible) and must be in place by the due date of the tax return filing. Companies to whom transfer pricing regulations are applicable are currently required to file their tax returns on or before 30 November following the close of the relevant tax year. The prescribed documents must be maintained for a period of nine years from the end of the relevant tax year, and must be updated annually on an ongoing basis.

The documentation requirements are also applicable to foreign companies deriving income liable to Indian withholding tax.

### Accountant's report

It is mandatory for all taxpayers, without exception, to obtain an independent accountant's report in respect of all international transactions between associated enterprises or specified domestic transactions. The report has to be furnished by the due date of the tax return filing (i.e. on or before 30 November). The form of the report has been prescribed. The report requires the accountant to give an opinion on the proper maintenance of prescribed documents and information by the taxpayer. Furthermore, accountant is required to certify correctness of an extensive list of prescribed particulars.

### Tax audit procedure

A certain percentage of tax returns are selected for detailed audit. A notice to this effect has to be statutorily dispatched to the taxpayer within six months from the end of the financial year in which the return is furnished. Such notice specifies the records, documents and details that are required to be produced before the tax officer.

Once an audit is initiated, the corporate tax assessing officer (AO) may refer the case to a specialist transfer pricing officer (TPO) for the purpose of computing the arm's-length price of the international transactions or specified domestic transactions. Such reference may be made by the AO wherever he or she considers it necessary. However, this can be done only with the prior approval of the Commissioner of Income tax.



In accordance with prevailing internal administrative guidelines of the Revenue, all taxpayers having an aggregate value of international transactions or specified domestic transactions with AEs in excess of INR 50 million are referred to a TPO for detailed investigation of their transfer prices. The threshold of INR 50 million may be reviewed on an ongoing basis.

The TPO would then send a notice to the taxpayer requiring the production of necessary evidence to support the computation of the arm's-length price of the international transactions or specified domestic transactions. The prescribed documentation/ information maintained by the taxpayer in respect of its transfer pricing arrangements would have to be produced before the tax authorities during the course of audit proceedings within 30 days after such request has been made. The period of 30 days can be extended to 60 days at most.

The TPO would scrutinise the case in detail, taking into account all relevant factors such as appropriateness of the transfer pricing method applied and correctness of data. TPOs are vested with powers of inspection, discovery, enforcing attendance, examining a person under oath and compelling the production of books of account and other relevant documents and information. Further, TPOs have been empowered to conduct surveys for spot inquiries and verification for subsequent investigation and collation of data.

After taking into account all relevant material, the TPO would pass an order determining the arm's-length prices of the taxpayer's international transactions or specified domestic transactions. A copy of the order would be sent to the AO and the taxpayer. On receipt of the TPO's order, the AO would compute the total income of the taxpayer by applying the arm's-length prices determined by the TPO and pass a draft order within the time limit prescribed for completion of scrutiny assessments.

### **Appeals procedure**

A taxpayer that is aggrieved by an order passed by the AO may appeal to the Commissioner of Income Tax, also called the Appellate Commissioner, within 30 days of the date of receipt of the scrutiny assessment order. The office of the Appellate Commissioner is a type of quasi-judicial authority, where the taxpayers make representations in support of their claims to rebut the order passed by the AO. The decision of the appellate commissioner is reflected in an appellate order.

### **Additional tax and penalties**

The following stringent penalties have been prescribed for

noncompliance with the provisions of the transfer pricing code:

- For failure to maintain the prescribed information/ document: 2% of transaction value.
- For failure to furnish information/documents during audit: 2% of transaction value.
- For failure to disclose any transaction in Accountant's report: 2% of transaction value.
- For adjustment to taxpayer's income: 100% to 300% of the total tax on the adjustment amount.
- For failure to furnish an accountant's report: INR 100,000.

Further, taxable income enhanced as a result of transfer pricing adjustments does not qualify for various tax concessions/holidays prescribed by the Act.

### **Advance pricing agreements (APAs)**

There are no monetary or other conditions prescribed under the Indian APA rules for a taxpayer to be eligible for applying for an APA. However, the APA mechanism is not available for specified domestic transactions. The validity of an APA (once entered into) shall not exceed five consecutive years and shall be binding on the taxpayer as well as the Revenue authorities in respect of the international transactions for which the APA is sought. APA fees would range between INR 1 million to 2 million, based on the value of international transactions.

### **Resources available to the tax authorities**

A special transfer pricing team within the Indian tax authorities deals with transfer pricing issues. The team comprises of trained TPOs who deal with transfer pricing issues arising during an audit. Indian tax authorities are actively training their staff to increase competency in handling transfer pricing issues.

### **Use and availability of comparables' information**

Taxpayers are required to maintain information on comparables as part of their transfer pricing documentation to demonstrate that the pricing policy complies with the arm's-length principle. Comparable information is a crucial element for defending transfer pricing in India. Indian revenue officials have indicated that, to the extent possible, Indian comparables should be used. Use of foreign comparables is generally not acceptable, unless the tested party is located overseas. In some cases, the TPOs have exercised their power to obtain private information from other taxpayers and used it against the

taxpayer undergoing an audit.

The quality of comparable information available in Indian databases is reasonable. The tax authorities use a couple of electronic databases giving detailed financial and descriptive information for companies. Taxpayers also usually rely on these databases. It is also possible to obtain information about Indian public companies from the Registrar of Companies upon payment of statutory fees.

### **Risk transactions or industries**

No transactions or industries are excluded from the possibility of a transfer pricing investigation. Software development, business process outsourcing, banking, telecommunications, pharmaceutical, FMCG and automobile (and ancillary) are some of the industries that have been subject to intense transfer pricing audits in recent times.

Outsourcing companies rendering core/high-value services to AEs need to carefully analyse and set their transfer prices. Furthermore, specific situations such as sustained losses, business strategies, business restructurings, transactions with entities in tax havens, and royalties and management charges paid should be sufficiently documented.

### **Management services**

Under India's exchange control rules, charging management service fees to Indian residents in certain situations could require regulatory approval. It may be possible to obtain regulatory approval for such a charge based on transfer pricing documentation proving its arm's-length nature. Management service fees charged to Indian taxpayers are tax-deductible if charged on an arm's-length basis. Management charges to Indian taxpayers are generally scrutinised in detail during transfer pricing audits. To mitigate the risk of disallowance, the charges should be evidenced by extensive supporting documentation proving that the services were rendered and were necessary to the business of the recipient of the services (the benefit test).

Where an Indian taxpayer is providing such services, the taxpayer should be compensated on an arm's-length basis.

### **Limitation of double taxation and competent authority proceedings**

The competent authority provisions/mutual agreement procedure (MAP) is an alternate dispute resolution mechanism that companies are increasingly beginning to use, especially in cases where the tax amount in dispute is significant. MAP settlements typically have been sought on issues relating to transfer pricing, PE matters and profit attribution.

Most Indian tax treaties contain an 'associated enterprises' article, which contains relieving provisions that require one country to reduce the amount of tax charged to offset the enhanced tax liability imposed by the other country to reflect the arm's-length standard. This article refers to competent authority provisions (contained in the relevant MAP article of the treaty) for consultation between authorities of both countries to prevent double taxation on taxpayers. MAP/competent authority provisions are an integral part of India's extensive treaty network.

The MAP route can be pursued by taxpayers simultaneously with the domestic dispute resolution process. In the event the MAP route is invoked, the competent tax authorities of the countries involved negotiate until they reach an agreement on the transfer prices acceptable to both the authorities. To facilitate the MAP, the Indian government has introduced rules and also has entered into memorandum of understanding (MoU) with the competent authorities of the United Kingdom and United States. An advantage of applying for the MAP under the MoUs mentioned is that Revenue will suspend the collection of tax, where the taxpayer has an adjustment in relation to transactions with the associated enterprises. Under the MoUs, the collection of tax is deferred while the MAP is in process. However, taxpayers need to provide appropriate bank guarantees in support of the potential tax payable prior to resorting to the MAP.

