

August, 2022

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Amrit Mahotsav

TAX Bulletin

★ ★ VOLUME - 118 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

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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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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/ 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

*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...!!!

The Tax Research Department successfully organised a seminar on 5th August 2022 at Rotary Sadan, Kolkata, Theme 'GST in India – Poised to deliver sustainable Growth'. Approximately 200 participants including practicing Cost Accountants, Members from industries, CMA Students, people from various industries, SMEs and students from various colleges from Kolkata attended the Seminar.

Shri Ashish Chandan – Principal Commissioner, CGST & Central Excise of Kolkata South graced the occasion as Chief Guest. CMA Ramesh Kumar Dash, Director Finance – Garden Reach Ship Builders and Engineers Ltd, were present as Guest of Honour. Shri Ashish Chandan in his speech, appreciated the Institute for organizing such seminar and mentioned about the need of organizing more such seminars for the benefit of the stakeholders. His main aim to address the august gathering was to understand the issues faced by the small businesses and practitioners in the compliance of GST. He appreciated the Institute for conducting courses, seminars and workshops for increasing GST awareness among the grass root level starting from the students of the colleges and universities.

Dr. Madhumanjari Mondal - Principal of Scottish Church College, Dr. Mousumi Singh Sengupta - Principal of THK Jain College and Mr. Tridib Sengupta, HoD-BBA from Bhowanipur Education Society were among the special Invitees.

The technical session was very interactive where the officials from the CGST Commissionerate along with Practicing Cost Accountants answered various queries raised by the audience at the auditorium as well as audience from all over India present via online mode. Mr. Tirthankar Pine, Senior Superintendent (CGST) and Mr. Alam, Senior Superintendent (Preventive Officer) attended the technical session as speaker along with CMA Manmohan Daga - Practicing Cost Accountant and CMA Natraj

Radhakrishnan - Practicing Cost Accountant as Moderator. Other Practicing Cost Accountants like CMA B.M Gupta, CMA Viswanath Bhat, CMA T.K Jagannathan, CMA Ajith Sivadasa and CMA Mrityunjay Acharjee, GM Finance – Numaligarh Refinery Ltd. also joined the seminar virtually and shared their thoughts and given suggestions to the Govt.

On the regular activities front, all the activities of the department are being carried on seamlessly. GST Course for Colleges and Universities is being conducted for the second time in ASC Degree College Bengaluru with 112 students. All the Taxation courses, (i) Certificate Course on GST, (ii) (i) Advanced Certificate Course on GST, (iii) Advanced Certificate Course on GST Audit and Assessment Procedure, (iv) Certificate Course on TDS (v) Certificate Course on Filing of Returns, (vi) Advanced Course on Income Tax Assessment and Appeals and (vii) Certificate Course on International Trade are being conducted seamlessly. The weekly quiz activity has gained momentum and participations are in an increasing trend. The 117th Tax Bulletin has also been released. 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
19th July 2022



CMA Chittaranjan Chattopadhyay
19th July 2022

TAXATION COMMITTEES 2021 - 2022

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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

Is it 1/3rd land cost deduction is logical in case of sale of flats under GST.

As we know the sale of land is not taxable as per the provisions of Schedule III of the CGST Act 2017. However, arriving land cost is really a big challenge out of the total cost of a flat. Normally before the introduction of the GST, under service, tax people used to take a deduction based on agreement value. Normally the builders and developers used to make 2 agreements. One is for the sale of the undivided share of land and another one is for the construction agreement. It was there in the VAT regime also. However, there was a lot of litigation before the introduction of the GST (under both service tax as well as VAT law). to avoid all these litigations in GST, Government has fixed the cost of land is 1/3rd. But in metros and big cities, the land cost out of total cost is somewhere around 60-70% but in remote areas like in taluka place and villages, it is not even 10-15%. Hence, those who are buying flats in cities are paying higher GST than those who are buying other than in big cities.

Due to this builders are not happy with 1/3rd deduction of land cost. Hence, Gujarat high court clearly said the case of Manjaal Manishbhai Bhatt VS Union of India on 6 May 2022. This Hon'ble Court may be pleased to strike down and declare Entry 3(if) of Notification No. 11/2017-Central Tax (Rate) as well as Entry 3(if) of Notification No. 11/2017 - State Tax (Rate) along with paragraph no. 2 of both the notifications as being ultra-vires Section 7(2) of the GST Acts read with Entry No. 5 of Schedule III to the GST Acts as well as ultra-vires Section 9(1) and Section 15 of the GST acts;

Further, the court observed that mandatory deduction of 1/3rd for value of land is not sustainable in cases where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of valuation rules. Such 1/3rd deduction can be permitted at the option of a taxable person particularly in cases where the value of land or undivided share of land is not ascertainable.

"It should be understood by the buyers that developers cannot take this stand, till the GST Department synchronises itself with the judgment of the Hon'ble Court. In such a scenario, developers may continue to pay tax on 2/3rd consideration of flats under protest and thereafter, the Developers/Buyers may file the refund claim with the jurisdictional GST authority of the Developer,"

Fixing 1/3rd land cost is highly illogical. Still act is not amended. Hence, builders and developers are in a big dilemma whether they need to charge GST on 66% or they can claim a higher land cost deduction based on actuals. In this regard, people are waiting for the Supreme Court's decision. Up to that, there is no other option better to discharge GST on 66 %.



CMA Vishwanath Bhat
Practicing Cost Accountant

GST Council – Voting Mechanism

The 47th meeting of the GST Council was held on June 28-29, 2022 under the Chairmanship of the Finance Minister Mrs. Nirmala Sitharaman and made several recommendations to implement changes to the GST regime.

Recently, in response to a discussion while speaking in the Rajya Sabha, the Finance Minister said, “As regards, the latest 47th meeting which was held in Chandigarh, it’s a matter of record that all states agreed to the proposal. There was not even a single disagreement.”

Despite India having a complicated federal structure on Indirect taxation, the GST Council has not played a significant role in streamlining the working under the “One Nation, One Tax, One Market” theme but also has been pivotal in ensuring that all the relevant stakeholders have a common structured platform to deliberate, discuss and recommend any changes in the GST laws. And to further strengthen this resolve, the Constitution provisions governing the Council mandates that any proposal to amend any law, rule or notification needs to be approved with at-least 75% majority. So, political differences aside, no proposal or discussion can become a recommendation unless both Centre and the States agree to it.

In order to get a better understanding on it, let’s look at how the approval and voting mechanism on a proposal works in the GST Council.

The Article 279A, inserted vide The Constitution (101st Amendment) Act, 2016 deals with Goods and Service Tax Council.

Clause 2 of Article 279A states that the GST Council shall be a joint forum of the Centre and the States, consisting of Union Finance Minister as the Chairperson. The Union Minister of State, in-charge of Revenue or finance and The Minister In-charge of finance or taxation or any other Minister nominated by each State Government shall be the Members of the GST Council. The GST Council is thus equally represented by the Centre and the respective States as stakeholders.

Clause 7 of the Article 279A mentions that One-half of the total number of Members of the GST Council shall constitute the quorum at its meetings.



CMA Manmohan Daga
Cost Accountant



Clause 9 of the Article 279A deals with the voting mechanism in the GST Council meeting. It states

- Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:

(a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and
(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

Now, let's look at how the weighted voting system works.

In terms of Clause 9 of the Article 279A, the "weighted votes of the members present and voting" in favour of a proposal in the GST Council shall be determined as under:

$$T = C + S$$

Where,

T = Total weighted votes of all members in favour of a proposal.

C = Weighted vote of the Centre = $1/3$ i.e., 33.33%

S = Weighted votes of the States in favour of a proposal.

Calculation of Weighted Vote of the Centre, C

This calculation is very easy. Where Centre is in favour of proposal, it will be $1 \times 1/3 = 1/3$ or say 33.33%. However, if Centre is not favour in proposal, the weighted vote of Centre will be $0 \times 1/3 = 0$.

Calculation of Weighted Vote of the States, S

$$S = W \times F/P$$

Where,

W = Weighted allocated to all States present and voting

i.e., i.e., $2/3$ or 66.67%

F = Number of States voting in favour of a proposal.

P = Number of States present and voting.

For example, if 24 states are present (P) and 18 states are in favour (F) of a proposal. The Weight of State (W) would be $2/3 \times 18/24 = 1/2 = 50\%$.

So, on a proposal, if Centre is also in favour, in the above example, Total Weighted Votes of all members (T) shall be 83.33% (33.33% + 50%) and the proposal shall be passed.

What will be the situation in case Centre is against the Proposal?