The increasing use of MAPs by taxpayers in seeking effective resolution of transfer pricing disputes is an encouraging step in the Indian scenario.

### **OECD issues**

India is not a member of the OECD. However, India has been invited to participate as an observer in the OECD's Committee on Fiscal Affairs, which contributes to setting international tax standards, particularly in areas such as tax treaties and transfer pricing. India's transfer pricing regulations broadly adopts the OECD principles. Tax offices have also indicated their intent of broadly following the OECD Guidelines during audits, to the extent the OECD Guidelines are not inconsistent with the Indian Transfer Pricing Code.

### **Joint investigations**

There is no evidence of joint investigations having taken place in India. However, almost all Indian tax treaties contain provisions for the exchange of information and administrative assistance, under which the Indian tax authorities may exchange information with other countries for transfer pricing purposes. Furthermore, with transfer pricing awareness increasing and India





signing agreements/renegotiating double tax avoidance agreements with various countries for exchange of information, joint investigations may be undertaken by the Indian tax authorities in the future.

### ***Anticipated developments in law and practice***

Revenue officials have indicated the possibility of introducing rules on safe harbour, cost contribution arrangements and thin capitalisation.

In the recent budget, the Government has proposed to introduce the General Anti-Avoidance Rule (GAAR) but as of now it has been deferred to April 2013. Current discussions indicate that the Government may further defer the implementation of GAAR by another three years. Under the GAAR provisions, Revenue authorities are empowered to disregard/combine/recharacterise the whole or any part of any impermissible avoidance arrangement. An arrangement may be regarded as an impermissible avoidance arrangement if the main purpose of the same or any part thereof is the availing of any tax benefit and is not at arm's length or is not for bonafide purpose or lacks commercial substance or results in the abuse of any provisions of the code.

### ***Payment of royalty***

The Government of India has permitted lump-sum fees for transfer of technology and royalty payments for use of trademarks/ brand names and technology under the automatic route without any restrictions. The objective of this change in policy is to freely promote the transfer of high-end technology into India.

This amendment in the exchange control regulations could have implications on the intercompany royalty arrangements that multinational enterprises have with their Indian affiliates. Because of exchange control limitations, multinational enterprises may have in the past restricted the royalty charge to their Indian affiliates in line with the limits prescribed under the automatic approval route. With the removal of such a restriction, multinational enterprises may consider revisiting their royalty arrangements with their Indian affiliates to align them with the arm's-length standard.

With this change in policy, a robust transfer pricing documentation for supporting the arm's-length nature of royalty payments would be of utmost importance to defend the deductibility of such payments before Revenue. ●

# ADVANCE RULING

(August 2021-December 2021)

**TEAM TRD**

| Name of Applicant                 | Industry      | Order No. & Date                                | Case History  |
|-----------------------------------|---------------|---|---|
| M/s. Geetee Tours Private Limited | Travel Agency | GST-ARA-55/2020-21/B-82 Mumbai dated 25.10.2021 | <p><b>Facts of the Case:</b></p> <ul style="list-style-type: none"> <li>The applicant, Geetee Tours Pvt. Ltd. is engaged in the business of tours and travels and carries on the business as package tour operators, daily passenger service operators, travel agents, etc. and is also engaged in running of buses, conveyances of all kinds and to transport passengers.</li> <li>The applicant has entered into the contract with “MUNICIPAL CORPORATION OF GREATER MUMBAI (MCGM), Worli, Mumbai 400018 to provide AC SUV and Innova equivalent car services for carrying COVID 19 patients for medical treatment.</li> </ul> <p>The applicant has sought the advance ruling on</p> <ul style="list-style-type: none"> <li>whether Toyota Innova or Equivalent Vehicles (6 Seater) registered in Tourist category with All India Tourist Permit provided for carrying Covid 19 patients for Medical Treatment would be considered as Taxable Services or Exempted Services.</li> </ul> <p><b>Views of Maharashtra Authority of Advance Ruling</b></p> <p>The Coram observed that even though the applicant has submitted that the subject supplies would fall under entry no. 6 of twelfth schedule article 243W of the constitution i.e. “Public health, no evidence or documents have been submitted to substantiate their claims for exemption. Further, the only SERVICE PURCHASE ORDER’, submitted by the applicant mentions the description of service as “Adv for ambulance-like Innova covid 19”.</p> <p>The applicant has not submitted that they have provided ambulance service for the covid patients. Neither have they submitted anything on record to show that the Innova vehicles supplied by them have been converted into ambulances or registered as such nor have they submitted proof of having transported only covid 19 patients for medical treatment. Further, the vehicles are not registered with RTO for use as the Ambulance and they are registered as tourist vehicles.</p> <p><b>Conclusion:</b></p> <p>The Maharashtra Authority of Advance Ruling (AAR) ruled that GST payable on Vehicles registered in the Tourist category for carrying Covid-19 patients for Medical Treatment.</p> |

| Name of Applicant  | Industry           | Order No. & Date                                 | Case History   |
|--------------------|--------------------|--|--|
| M/S. Deccan Wheels | Automobile Company | GST-ARA-103/2019-20/B-81 Mumbai dated 25.10.2021 | <p><b>Facts of the Case:</b></p> <p>The applicant, Deccan Wheels purchases second-hand cars (goods) and after minor processing on it such as change of tires, change of battery, painting, denting, repairs, servicing, internal cleaning, polishing, etc, which does not change the nature of the goods, the said goods are sold. The applicant does not claim the Input tax credit on the purchase of second-hand goods and has opted for Margin Scheme and applies GST rate as per Notification No 8/2018- Central Tax (Rate) dt 25/01/2018.</p> <p>The applicant has sought the advance ruling on</p> <ol style="list-style-type: none"> <li>1. How to calculate margin on sale of second hand goods?</li> <li>2. Whether tax is to be calculated on margin or the margin is inclusive of tax?</li> <li>3. Input Tax Credit Can we claim Input Tax Credit on other indirect expenses incurred for the purpose of business such as rent, commission, professional fees, telephone etc.?</li> <li>4. If in F.Y. 2019-20 our total margin on sale of second hand goods is below Rs 1.5 crores and total sale value of second hand goods is above Rs 1.5 crores can we opt for composition scheme for F.Y. 2020-21 as in F.Y. 2019-20 our total margin will be less than Rs 1.5 crores</li> </ol> <p><b>Views of Maharashtra Authority of Advance Ruling</b></p> <p>The Coram have gone through the facts of the matter, documents and record and submissions both the oral and written, made by the applicant as well as the jurisdictional officer. The applicant during the course of the final hearing held on 12.10.2021 desired to withdraw question Nos. 1,2 &amp; 4 and the same is accepted by the Coram.</p> <p>The Coram observed that the concessional rate under the notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods.</p> <p>In other words, since the applicant has been availing the benefit of the said notification and paying GST at a concessional rate, they shall not avail Input Tax Credit, as queried.</p> <p><b>Conclusion:</b></p> <p>The Maharashtra Authority of Advance Ruling (AAR) ruled that Input Tax Credit cannot be claimed on Indirect Expenses like rent, commission, professional fees, telephone incurred for purpose of business.</p> |