Every decision of the GST Council will be taken by a majority of not less than three-fourths of weighted votes (75%) of the members present and voting. The Centre's share of weight is either 33.33% (if it is in favour) or 0% (if Centre is not in favour). The minimum requirement is that three-fourth of weighted votes must be in favour of proposal. Thus, if Centre is against the proposal, then the weighted vote cannot reach 75%. Even if all the states agree to any proposal their total weight will be only 66.67%.

One may argue that the provision runs in such a manner that Centre is having a Veto Power. Without the consent of the Centre, no decision can be taken at the Council even if all States come together and agree on a proposal. Is it a case where the provision is unduly tilted in favour of the Centre or is it that the strength of voting weightage of Centre ensures that the balance is maintained? Whatever the answer may be, let's not undermine the fact that Centre is as important a stakeholder as the States are when it comes to the concurrent jurisdiction of taxation as enshrined in the Constitution. And to have a strong sounding board is very important to ensure that the laws framed are tax friendly, pragmatic and in the right earnest to push India towards 5 trillion \$ economy and beyond.

TB



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5th August 2022 – Rotary Sadan Seminar

The Tax Research Department of The Institute of Cost Accountants of India organised a seminar on 5th August 2022 at Rotary Sadan, 94/2, Chowringhee Road, Maidan, Kolkata- 700020 from 5 p.m to 7 p.m with theme “GST in India-Poised to deliver Sustainable Growth”. Approx. 200 participants including practicing Cost Accountants, Cost Accountants from industries, CMA Students, people from various industries, SMEs and students from various colleges from Kolkata attended the Seminar. The Seminar was organised as a concluding seminar on the occasion of “Observance of GST Month – 2022” which started on 1st July 2022 by organising an online seminar. During July 2022, seminars have been organised throughout India by the Institute to commemorate the historic event of implementation of GST on 1st July 2017. The seminar started with lighting of lamp and felicitating the guests.



CMA Chittaranjan Chattopadhyay

CMA Chittaranjan Chattopadhyay-Chairman-Indirect Taxation Committee welcomed all guests, speakers and students, trade associations, Govt. Officials and also chief guest Shri Ashish Chandan – Principal Commissioner, CGST & Central Excise of Kolkata South. He elaborated on the activities of Tax Research Department along with other ad hoc courses of our institute and the historical background of our Institute.

CMA Biswarup Basu

CMA Biswarup Basu, Immediate Past President also illuminated history of Institute, contribution of the Institute in GST, being a professional body.

CMA Ramesh Dash

CMA Ramesh Kumar Dash, Director Finance – Garden Reach Ship Builders and Engineers Ltd, appreciated the effort of Institute for organizing such kind of open forum discussion between Govt. Officials and Industry People on GST Issues.

Shri Ashish Chandan

Shri Ashish Chandan – Principal Commissioner, CGST & Central Excise of Kolkata South graced the occasion as Chief Guest. He recapitulated the history of GST in last 5 years like subsumed of several taxes after introduction of GST, Implementation of QRMP Scheme, simplification of GST through several amendments in 47 GST Council meetings as of now. He also added that GST has brought sustainable growth for making skill India. At the end he appreciated the effort of Institute for organizing seminars on various burning issues throughout the year. He also told being Govt. Representative it is their duty to create awareness among trade associations and taxpayers about the GST.

CMA Amal Kumar Das

CMA Amal Kumar Das - Past President welcomed all and appreciated the efforts to organize such kind of seminar for having the opportunity for practitioner and trade associations to interact with Govt. Officials regarding practical hardships faced in GST.

Dr. Madhumanjari Mondal

Dr. Madhumanjari Mondal-Principal of Scottish Church College expressed her happiness to be a part of that seminar. She also appreciated the initiative of th Institute to organize GST Course with College and University and told that the students from her college who joined that course have highly appreciated that course also.

Dr. Mousumi Singh Sengupta

Dr. Mousumi Singh Sengupta-Principal of THK Jain College appreciated the initiative of our Institute to organize GST Course with College and University and she expressed her willingness to organize such kind of courses and workshops in near future for their students and official staff.

Mr. Tridib Sengupta

Mr. Tridib Sengupta, HoD-BBA from Bhowanipur Education Society appreciated well-structured GST Course for College and University Students.