| Name of Applicant                       | Industry           | Order No. & Date                | Case History   |
|---|--------------------|---------------------------------|--|
| M/S New Pandian Travels Private Limited | Transport Business | TN/43/ARA/2021 Dated 30.11.2021 | <p><b>Facts of the Case:</b></p> <ul style="list-style-type: none"> <li>The applicant, New Pandian Travels Private Limited has been engaged in transporting passengers as a Rent-a-cab operator by providing the Motor Vehicle on hire or rental basis either directly to passengers or to the organizations and they have establishments at Chennai, Bengaluru, Vijayawada, Hyderabad and other places that are duly registered under GST law.</li> <li>The service provided by them is Rent-a Cab operator and classified basically under SAC 996601.</li> </ul> <p>The applicant has sought the advance ruling on the issues</p> <ol style="list-style-type: none"> <li>Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented to customers will be available to it as INPUT TAX CREDIR (ITC) in terms of Section 17(5)(a)(A) of Central Goods and Service Tax Act, 2017?</li> <li>Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will be available to it as INPUT TAX CREDIT (ITC) in terms of Section 17(5)(a)(B) of Central Goods and Service Tax Act, 2017.</li> <li>Whether the supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply and whether ITC is admissible on Motor Vehicles procured and used commonly for such supply to SEZ and other than SEZ supplies?</li> </ol> <p><b>Views of Tamil Nadu Authority of Advance Ruling</b></p> <p>The Coram of L.Latha and T.V.Venkatesh ruled that GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented with Operators to the Vendors is not available to the applicant as ITC in terms of Section 17(5)(a)(A) of Central Goods and Service Tax Act</p> <p>“GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as a public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will NOT be available to as ITC,” the AAR said.</p> <p>The AAR further held that supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply ITC is not admissible on Motor Vehicles procured as the same is restricted at S.17(5)(a)(n) of the Act.</p> <p><b>Conclusion:</b></p> <p>The Tamil Nadu Authority of Advance Ruling (AAR) ruled that no Input Tax Credit (ITC) available on GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented with Operators to Vendors.</p> |

| Name of Applicant            | Industry                   | Order No. & Date                | Case History  |
|------------------------------|----------------------------|---------------------------------|---|
| M/S Coral Coil India Limited | Coil Manufacturing Company | TN/40/ARA/2021 Dated 30.11.2021 | <p><b>Facts of the Case:</b></p> <p>The applicant, Coral Coil India Private Limited has received purchase orders from Coral Manufacturing Works India Private Ltd for the manufacture and supply of stator coils for wind operated electricity generators (WOEG); that buyer has stated in the PO that the item ordered is for use solely and principally with Enercon WOEG production; that the applicant has a dedicated coil manufacturing facility at the registered location, which caters to all types of customers such as OEMs (original equipment manufacturers) and rewinders all over the world; that the stator coils so manufactured by the applicant have utility in all types of generators.</p> <p>The applicant has sought the advance ruling on the issue</p> <ol style="list-style-type: none"> <li>1. whether the supply of Stator Coil by the Applicant to M/s. Coral Manufacturing Works India Private Ltd., will be eligible for the levy of 2.5% CGST in terms of Sl. No. 234 in the notification 1-CTR dated 28 June 2017 and 2.5% SGST in terms of the corresponding SGST notification.</li> </ol> <p><b>Views of Tamil Nadu Authority of Advance Ruling</b></p> <p>The Coram of L.Latha and T.V.Venkatesh ruled that the supply of Stator Coil by the Applicant to M/s. Coral Manufacturing Works India private Limited for use in the WOEG will be eligible for the levy of 6% CGST in terms of Sl.No.201 A in the Schedule II in the notification 1 CTR dated 28 June 2017 (as amended) and 6% SGST in terms of corresponding SGST notification with effect from October 1, 2021, subject to the self-assessment of the applicant that all such supplies are for the manufacture of the Generators for Renewable Energy, based on the Purchase Orders or Supply Contracts for each of such supply.</p> <p><b>Conclusion:</b></p> <p>The Tamil Nadu Authority of Advance Ruling (AAR) ruled that the 12% GST payable on supply of Stator Coil for use in wind operated electricity generators (WOEG).</p> |



| Name of Applicant                                | Industry            | Order No. & Date                                    | Case History  |
|--|---------------------|---|---|
| M/s. Indiana Engineering Works (Bombay) Pvt. Ltd | Engineering Company | GST-ARA-120/2019-20/B-114, Mumbai, dated 16.12.2021 | <ul style="list-style-type: none"> <li>The Applicant has entered in an identical lease agreement with other licensees for leasing other space</li> <li>Applicant has installed electric meters for use and consumption of power by the licensee</li> </ul> <p>The following questions were raised-</p> <p><b>a)</b> Whether Electricity charges and Water charges paid by the Applicant as per meter reading and collected from the recipients at actual on reimbursement basis are liable to GST?<br/> <b>Answer - Affirmative</b></p> <p><b>b)</b> In the above scenario, whether the Appellant acts as a Pure Agent?<br/> <b>Answer - Negative</b></p> <p><b>c)</b> Is the Applicant liable to add value of Electricity and Water charges to the monthly License Fee if as per terms of the contract tenant user is paying for such utility services directly to the Service Provider i.e. Electricity Power Distributor/BMC, as the case may be, even though Electric and Water meters continue to remain in the name of the Applicant?<br/> <b>Answer –</b> As the facts of the case do not lead to or show or mention such a situation , therefore , a hypothetical question based on mere assumptions (without proper underlying facts) cannot be answered.</p>  |
| Rasi Nutri Foods                                 | FMCG Company        | TN/39/ARA/2021 Dated 21.10.2021                     | <p><b>Facts of the Case:</b></p> <p>The Applicant, Rasi Nutri Foods is engaged in the business of manufacture and supply of nutrition products such as complementary weaning food, energy food, fortified rice kernel, etc., and is also engaged in the trading of agricultural commodities. The Government of Tamil Nadu had invited tenders from eligible bidders for the supply of 164 MTs of Fortified Rice Kernels (FRK) per month with a content of 3 micronutrients namely Iron, Folic Acid, and Vitamin 1312. to Trichy District of Tamil Nadu (for issue under public distribution system), vide E-Tender Document dated 11.05.2020. Subsequently, the Applicant has been awarded the contract for the supply of FRK. In terms of the tender document, the successful bidder has to supply 164 MTs of RK to make Fortified Rice at the designated Rice Miller's locations as per the technical specifications mentioned in the tender document, for a period of 2 years.</p> <p>The Applicant is supplying the FRK to the Tamil Nadu Civil Supplies Corporation (TNCSC) and raises invoices on the TNCSC whereby 5% GST (2.5% CGST 2.5% SGST) has been charged; subject to the condition that the TNCSC submits the Certificate as mandated in Notification 39/2017-CT(R) dated 18.10.2017 read with G.O.Ms.No. 140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, failing which 18% GST (9% CGST 9% SGST) shall be applicable.</p> <p>The applicant has sought the advance ruling on the issue of</p> <ol style="list-style-type: none"> <li>Whether Notification No.39/2017 CT(R) dated 18.10.2017 read with G.O.Ms.No. 140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, would be applicable to the Applicant's activity of manufacture and</li> </ol> |