Thereafter, Interactive Technical Session started where the officials from the CGST commissionerate along with Practicing Cost Accountants answered various queries raised by the audience at the auditorium as well as audience from all over India present via online mode. Mr. Tirthankar Pine, Senior Superintendent (CGST) and Mr. Alam, Senior Superintendent (Preventive Officer) attended the technical session as speaker along with CMA Manmohan Daga-Practicing Cost Accountant and CMA Natraj Radhakrishnan-Practicing Cost Accountant as Moderator. Other practicing Cost Accountants like CMA B.M Gupta, CMA Viswanath Bhat, CMA T.K Jagannathan, CMA Ajith Sivadasa and CMA Mrityunjay Acharjee, GM Finance – Numaligarh Refinery Ltd. also joined the seminar virtually and shared their thoughts and given suggestions to the Govt. Dignitaries to strengthen the GST in India. The Interactive session was a fruitful one where participants from trade, industry, SMEs, Practicing Cost Accountants raised their queries and all the queries and doubts were clarified by the speakers of the technical session. The seminar ended with vote of thanks to all the dignitaries and participants and with an expectation to have more such type of seminars in future.

TAX UPDATES NOTIFICATIONS AND CIRCULARS

INDIRECT TAX NOTIFICATIONS & CIRCULARS

GOODS AND SERVICES TAX

[Circular No. 177/09/2022](#)

[Date - 3rd August, 2022](#)

[Clarifications regarding applicable GST rates & exemptions on certain services](#)

Representations have been received seeking clarification on the following issues:

1. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021;
2. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions;
3. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022;
4. Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan;
5. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments;
6. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%;
7. Taxability and applicable rate of GST on transport

of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time;

8. Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or upfront amount charged for long term lease of land and are eligible for the same tax treatment.

For more details, please follow -

<file:///D:/TRD-DEBA/Downloads/cir-177-08-2022-cgst.pdf>

[Circular No. 178/09/2022](#)

[Date - 3rd August, 2022](#)

[GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law – reg](#)

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act. Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of Central Goods and Services Tax Act, 2017 (hereinafter referred to as, “CGST Act”) in this context has been examined in the following paragraphs.

“Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5 (e) of Schedule II of CGST Act if the same constitutes a “supply” within the meaning of the Act. The said expression has following three limbs: -

- a. Agreeing to the obligation to refrain from an act

Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by

the other party.

Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

For more details , please follow -

<file:///D:/TRD-DEBA/Downloads/cir-178-08-2022-cgst.pdf>

Circular No. 179/09/2022

Date - 3rd August, 2022

Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th – 29th June, 2022 at Chandigarh –reg.

Based on the recommendations of the GST Council in its 47th meeting held on 28th - 29th June at Chandigarh, clarifications, with reference to GST levy, related to the following are being issued through this circular:

Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%:

1. Representations have been received seeking clarification regarding the applicable rate of GST on electrically operated vehicle without any battery fitted to it.
2. The explanation of 'Electrically operated vehicles' in entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate) reads as: 'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.
3. As is evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs solely on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated electric vehicle.

4. It is also pertinent to state that the WCO's HSN Explanatory notes have also not considered batteries to be a component, whose absence changes the essential character of an incomplete, unfinished or unassembled vehicle.

5. Also, the HSN explanatory notes for Chapter 87 have clearly stated that Motor Chassis fitted with cabs i.e. the chassis fitted with cabin body falls under 87.02 to 87.04 and not in heading 87.06.

For more details , please follow -

<file:///D:/TRD-DEBA/Downloads/cir-179-08-2022-cgst.pdf>

CUSTOMS – NON TARIFF

Notification No.66/2022 -Customs (N.T.)

Date – 4th August, 2022

Exchange rate Notification No.66/2022-Cus (NT) dated 04.08.2022-reg.

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No.64/2022-Customs(N.T.), dated 21st July, 2022 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 5th August, 2022, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

For more details , please follow -

<https://taxinformation.cbic.gov.in/view-pdf/1009478/ENG/Notifications>

Notification No.67/2022 -Customs (N.T.)

Date – 8th August, 2022

Passenger Name Record Information Regulations, 2022

In exercise of the powers conferred by sub-section (1) read with clause (ab) of sub-section (2) of section 157 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following regulations, namely: -

1. Short title and commencement. -

(1) These regulations may be called as the Passenger

Name Record Information Regulations, 2022.