| Name of Applicant                                   | Industry         | Order No. & Date                                  | Case History   |
|---|------------------|---|--|
|   |                  |   | <p>supply of Fortified Rice Kernels to the Tamil Nadu Civil Supplies Corporation pursuant to the Pilot Scheme on “Fortification of Rice &amp; its Distribution under the Public Distribution System” project launched by the Central Government.</p> <p><b>Views of Tamil Nadu Authority of Advance Ruling</b></p> <p>The Coram of Members K.Latha and T.V.Venkatesh held that FRK is not directly supplied to the economically weaker sections, but only after blending with rice grains in designated rice mills. The Notification No. 39/2017-C.T.(Rate) dated 18.10.2017 provided the concessional rate to Food Preparation’ subject to fulfilment of conditions at Column (4) before such amendment. Therefore, in our view, the concessional rate under Notification No.39/2017 C.T. (Rate) for the Period 18.10.2017 to 30.09.2021 is not available to the applicant for reasons, that FRK is not a food preparation put up in unit containers for free distribution to economically weaker sections and Applicants are not involved in free distribution of FRK to Economically weaker sections.</p> <p><b>Conclusion:</b></p> <p>The Tamil Nadu Authority of Advance Ruling (AAR) ruled that no GST concessional rates are applicable to activities of manufacture, supply of Fortified Rice Kernels till September 30, 2021.</p> |
| M/s. Integrated Decisions And Systems India Pvt Ltd | Software company | GST-ARA-6/2019-20/B-113, Mumbai, dated 16.12.2021 | <ul style="list-style-type: none"> <li>• The applicant is engaged in providing software development and support services to its holding company located outside India.</li> <li>• The comp-any provided transport facility to its employees to provide security and safety.</li> </ul> <p>The following questions were raised-</p> <p><b>1:</b> Whether part recovery of ‘renting of motor vehicles services’ / ‘cab services’ from employees in respect of the transport facility provided to them would be treated as ‘supply’ as per provision of GST and whether GST is leviable on the same?</p> <p><b>Answer</b> -Negative</p> <p><b>2:</b> If answer to question no. 1 is yes, then how the value of said supply will be determined keeping in mind that employee and the applicant are related party as per provisions of GST law?</p> <p><b>Answer</b> –Not answered in view of answer to Question No. 1 above</p> <p><b>3:</b> Further also if the answer to question no 1 is yes, then whether Input Tax Credit is admissible in respect of GST paid on inward supply of ‘renting of motor vehicles service’ which are used for employees?</p> <p><b>Answer</b> –Not answered in view of answer to Question No. 1 above</p>   |



| Name of Applicant          | Industry         | Order No. & Date                                    | Case History   |
|----------------------------|------------------|---|--|
| M/s. NITIN BAPUSAHEB PATIL | Commission Agent | GST-ARA-108/2019-20/B-115, Mumbai, dated 22.12.2021 | <ul style="list-style-type: none"> <li>• The Applicant, a registered person under GST Act, 2017, as a 'Commission Agent' in APMC, Sangli, Maharashtra, renders his services to the farmers in relation to the supply of 'Turmeric'</li> <li>• Based on the tender / auction, if farmer and buyer mutually agree to sale and purchase, the Applicant, as a commission agent, facilitates activities ancillary to supply of agriculture product 'Turmeric' in APMC, for which he gets a fixed commission @3% as per APMC regulations. Applicant does not do any sort of trading of turmeric.</li> </ul> <p>The following questions were raised-</p> <p><b>Q.1</b> Whether the Turmeric (Turmeric in Whole form - not in powder form) is covered under the definition of 'Agriculture Produce' and exempted from GST? If not, what is the HSN code of Turmeric and the rate of GST on the Turmeric?</p> <p><b>Answer</b> – Dried and Polished Turmeric as in the instant case, is not covered under the definition of 'Agriculture Produce' and is not exempted from GST. The HSN code of the impugned product is 0910 30 20 and the rate of GST is 5% (2.5% each of CGST and SGST)</p> <p><b>Q.2</b> Whether services rendered by Applicant as a Commission Agent in APMC, Sangli are liable to GST in terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017?</p> <p><b>Answer</b> – The impugned services rendered by the applicant are taxable under GST and not exempt terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017</p> <p><b>Q.3</b> Whether the applicants required to be registered under the CGST Act, 2017 for his activities specified under Annexure-I? If yes, under which section of the GST Act, he is required to be registered?</p> <p><b>Answer-</b> The applicant is required to be registered under the relevant provisions of the CGST Act, 2017 for his impugned activities</p> |



| Name of Applicant                   | Industry           | Order No. & Date                                     | Case History   |
|-------------------------------------|--------------------|--|--|
| M/s. MH Ecolife E-Mobility Pvt. Ltd | Transport Business | GST-ARA- 60/2020- 21/B-116, Mumbai, dated 22.12.2021 | <ul style="list-style-type: none"> <li>• MH Ecolife E-Mobility Pvt. Ltd., Maharashtra (“the Applicant”) and Navi Mumbai Transport Undertaking (“NMMT”) have entered into an Operator Agreement to Procure and supply air-conditioned electric buses to NMMT on gross contract basis to be plied on routes identified by NMMT.</li> <li>• NMMT or a third party appointed by NMMT, was responsible to collect appropriate fare from the passengers.</li> </ul> <p>The following questions were raised-</p> <p>1. Whether services provided by the applicant to NMMT under the Agreement, by way of supplying, operating and maintaining air-conditioned electrically operated buses are taxable and subject to GST?</p> <p><b>Answer-</b> Affirmative</p> <p>2. If the answer to (i) above is yes, what will be appropriate SAC (Services Accounting Code) for classifying the services provided by the applicant and applicable GST rate thereon?</p> <p><b>Answer-</b> The service of operating AC buses by the Applicant for NMMT would be subject to GST @12% under Tariff Heading 9966 i.e., “renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient” inserted by way of Notification No.31/2017- Central Tax (Rate) dated October 13, 2017 (Amending Notification No. 11/2017- Central Tax (Rate) dated June 28, 2017) chargeable @ 12% with ITC and @ 5% without ITC.</p> <p>3. Whether Applicant shall be eligible to avail the input tax credit of tax paid on the procurement of input supplies used in supplying services to NMMT under the Agreement?</p> <p><b>Answer-</b> The applicant shall be eligible to avail ITC OF Tax paid on the procurement of input supplies used in supplying services to NMMT under the agreement only if they pay tax @12% on output service as discussed above</p> |



| Name of Applicant                         | Industry                  | Order No. & Date                                   | Case History  |
|---|---------------------------|--|---|
| M/s. Core Construction (Yatin Manoj Mora) | Works Contract Service    | GST-ARA-08/2020-21/B-109, Mumbai, dated 10.12.2021 | <ul style="list-style-type: none"> <li>Applicant is providing work contract service (WC'S) as a sub-contractor to the main contractor for construction of Roads to be used by the general public.</li> <li>Applicant feels that they are a sub-contractor providing service to the main contractor for original contract work of constructing the Roads to be used by the General Public for which 12% "GST is applicable and not 18%, as applicable in other cases.</li> </ul> <p>The following questions were raised-</p> <p>1. What Tax Rate to be charged by the sub-contractor to main contractor on Work Contract Services on Construction of Roads?</p> <p><b>Answer-</b> In respect of Sub-Contract awarded to the applicant by M/s J. P. Enterprises (main contractor), to whom Aurangabad Municipal Corporation awarded the contract for Executing Work of construction of Concrete Roads in Aurangabad City Packages P-2, the rate to be charged is 6% SGST plus 6% CGST, total 12%, as discussed above.</p> <p>2. Whether to Charge GST tax of 12% or 18%?</p> <p><b>Answer-</b> As mentioned in Answer to Question No 1 above.</p>   |
| M/s. Portescap India Private Limited      | Motor Manufacturer and Ex | GST-ARA-93/2019-20/B-110, Mumbai, dated 10.12.2021 | <p>The applicant is engaged in the business of manufacturing of customized motors in India.</p> <p>Applicant is SEZ Unit engaged in export of manufactured goods</p> <p>The following questions were raised-</p> <p>Q1. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on procurement of renting of immovable property services from Seepz Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 – Central Tax (Rate) dated 25th January 2018 ?</p> <p><b>Answer:</b> Answered in the affirmative.</p> <p>Q2. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on any other services in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 – Central Tax (Rate) dated 25th January 2018?</p> <p><b>Answer:</b> Not answered in view of discussions made above.</p> <p>Q3. If, answer to the above point is in the affirmative, then the tax under reverse charge mechanism is required to be paid under which tax head i.e., IGST or CGST and SGST?</p> <p><b>Answer:</b> The tax will be discharged by them under IGST head.</p> |

# TAX UPDATES, NOTIFICATIONS AND CIRCULARS

## Goods and Services Tax Notification

### Notification No. 01/2022 – Central Tax

Date – 24th February 2022

Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 20 Cr from 1st April 2022

CBIC has made amendments in the Notification No. 13/2020 – Central Tax, dated the 21st March, 2020, namely: -

In the said notification, in the first paragraph, with effect from the 1st day of April, 2022, for the words “fifty crore rupees”, the words “twenty crore rupees” shall be substituted.

**Interpretation** - Businesses with turnover of over Rs. 20 crores will have to generate electronic invoice for B2B transactions from 1st April 2022 according to above notification.

## Customs Notification (Non-Tariff)

### Notification No. 11/2022-Customs (N.T.)

Date – 22nd February 2022

Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022

CBIC has made regulations, namely: -

1. Short title and commencement. –

- (1) These regulations may be called the Shipping Bill (Post export conversion in relation to instrument based scheme) Regulations, 2022.
- (2) They shall come into force on the date of their publication in the Official Gazette.
- (3) These regulations shall apply to shipping bills or bills of export filed on or after the date of publication of these regulations in the Official Gazette.

For more details, please follow -

<file:///D:/TRD-Deba/Downloads/csnt11-2022.pdf>

## Notification No. 12/2022-Customs (N.T.)

Date – 28th February 2022

Fixation of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver- Reg

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

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

| Sl. No. | Chapter/ heading/ sub-heading/ atariff item | Description of goods | Tariff value (US \$Per Metric Tonne) |
|---------|---|----------------------|--------------------------------------|
| 1       | 1511 10 00                                  | Crude Palm Oil       | 1377                                 |
| 2       | 1511 90 10                                  | RBD Palm Oil         | 1420                                 |
| 3       | 1511 90 90                                  | Others – Palm Oil    | 1399                                 |
| 4       | 1511 10 00                                  | Crude Palmolein      | 1426                                 |

For more details , please follow -

<file:///D:/TRD-Deba/Downloads/csnt12-2022.pdf>

## Customs Notification (Anti-Dumping Duty)

### Notification No. 09/2022-Customs (ADD)

Date – 24th February 2022

Seeks to impose anti-dumping duty on imports of Glazed/Unglazed Porcelain/Vitrified Tiles in polished or unpolished finish with less than 3% water absorption from China PR for a period of 5 years

The designated authority, vide notification No. 7/39/2020-DGTR, dated the 22nd January, 2021 had initiated the review in terms of sub-section (5) of section 9A of the



Customs Tariff Act, 1975 (51 of 1975) in the matter of continuation of anti-dumping duty on imports of 'Glazed/ Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption' falling under headings 6907 or 6914 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, the People's Republic of China and imported into India, imposed vide Notification No. 29/2017- Customs(ADD), dated the 14th June, 2017.

For more details, please follow -

<file:///D:/TRD-Deba/Downloads/csadd09-2022.pdf>

## **Notification No. 10/2022-Customs (ADD)**

**Date – 24th February 2022**

Seeks to further amend notification No. 01/2017-Customs (ADD) to extend the levy of ADD on jute products originating in or exported from Nepal and Bangladesh.

The designated authority vide Notification No. 7/9/2021-DGTR dated 28th June, 2021, dated the 28th June, 2021, has initiated review in terms of sub-section (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975) in the matter of continuation of anti-dumping duty on imports of "Jute products" namely, Jute Yarn/ Twine (multiple folded/ cabled and single), Hessian fabric, and Jute sacking bags (hereinafter referred to as the subject goods) falling under Tariff Headings 5307, 5310, 5607 or 6305 of the

First Schedule to the Customs Tariff Act, originating in or exported from Bangladesh and Nepal (hereinafter referred to as the subject countries), imposed vide Notification No. 01/2017-Customs(ADD), dated 5th January, 2017, and has requested for extension of the said anti-dumping duty in terms of sub-section (5) of section 9A of the Customs Tariff Act.

For more details, please follow -

<file:///D:/TRD-Deba/Downloads/csadd10-2022.pdf>

## **Customs Circulars**

### **Circular No. 04/2022-Customs**

**Date – 27th February 2022**

Implementation of automation in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 with effect from 01.03.2022.

Reference is drawn to the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2022 notified vide Notification No. 07/2022-Customs (N.T.) dated 01.02.2022 so as to make certain amendments in existing Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. These changes come into effect from 1st March, 2022.

For more details , please follow -

<https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2022/Circular-No-04-2022.pdf>





# PRESS RELEASE

## More than 29.8 lakh major Tax Audit Reports(TARs) filed on the e-Filing portal of the Income Tax Department

Date – 16.02.2022

**M**ore than 29.8 lakh major Tax Audit Reports(TARs) have been filed on the eFiling portal of the Income Tax Department as on 15th February, 2022. On the last day, over 4.14 lakh major Tax Audit Reports/forms have been filed.

Out of 29.8 lakh of the major statutory forms, over 2.65 lakh Form 3CA-3CD and around 24.5 lakh Form 3CB-3CD have been filed in FY 21-22. More than 2.71 lakh other Tax Audit Reports (Form 10B, 29B, 29C, 3CEB, 10CCB, 10 BB) have been filed till 15.02.2022.

On 15.02.2022, 34,842 Form 3CA-3CD(out of total of 2,65,153), 3,36,842 Form 3CB-3CD (out of total of 24,48,950), 18,644 Form 10B (out of total of 1,50,950), 11,852 Form 29B (out of total of 74,923), 478 Form 29C (out of total of 2,820), 10,542 Form 3CEB (out of total of 33,345), 873 of Form 10CCB (out of total of 4,904) and 570 of Form 10BB (out of total of 3851) have been filed. On the last date i.e. the extended due date of 15.02.2022, 14% of these statutory forms and in the last 5 days from 11.02.2022 to 15.02.2022, 30% of these statutory forms were filed.

Further, more than 5.41 crore Income Tax Returns(ITRs) filed have been verified out of 6.26 crore ITRs filed for AY 2021-22. Of the verified ITRs, more than 4.50 crore ITRs have been processed and 1.58 crore refunds for AY 2021-22 have been issued.

The Department expresses gratitude to all tax professionals and taxpayers for the support in compliances and requests the attention of taxpayers who are yet to accept the Tax Audit Report submitted by their CA to complete the process of submission.

## Income Tax Department conducts searches on a group engaged in organizing multi-state gaming activities, online betting, etc.

Date – 24.02.2022

**T**he Income Tax Department conducted search and seizure operations on a business group engaged in gaming activity, online betting (including cricket betting), etc. on 15.02.2022. Total of 29 premises spread over Mumbai, Delhi, Surat, Jaipur, Pune and Kolkata were covered. The search action revealed that the group was operating in a clandestine manner and had concealed its operations and income from law enforcement agencies. The revenue generated by the group from its activities is largely in cash.

The group operates from Mumbai and has a wide network of agents and area managers in different cities for collection of cash from large customer base who use the websites hosted on cloud servers by private operators. It was detected during the search that, after allotting IDs and passwords to the customers, points are credited into their accounts by agents/area managers after collecting cash from them. The cash is then sent to Mumbai through hawala operators. Handwritten notes, documents and digital evidence containing detailed account of daily cash transactions to be introduced in the books of account have been seized during the search.

The search revealed that the group has been introducing its unaccounted cash into books of account as unsecured loans, security premium, partner's capital, agricultural income, share transactions, commission and trading income, etc., in the form of accommodation entries. This cash has been routed through several layers of dummy/shell companies controlled by the entry provider groups or through hawala channels. The amounts introduced in the books of account have been invested in real estate and securities market. Preliminary investigation has revealed cash turnover of more than Rs. 600 crore in the last 6 months or so.