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

2. Definitions. -

- (1) In these regulations, unless the context otherwise requires, -
- (a) “Act” means the Customs Act, 1962 (52 of 1962);
- (b) “aircraft operators” means a person or organization or enterprise engaged in or offering to engage in the operation of aircraft other than, -
- (i) a “State aircraft” as defined in the Aircraft Rules, 1937; or
- (ii) an aircraft, which is used for the transportation of passengers or goods by air, and specifically excluded for the purposes of these regulations by an order of the Board; to, from, or through India;
- © “authorised agents” includes a person who is authorized by, or on behalf of such aircraft operator to undertake all acts connected with the entry and clearance of the operator’s aircraft, crew, passengers, cargo, mail, baggage (including unaccompanied baggage) or stores

For more details , please follow -

<https://taxinformation.cbic.gov.in/view-pdf/1009479/ENG/Notifications>

CUSTOMS – ANTI DUMPING DUTY

Notification No. 24/2022-Customs (ADD)

Date - 3rd August, 2022

Seeks to impose anti-dumping duty on Opal Glassware from UAE & China PR for a period of 5 years

Whereas, in the matter of “Opal Glassware” (hereinafter referred to as the subject goods), falling under headings 7013 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), (hereinafter referred to as the Customs Tariff Act), originating in, or exported from the People’s Republic of China and United Arab Emirates (hereinafter referred to as the subject countries), and imported into India, the designated authority in its final findings vide, notification number. 15/4/2016-DGAD, dated 3rd July, 2017, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 3rd July, 2017 had recommended extension of anti-dumping duty on the imports of subject goods, originating in, or exported from the subject countries;

And whereas, on the basis of the aforesaid findings of the designated authority, the Central Government had extended anti-dumping duty on the subject goods vide notification of the Government of India, Ministry of Finance (Department of Revenue), No. 37/2017-Customs(ADD), dated the 9th August, 2017 published in Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide, number G.S.R. 1006(E), dated the 9th August, 2017.

For more details , please follow -

<https://taxinformation.cbic.gov.in/view-pdf/1009477/ENG/Notifications>

TB

TAX UPDATES NOTIFICATIONS AND CIRCULARS

DIRECT TAX NOTIFICATIONS

Notification No. 89/2022

Date - 3rd August, 2022

Amendment in Notification No 16/2020, dated the 5th March, 2020

CBIC has further amended the notification number 16/2020, dated the 5th March, 2020, namely: -

In the said notification, -

- (i) in the first para, after clause (v), the following clause shall be inserted, namely: -

“(vi) Bullion Depository Receipt with underlying bullion,”

- (ii) in the Explanation, after clause (b), the following clause shall be inserted, namely: -

“(c) “Bullion Depository Receipt with underlying bullion” shall have the same meaning as assigned to it in clause (iii) of Explanation by the Department of Economic Affairs, Ministry of Finance vide its notification number S.O. 2957 (E), published in Gazette of India, Extraordinary, vide number, F.No.3/7/2020-EM dated the 31st August, 2020.”

This notification shall come into force with effect from the date of its publication in the Official Gazette.

Notification No. 90 /2022

Date - 5th August, 2022

Notification for COVID Related Exemption

CBDT has notified the following conditions, namely: -

1. The employee shall submit the following documents to the employer, -

(i) the COVID-19 positive report of the employee or family member, or medical report if clinically determined to be COVID-19 positive through

investigations, in a hospital or an in-patient facility by a treating physician of a person so admitted;

(ii) all necessary documents of medical diagnosis or treatment of the employee or his family member for COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as COVID-19 positive; and

(iii) a certification in respect of all expenditure incurred on the treatment of COVID-19 or illness related to COVID-19 of the employee or of any member of his family.

2. This notification shall be deemed to have come into force from the 1st day of April, 2020 and shall apply in relation to the assessment year 2020-2021 and subsequent assessment years.

Note: It is certified that no person is being adversely affected by granting retrospective effect to this notification

Notification No. 91/2022

Date - 5th August, 2022

Notification for COVID Related Exemption Application Format

S.O. 3704(E). —In exercise of the powers conferred by clause (XII) of the first proviso of clause

(x) of sub-section (2) of section 56 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby

specifies the following conditions, namely: -

1. The individual shall keep a record of the following documents, namely: -

(i) the COVID-19 positive report of the individual or his family member, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an in-patient facility by a treating physician for a person so admitted;

(ii) all necessary documents of medical diagnosis or treatment of the individual or family member due to COVID-19 or illness related to COVID-19 suffered

within six months from the date of being determined as a COVID-19 positive;

2. Statement of any amount received for any expenditure actually incurred by an individual for his medical treatment or treatment of any member of his family, for any illness related to COVID-19 for the purposes of clause (XII) of the first proviso to clause (X) of sub-section (2) of section 56 of the Income-tax Act, 1961 shall be verified and furnished in Form No. 1.
3. The details of the amount received in any financial year shall be furnished in Form No. 1 to the Income Tax Department within nine months from the end of such financial year or 31.12.2022, whichever is later.