Listed securities worth more than Rs. 550 crore and 30 bank accounts have been provisionally attached so far. Cash (including foreign currency) of Rs. 3.08 crore and jewellery worth Rs. 81 lakh has been seized.

Further investigations are in progress.

# INDIRECT TAX JUDGEMENTS

***Pan shop seller not eligible to opt for composition scheme being manufacturing Gutka by mixing ingredients: The AAR, Madhya Pradesh***

**FACT OF THE CASE**

The applicant was running pan shop and dealing in all types of products which would be related to pan and necessary items generally accepted in pan shop in general trade parlance. It filed an application for advance ruling to determine whether it would be eligible to opt composition scheme as turnover shall be much less than Rs. 1.5 crores.

**DECISION OF THE CASE**

The Authority for Advance Ruling observed that as per Section 10(2)(b) of CGST Act, the benefit of composition scheme shall not be available to a person who is engaged in supply of goods that are not leviable to tax. Also, as per the Notification No. 14/2019-Central Tax, the persons who are engaged in manufacturing of the Tobacco or Pan Masala, are not eligible for composition scheme.

In the instant case, one of the goods that shall be manufactured and sold from the applicant's Pan Shop is Gutka, containing Tobacco or otherwise which would be similar to Pan Masala. Thus, the preparation of Gutka at the Pan Shop for sale would be covered in the Second Proviso of Notification No. 14/2019-Central Tax. Therefore, benefit of composition scheme shall not be available to applicant.

***No GST on supply of medicines, consumables, etc. to patients admitted to hospital: The AAR, Madhya Pradesh***

**FACT OF THE CASE**

The applicant was providing health care services to patient admitted in hospital. It filed an application for advance ruling to determine whether the medicines, consumables, Surgical, etc. used in the course of providing health care services to the patient admitted in the hospital for treatment, surgery or diagnosis would be considered as composite supply of health care services.

**DECISION OF THE CASE**

The Authority for Advance ruling observed that for the in-patients, all the medicines, etc. were issued through the in-patient billing series and strictly under the prescription of the doctors aimed at curing, restoring or maintaining the health of a patient, which would be incidental to the health

care services rendered in the hospital.

Therefore, if a composite amount would be charged from the patient admitted in the hospital for treatment surgery or diagnosis including for medicines and other goods and services supplied in the course of treatment of the patient and if the amount of such medicines and other goods and services would not be segregable from the composite amount charged from the patient, then it would a composite supply under GST in which health care service would be principal supply. Such composite supply of health care services would be exempt from tax as per Sl. No. 74 of Notification No. 12/2017-CT (Rate), dated 28-6-2017.

***18% GST payable on Construction of Buildings and Civil Structures necessary to House Data Centres, Nearline Data Centres, Disaster Recovery Station, Satellite Data Centre: The AAR, Maharashtra***

**FACT OF THE CASE**

The applicant, M/s Sterlite Technologies Limited, manufactures telecom products such as optic fiber, optic fiber cable, etc.; lays the optic fiber cables (either underground or hung overhead) to create a network, sets up control centers, installs equipment necessary to operate network for desired purpose, commissions network and any other ancillary activity that may be necessary for creation of network infrastructure for its customers in telecom industry by way of 'turnkey contracts'.

To establish countrywide IP/MPLS based multiprotocol converged network, Naval Communication Network, as core infrastructure for supporting strategic and operational needs, the Indian Navy has entrusted the setting up of these networks to Bharat Sanchar Nigam Limited (BSNL), which in-turn has contracted the work to the applicant who has to supply all material and services required; training services to operate the same and supply of satellite connectivity vehicles for ensuring seamless connectivity during breakdown of network.

The network to be created includes the key activities which are Construction of buildings and civil structures necessary to house data centres, nearline data centres, disaster recovery station, satellite data centre and connectivity equipment at Naval ports across mainland and coastal region in India. Installing rack, stack in the buildings and other civil infrastructures necessary to house the



equipment and enable operation of all the centres/ports. Assemble/install all equipment and powering it up by connecting with power supply and back-up generators. Interconnecting and configuring all the equipment in all the data centres, nearline data centres, disaster recovery station, satellite data centre, etc. with each other to enable information exchange across the network as desired.

The applicant has sought the advance ruling on the issue in respect of the GST rate applicable on the activities.

#### **DECISION OF THE CASE**

The Coram has held that activities of the applicant were covered under entry 3(ii) of the Notification No 11/2017 CGST (Rate) dated June 28, 2017 and thereafter with effect from 01.04.2019, the said activities are covered under Sr. No. 3 (xii) as amended by Notification No 03/2019 CGST (Rate) dated 29th March, 2019, taxable at the rate of 18%.

*The Maharashtra Authority of Advance Ruling (AAR) has ruled that 18% GST payable on Construction of buildings and civil structures necessary to house data centres, nearline data centres, disaster recovery station, satellite data centre.*

#### **12% GST to be levied on printing of cheque books as per specifications and paper given by banks: The AAR, Telangana**

##### **FACT OF THE CASE**

The applicant was engaged in printing of cheque books in name of specific bank name and customer name as per specification given by banks. It filed an application for advance ruling to determine applicable GST rate for the supply of printing of cheque books to the banks

##### **DECISION OF THE CASE**

The Authority for Advance Ruling observed that Notification No. 2/2017(Rate) exempts supply of Cheques, loose or in book form at HSN Code 4907. But the applicant would not supply cheques to bankers and it would be the bankers who would be supplying cheques to their customers. The content of the cheque book would be supplied by the banker and the banker shall be the person who owns usage rights to such intangible property. The applicant would be printing cheques as per the directions of the Bankers and the applicant shall use its own physical input, i.e., paper. Therefore, the applicable rate of GST would be 12% as per serial No. 27 of Notification No. 11/2017(Rate).

#### **18% GST payable on Income earned from conducting Guest Lecture: The AAR, Karnataka**

##### **FACT OF THE CASE**

The applicant, Sri Sairam Gopal Krishna Bhat had obtained registration as a Proprietary concern under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively) and the registration was canceled w.e.f 01.09.2019. Since he is not registered under GST Act presently, he is considered an unregistered person. The applicant is a Professor of Law at the National Law School of India University, Bengaluru, and is engaged in classroom teaching and training for students and other personnel.

The applicant states that in February 2019 he was advised to register himself under the GST Regime as his total income exceeded Rs.20,00,000/- in the financial year 2018-2019, from his activities such as delivering Guest Lectures at Institutions of International and National Repute, recognized by the UGC and sponsored by Government of India and teaching interconnected activities under a project sponsored by the United Nations Development Programme and hence registered himself under GST Act 2017.

The applicant has sought the advance ruling on the issue raised was Whether the income earned from conducting Guest Lectures amounts to or results to a taxable supply of services

##### **DECISION OF THE CASE**

The Coram has ruled that the income earned from conducting Guest Lectures, amounts to a taxable supply of services as per entry No. (ii) of 21 of Notification No. 11/2017 Central Tax (Rate) dated: 28.06.2017.

“Income earned from conducting Guest Lectures amounts to Supply of taxable services. The said Service falls under SAC 9983 i.e, Other professional, technical, and business services and do not fall under the exempted category of services, as information, whether the guest lecturers is not part of “Education” as defined supra, is not forthcoming the application. Hence, the said services provided by the applicant attract GST of 18%,” the AAR ruled.

*The Karnataka Authority of Advance Ruling (AAR) has ruled that 18% GST is payable on Income earned from conducting guest lectures.*

# DIRECT TAX JUDGEMENTS

*Lessee entitled for Sec. 35AD deduction though lessor constructed basic civil structure of building: ITAT*

## **FACT OF THE CASE**

1. The assessee engaged was in the business of running hotels and resorts. It filed its return of income wherein it claimed deduction under section 35AD. The deduction was claimed on the ground that it had incurred expenditure towards the construction of a new Five Star Hotel.
2. During scrutiny assessment, the Assessing Officer (AO) disallowed the claim of deduction under section 35AD. AO contended that the assessee did not build the hotel building and operated the same on the leasehold land & building.
3. The CIT(A) upheld the order of AO. Aggrieved assessee filed the instant appeal before the Tribunal.