For more details, please follow –

https://incometaxindia.gov.in/communications/notification/notification_91_2022.pdf

[Notification No. 92/ 2022](#)

[Date - 5th August, 2022](#)

[Notification for COVID Related Exemption Application Format](#)

CBDT has specified the following conditions, namely: -

- (i) the death of the individual should be within six months from the date of testing positive or from the date of being clinically determined as a COVID-19 case, for which any sum of money has been received by the member of the family;
- (ii) the family member of the individual shall keep a record of the following documents, -
 - (a) the COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an inpatient facility by a treating physician;
 - (b) a medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that death of the person is related to corona virus disease (COVID-19).

Statement of any sum of money received by a member of the family of a deceased person from the employer of the deceased person or from any other person or persons, on account of death due to COVID-19 for the purposes of clause (XIII) of the first proviso to clause (x) of subsection (2)

of section 56 of the Income-tax Act, 1961 shall be verified and furnished in Form A.

For more details, please follow –

https://incometaxindia.gov.in/communications/notification/notification_92_2022.pdf

[Notification No. 93/2022](#)

[Date - 5th August, 2022](#)

[Notification regarding Qatar Holding LLC](#)

CBDT has specified the sovereign wealth fund, namely, Qatar Holding LLC (PAN: AAACQ3167H), (hereinafter referred to as the assessee) as the specified person for the purposes of the said clause in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as said investments) subject to the fulfilment of the following conditions, namely: -

- (i) the assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date in which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;
- (ii) the assessee shall get its books of account audited for the previous years referred to in clause (i) by an accountant specified in the Explanation below sub-section (2) of section 288 of the Act and furnish the Audit Report in the format annexed as Annexure to this notification herewith at least one month prior to the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;
- (iii) the assessee shall furnish a quarterly statement within one month from the end of each quarter electronically in Form II as annexed to Circular No 15 of 2020, dated the 22nd July, 2020 with F. No. 370142/26/2020-TPL, issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (Tax Policy and Legislation Division), in respect of each investment made by it during the said quarter;
- (iv) the assessee shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under

clause (23FE) of section 10 of the Act;

- (v) the assessee shall continue to be owned and controlled, directly or indirectly, by the Government of Qatar, and at no point of time should any other person have any ownership or control, directly or indirectly, in the assessee;
- (vi) the assessee shall continue to be regulated under the laws of the Government of Qatar;
- (vii) the earnings of the assessee shall be credited either to the account of the Government of Qatar or to any other account designated by that Government so that no portion of the earnings inures any benefit to any private person, barring any payment made to creditors or depositors for loan taken or borrowing [as defined in sub-clause (a) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act] made for purposes other than for making investment in India;
- (viii) the assessee shall not have any loan or borrowing [as defined in sub-clause (a) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act], directly or indirectly, for the purposes of making investment in India;
- (ix) the asset of the assessee shall vest in the Government of Qatar upon dissolution, barring any payment made to creditors or depositors for loan taken or borrowing for purposes other than for making investment in India; and
- (x) the assessee shall not participate in the day to day operations of investee (as defined in clause (i) of Explanation 2 to clause (23FE) of section 10 of the Act), but any monitoring mechanism to protect the investment with the investee, including the right to appoint directors or executive director, shall not be considered as participation in the day-to-day operations of the investee.

For more details , please follow -

https://incometaxindia.gov.in/communications/notification/notification_93_2022.pdf

Notification No. 94/2022

Date - 10th August, 2022

CBDT notifies books & other documents to be maintained by entities under Section 10(23C)/12A

CBDT has made further amendments the Income-tax

Rules, 1962, namely: -

1. Short title and commencement.

- (1) These rules may be called the Income-tax (24th Amendment) Rules, 2022.
- (2) They shall come into force from the date of their publication in the Official Gazette. 2. In the Income-tax Rules, 1962, after rule 17A the following rule shall be inserted, namely:

“17AA. Books of account and other documents to be kept and maintained. — (1) Every fund or institution or trust or any university or other educational institution or any hospital or other medical institution which is required to keep and maintain books of account and other documents under clause (a) of tenth proviso to clause (23C) of section 10 of the Act or sub-clause (i) of clause (b) of sub-section (1) of section 12A of the Act shall keep and maintain the following, namely: -

(a) books of account, including the following, namely: -

- (i) cash book;
- (ii) ledger;
- (iii) journal;

(iv) copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the assessee, and copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by the assessee;

(v) original bills wherever issued to the person and receipts in respect of payments made by the person;

(vi) any other book that may be required to be maintained in order to give a true and fair view of the state of the affairs of the person and explain the transactions effected.

For more details, please follow -

<https://incometaxindia.gov.in/communications/notification/notification-94-2022.pdf>

11

PRESS RELEASE

Date - 3rd August, 2022

Income Tax Department conducts searches on Healthcare Provider Groups in Haryana and Delhi-NCR

The Income Tax Department carried out search and seizure operations on 27.07.2022 on several groups engaged in the healthcare services by running hospitals. A total of 44 premises were covered during the search action in Delhi-NCR.

During the course of the search operation, huge incriminating physical and digital evidence has been seized.

The analysis of evidences revealed that the one of the groups was maintaining a parallel set of books of account, indicating systematic under-reporting of receipts received from patients in cash. The modus-operandi adopted by this group included removal of invoices or deflation of the invoice amount by marking them as "Discounts/Concessions" etc., at the time of discharge of patients from the hospital. This practice, resulting in evasion of income, is being followed across all the hospitals of the group and is spread over various years.

The other healthcare groups covered in the search operation have been found to be engaged in obtaining either bogus or inflated invoices for pharmaceutical drugs and/or medical devices such as stents, leading not only to suppression of actual profits, but also overcharging from the patients. The money trail found during the investigations has further corroborated the fact that the groups have been receiving back cash in lieu of payments made through banking channels for these bogus/inflated invoices. One of the hospitals of these groups was also found to be claiming wrong deduction over the years without fulfilling the necessary conditions for the hospital to be eligible as specified business.

The seized evidence has also revealed the practice of referral payment to doctors and clinics without duly recording these in the books of account. The referral payment has been fixed at a percentage of invoices raised to the patients. Evidences pertaining to transaction of benami nature have also been uncovered during the search action.

The search operation has led to the seizure of unexplained cash of over Rs.3.50 crore and jewellery valued at Rs. 10.00 crore. So far, the unaccounted income of all the groups detected in these operations, is estimated to be more than Rs. 150 crore. More than 30 bank lockers have been put under restraint.

Further investigations are in progress.

Date - 5th August, 2022

Income Tax Department conducts searches in Mumbai

The Income Tax Department carried out a search and seizure operation on 28.07.2022 on an ex-fund manager and chief trader of equities of a prominent mutual fund house along with related sharebrokers, middlemen and entry operators. The search action covered more than 25 premises, spread across Mumbai, Ahmedabad, Vadodara, Bhuj and Kolkata.

As a result of the search operation, various incriminating evidences in the form of documents and digital data have been found and seized. These evidences gathered during the search including sworn statements recorded from various persons have revealed the modus operandi. It has been detected that the said fund manager and chief trader were sharing specific trade related information with brokers/middlemen and persons located in certain foreign jurisdictions. These persons in turn, used such information for illicit gains in the share market by trading in such scrips either in their own account or account of their clients. These persons including family members of the fund manager have admitted in their statements that the unaccounted cash generated from the above operations was routed mainly through Kolkata based shell entities into their bank accounts. From these bank accounts, funds have been further diverted into the bank accounts of companies/entities incorporated in India and other low tax jurisdictions. The gleaning of seized evidences has exposed the nexus between the exfund manager, middlemen, share brokers, and entry operators.

Evidences of large-scale unaccounted investment in cash loans, fixed deposits, immovable properties and their renovation, etc. have also been found and seized. More than 20 lockers have been put under restraint. So far,



unaccounted deposits exceeding Rs. 55 crore have been seized.

Further investigations are in progress.

6th August, 2022

Income Tax Department conducts searches in Tamil Nadu

The Income Tax Department carried out search and seizure operations on 02.08.2022 in the cases of certain producers, distributors, and financiers associated with the film Industry. The search operations were conducted at almost 40 premises located in Chennai, Madurai, Coimbatore and Vellore.

During the course of the search operations, several incriminating documents and digital evidence etc., relating to unaccounted cash transactions and investments have been seized. Secret and hidden premises have also been unearthed during the search.

The searches in the cases of film financiers have revealed documents like promissory notes etc., relating to unaccounted cash loans, which were advanced to various film production houses and others. In the cases of film production houses, evidences reveal tax evasion, as the actual amounts realized from the release of the films are much more than the amounts shown in the regular books of account. The unaccounted income so generated by them is deployed for undisclosed investments as well as for various undisclosed payments.