## **DECISION OF THE CASE**

1. The Tribunal held that section 35AD does not specify that the assessee has to construct the entire building by itself or own the building and land. The provisions only specify that the specified business should be in the nature of the building and operating a new hotel of 2 stars or above category as classified by the Central Government.
2. In the assessee's case, there is no doubt that the entire investment made by the assessee was for constructing a portion of the building and for operating a new hotel of the category specified under the Act. Further, from the provisions of section 35AD, it was evident that these provisions are brought into the Act to promote certain specified businesses in the country.
3. These provisions grant deduction to the assessee regarding the entire capital expenditure incurred wholly and exclusively for the specified business that has commenced during the previous year. Even otherwise, by virtue of section 32, the assessee is entitled to deduction towards such expenditures under section 32 by way of depreciation over time. Therefore, there is no loss to the revenue when the whole issue is viewed in its entirety because when the assessee derives the benefit of section 35AD, it saves payment of tax in the initial years but in the

subsequent years ends up paying higher tax as it is deprived of the benefit of depreciation under section 32.

4. Provisions of section 35AD only help the assessee to maintain higher cash liquidity during the initial years of its business. Once deduction under section 35AD is claimed, then by virtue of section 35AD(4), no other deduction in respect of these expenditures shall be allowed as deduction.
5. Thus, keeping in view of the facts and circumstances of the case, the assessee was entitled to the benefit of deduction under section 35AD.

*No capital gains if only licence was given to developer to enter property for construction under JDA: ITAT*

## **FACT OF THE CASE**

1. The assessee was a builder and filed its return of income for the assessment year 2006-07. During the year under consideration, the assessee had entered into a Joint Development Agreement (JDA) with a developer to construct an apartment project in respect of land owned by it.
2. As per the agreement, the assessee had transferred 65% share of undivided interest in the above land and, in consideration, received 35% of the built-up area in the apartment project. The assessee also received 10 lakhs as a refundable deposit for handing over the property to the builder.
3. The Assessing Officer (AO) held that there was the transfer of assets within the meaning of Section 53A of the Transfer of Property Act. Thus, he invoked provisions of section 2(47)(v) and computed capital gains.
4. The CIT(A) upheld the order of AO. Aggrieved- assessee filed the instant appeal before the Tribunal.

## **DECISION OF THE CASE**

1. The Tribunal held that the supplementary joint development agreement provides that the developer was granted irrevocable permission and license to enter the scheduled property to construct residential apartments as per the plan to be obtained.





2. It was specifically mentioned that the license so granted shall not be considered possession delivered in part performance of the contract under section 53 (sic. 53A) of the Transfer of Property Act, nor any property right shall be deemed in favour of the developer.
3. A careful perusal of the provisions of section 53A of the Transfer of Property Act would show that the transferee should have taken possession in part performance of the contract and has done the same act in furtherance of the contract.
4. In the instant case, the development agreement clearly specified on that possession of the property was not given, and what was given was only a license to enter the property. Thus, the provisions of section 2(47)(v) did not apply to the assessee. Accordingly, the order passed by the CIT(A) was set aside, and AO was directed to delete the assessment of short-term capital gains.

***Fertilizer Subsidy Income derived from Business of Industrial undertaking eligible for Income Tax Deduction: ITAT***

**FACT OF THE CASE**

1. The assessee has raised the ground with respect to the taxability of sales tax incentive whether is an income chargeable to tax and, if yes, whether same is eligible for deduction u/s 80 IB of the income tax act and whether the fertilizer subsidy provided by the government as per price concession was an income eligible for deduction u/s 80 IB of the income tax act, has not been decided.
2. The assessee was aggrieved that the Sales tax remission of Rs 3.31 crores and fertiliser price concession from government of Rs 105.40 crores should be included as an eligible income for deduction u/s 80 IB of the act. The departmental representative vehemently supported the order of the learned assessing officer and stated that in the earlier years the issue has been decided against the assessee and therefore now the issue has been correctly set- aside by the coordinate bench to the file of the learned assessing officer for verification whether the income from fertilizer subsidy is eligible for deduction u/s 80 IB of the income tax act or not.

**DECISION OF THE CASE**

1. The Coram has held that the assessee is eligible for deduction u/s 80 IB of the Income Tax Act on fertilizer

subsidy received by it. Accordingly, we hold that the fertilizer subsidy income received by the assessee is income derived from the business of the industrial undertaking and is eligible for deduction u/s 80 IB of the income tax act.

2. The Income Tax Appellate Tribunal (ITAT), Mumbai Bench has ruled that Fertilizer Subsidy income derived from business of industrial undertaking eligible for Income Tax Deduction.

***Sum recovered from Indian affiliate for software used to provide services to various group entities is royalty: ITAT***

**FACT OF THE CASE**

1. The assessee was a Switzerland-based non-resident company. It rendered information technology (IT) services to its Indian affiliate RIPL and received Rs. 20.04 crores, which was offered to tax at a rate of 10 percent as per the India Switzerland tax treaty provisions.
2. However, another receipt of Rs. 3.89 crores from RIPL wasn't offered to tax, and it was claimed as reimbursement of IT license costs incurred towards the central purchase of software licenses used by RIPL.
3. The Assessing Officer (AO) held that amount of Rs. 3.89 crore claimed as reimbursement was no different from receipt of Rs. 20.04 crore from IT services rendered under Agreement, which was offered to tax. Thus, the same would be chargeable to tax in India as Fees for Technical Services/Royalty under article 12 of DTAA. The Dispute Resolution Panel (DRP) did not provide any succour to the assessee. The assessee filed the instant appeal before the Tribunal.

**DECISION OF THE CASE**

1. The Pune Tribunal held that to categorize a particular amount as reimbursement, it is sine-qua-non that expenditure should be incurred for and on behalf of others. It envisages two cumulative conditions, viz., first that undiluted benefit flowing from incurring of expenditure is passed on, as such, to other and second, that amount incurred is recovered as it is from other without any plus or minus to that.
2. In the instant case, 19 global entities were availing IT services from the assessee. The Indian entity had been allocated more than 17 per cent of the total



costs as against each of the other 18 entities, getting an average allocation of 4.6 per cent. It showed that the assessee allocated costs for rendering IT services in a peculiar manner, the modus operandi of which was not open for verification to the tax authorities.

3. Further, clause (4) of the Agreement shows that the Agreement firstly talks of incurring software and license fee in rendering the services and then of loading software and license fee cost with a mark-up of 5 per cent. This brings one to the inevitable conclusion that the second constituent of reimbursement, the recovery of the amount incurred from the other without any plus or minus, also falls on the ground.
4. The cumulative satisfaction of both conditions is essential for constituting 'reimbursement'. If one of them is lacking, the test of reimbursement fails. In the instant case, both the conditions were failing. Neither the undiluted benefit of the software cost was passed on to RIPL, nor did the assessee recover the amount as it is from RIPL. Thus, the contention of 'Reimbursement' cannot be countenanced.

***Acknowledgement of debt in the balance sheet triggers a fresh period of limitation on each acknowledgement: NCLAT***

**FACT OF THE CASE**

1. In the instant case, the Appellant entered into a Letter of Intent (LoI) for disbursing advance for marketing/financial requirements of a development project to be undertaken by the respondent corporate debtor.
2. In pursuance of the agreement, the appellant had advanced different amounts to the corporate debtor. The balance sheet of the corporate debtor had acknowledged the receipt of financial assistance of Rs. 40.75 crores, which was duly reflected in the balance sheet. Later, the appellant addressed a letter to the corporate debtor stating that sum of Rs. 41.75 crores had been paid under the Memorandum of Understanding (MoU).
3. The corporate debtor sent a letter denying signing and executing MoU. It was also alleged that the appellant had failed to raise the required funds as promised. The appellant filed a Commercial Suit for recovery wherein an interim injunction order was issued expressing the opinion that there was a clear

admission of liability. Thereafter, an application was filed under section 7 by the appellant claiming as a financial creditor for recovery of the amount of Rs. 41.75 crores together with interest accrued thereon at the rate of 18 per cent.

4. The Adjudicating Authority rejected an application filed under section 7, holding that arrangement between parties was in nature of business sharing and there was no 'financial debt'.
5. The Adjudicating Authority in its judgment observed that in continuation of the Letter of Intent, no MoU was formally executed between the parties. It was held that the arrangement between the parties was in the nature of business sharing and there was no 'financial debt'. The Adjudicating Authority further held that the claim of the appellant was barred by limitation.

**DECISION OF THE CASE**

1. The NCLAT observed that on consideration of documents and correspondences, including balance sheets, it was evident that the amount paid to the corporate debtor as advance for marketing/financial requirements of the development project undertaken by the corporate debtor was nothing but a financial debt within the meaning of IBC. Therefore, the Adjudicating Authority committed an error in holding that appellant was not a financial creditor and rejecting the application filed by the appellant under section 7.
2. The NCLAT further held that where there was an acknowledgement of debt in the balance sheet, there shall be a fresh period of limitation on each acknowledgement, thereby, attracting provisions of section 18 of the Limitation Act, 1963. However, the balance sheet would have to be examined on a case-to-case basis to establish whether acknowledgement of liability in fact had been made.
3. The NCLAT further stated that where there was an acknowledgement of debt in the balance sheet, there shall be a fresh period of limitation on each acknowledgement, thereby, attracting provisions of section 18 of Limitation Act, 1963 however, balance sheet would have to be examined on a case-to-case basis to establish whether acknowledgement of liability, in fact, had been made.



# DIRECT TAX CALENDER – MARCH, 2022

| DESCRIPTION   | DUE DATE         |
|---|------------------|
| 1. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of January, 2022.  |                  |
| 2. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of January, 2022.  |                  |
| 3. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of January, 2022.  |                  |
| Due date for deposit of Tax deducted/collected for the month of February, 2022. 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.   | 7th March, 2022  |
| 1. Fourth instalment of advance tax for the assessment year 2022-23.<br>Due date for payment of whole amount of advance tax in respect of assessment year 2022-23 for assessee covered under presumptive scheme of section 44AD / 44ADA.  | 15th March, 2022 |
| 2. Due date for filing of return of income for the assessment year 2021-22 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A apply.   |                  |
| 3. Return of income for the assessment year 2021-22 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s).  |                  |
| 1. Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of January, 2022.   | 17th March, 2022 |
| 2. Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of January, 2022.   |                  |
| 3. Due date for issue of TDS Certificate for tax deducted under section 194M in the month of January, 2022  |                  |
| 1. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of February, 2022.   | 30th March, 2022 |
| 2. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of February, 2022.   |                  |
| 3. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of February, 2022  |                  |
| 1. Due date for linking of Aadhaar number with PAN.   | 31st March, 2022 |
| 2. Country-By-Country Report in Form No. 3CEAD for the previous year 2020-21 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group.   |                  |
| 3. Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2020 to March 31, 2021) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc. |                  |
| 4. Filing of belated/revised return of income for the assessment year 2021-22 for all assessee (provided assessment has not been completed before March 31, 2021).  |                  |
| 5. Filing of application in Form 10A for registration/provisional registration/intimation/approval/provisional approval of Trust, institutions or Research Associations, etc. (which was required to be filed on or before 30-06-2021).   |                  |
| 6. Filing of application in Form 10AB for conversion of provisional registration into regular registration or renewal of registration/approval after five year of registration/approval of Trust, institution, etc. (which was required to be filed on or before 28-02-2022)  |                  |

# IMPORTANT RETURN DUE DATE – GST MARCH 2022

| <b>GSTR 1</b>                    |                            |                 |
|----------------------------------|----------------------------|-----------------|
|                                  | <b>For the period</b>      | <b>Due Date</b> |
| Turnover More than INR 1.5 Crore | February 2022 (Monthly)    | 11th March 2022 |
| Turnover Upto INR 1.5 Crore      | Jan – Mar 2022 (Quarterly) | 13th April 2022 |
| IFF (Optional)                   | January 2022 (Monthly)     | 13th March 2022 |

| <b>GSTR 3B</b>   |                            |                 |
|--|----------------------------|-----------------|
|  | <b>For the period</b>      | <b>Due Date</b> |
| Annual Turnover upto INR 5 Crore in Previous FY  | February 2022              | 20th March 2022 |
| Annual Turnover more than INR 5 Crore in Previous FY   | February 2022              | 20th March 2022 |
| Turnover Upto INR 5 Crore<br>(for Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Sikkim,) | Jan – Mar 2022 (Quarterly) | 24th April 2022 |
| Turnover Upto INR 5 Crore<br>(for Chandigarh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttarakhand.)   | Jan – Mar 2022 (Quarterly) | 22nd April 2022 |

| <b>COMPOSITION DEALER</b> |                            |                 |
|---------------------------|----------------------------|-----------------|
|                           | <b>For the period</b>      | <b>Due Date</b> |
| GST CMP-08                | Jan – Mar 2022 (Quarterly) | 18th April 2022 |
| GSTR 4                    | Financial Year 2021-22     | 30th April 2022 |

|  | <b>For the period</b>  | <b>Due Date</b> |
|--|------------------------|-----------------|
| GSTR 9-Annual Return (Annual Turnover More than 2 crore) | Financial Year 2020-21 | 28th Feb 2022   |
| GSTR 9C- Audit Form (Annual Turnover More than 5 crore)  | Financial Year 2020-21 | 28th Feb 2022   |

|   | <b>For the period</b>   | <b>Due Date</b> |
|---|-------------------------|-----------------|
| GSTR 5 (Non- Resident Foreign Taxpayer) | February 2022 (Monthly) | 20th March 2022 |
| GSTR 5A (NRI OIDAR Service Provider)    | February 2022 (Monthly) | 20th March 2022 |
| GSTR 6 (Input Service Distributor)      | February 2022 (Monthly) | 13th March 2022 |
| GSTR 7 (TDS Deductor)                   | February 2022 (Monthly) | 10th March 2022 |
| GSTR 8 (TCS Collector)                  | February 2022 (Monthly) | 10th March 2022 |

## E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

|   |  |
|---|--|
| Impact of GST on Real Estate                                | Handbook on GST on Service Sector                          |
| Insight into Customs - Procedure & Practice                 | Handbook on Works Contract                                 |
| Input Tax Credit & In depth Discussion                      | Handbook on Impact of GST on MSME Sector                   |
| Exemptions under the Income Tax Act, 1961                   | Insight into Assessment including E-Assessment             |
| Taxation on Co-operative Sector                             | Impact on GST on Education Sector                          |
| Guidance Note on GST Annual Return & Audit                  | Addendum_Guidance Note on GST Annual Return & Audit        |
| Sabka Vishwas-Legacy Dispute Resolution Scheme 2019         | An insight to the Direct Tax- Vivad se Vishwas Scheme 2020 |
| Guidance Note on Anti Profiteering                          | International Taxation and Transfer Pricing                |
| Advance Rulings in GST                                      | Handbook on E-Way Bill                                     |
| Handbook on Special Economic Zone and Export Oriented Units | Taxation on Works Contract                                 |

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



## TAXATION COMMITTEES - PLAN OF ACTION

### Proposed Action Plan:

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

### Disclaimer:

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