Similarly, evidences seized in the cases of film distributors, indicate collection of unaccounted cash from the theatres. As per the evidences, the distributors have formed syndicates and have systematically suppressed the theatre collections, resulting in the suppression of actual income.

So far, the search operation has resulted in detection of undisclosed income exceeding Rs. 200 crore. Undisclosed cash of Rs.26 crore and unaccounted gold jewellery exceeding Rs. 3 crore have been seized.

Further investigations are in progress.

10th August, 2022

Income Tax Department conducts searches in Madhya Pradesh

The Income Tax Department carried out a search operation on 14.07.2022 on a group engaged in the

business of mining, sugar manufacturing and liquor. The key person of the group is also occupying a political position. The search operation covered several premises located in Madhya Pradesh and Mumbai.

During the course of the search operation, a large number of incriminating documentary and digital evidences have been found and seized.

The analysis of seized evidences of sand mining business reveals that the group has been indulging in tax evasion by not recording sales in the regular books of account. The comparison of actual sales as per digital evidence vis a vis accounted sales of contemporary months clearly exhibits regular large-scale suppression of sales exceeding Rs. 70 crore. Evidence of non-payment of royalty on such unaccounted sales has also been found. Further, a sum of more than Rs.10 crore has been found to be paid in cash by the group to other business associates, which is outside the regular books of account.

In the case of the sugar manufacturing business, issues pertaining to stock difference have also been detected.

Evidence gathered during the search further reveals that some benamidars have been made partners in a firm doing the sand mining business and were also found to be declaring profits in their income tax returns. However, the money was actually being transferred by them to the beneficial owner of the group. During the search, one such benamidar, in his statement, admitted to being merely a salaried employee, having neither any knowledge of the affairs of the business nor having received any profits from such business.

So far, the search action has led to seizure of undeclared assets exceeding Rs. 9 crore.

11th August, 2022

Income Tax Department conducts searches in Rajasthan

The Income Tax Department carried out a search operation on 03.08.2022 on a Jaipur based group, engaged in the business of gems and jewellery, hospitality and real estate. The search operation has covered more than three dozen premises located in Jaipur and Kota.

During the course of the search, large number of incriminating documentary and digital evidences have been found and seized.

The analysis of seized evidences of real estate business

reveals that the group has been indulging in large scale tax evasion by accepting on-money in cash on the sale of residential dwellings and land which has not been recorded in the regular books of account. Further, evidences pertaining to out-of-books sale of gems and jewellery were also unearthed during the search.

The search also revealed that the unaccounted income so earned has been invested in land, construction of luxury hotel and has also been used in financing cash loans. The seized evidences contain details of interest income earned

on these cash loans which has not been recorded in the books of account.

A preliminary investigation indicates that the group has indulged in generation of unaccounted income exceeding Rs. 150 crore. So far, the search operation has resulted in seizure of unaccounted assets exceeding Rs.11 crore.

Further investigations are in progress

INDIRECT TAX JUDGEMENT

ITC denied if buyer having knowledge of investigation going on against his supplier

FACT OF THE CASE:

- M/s Dhara Enterprises has engaged in the business of Ferrous waste and scrap.
- A Show Cause Notice ("SCN") was served imposing the tax liability along with the penalty on the Petitioner.
- Thereafter, the Petitioner preferred an appeal before the Appellate Authority who vide order dismissed the appeal.
- Hence the Petitioner had filed this Petition praying to quash the Impugned order.
- There is gross violation of the principle of natural justice, while issuing the SCN, when the authorities alleged that the Petitioner had availed some ineligible ITC, then they should have disclosed the transactions on which such benefit was availed by the Petitioner.
- It came to know for the first time, on passing of Impugned order that the transactions were in respect of inward supply received from one M/s V.K. Enterprises, Chhatarpur and liability under Section 74 of the CGST Act was fastened upon the Petitioner.
- The Petitioner had availed the benefit of some ineligible ITC on inward supply from the Supplier and accordingly in the SCN the amount of the ITC availed by the Petitioner were clearly mentioned.
- The Petitioner was well aware about the details of transaction for which, the liability was being fastened upon the Petitioner and hence present Petition deserves to be dismissed.

Issue:

Whether the Petitioner was right in availing credit when he was having the knowledge that the transactions with its supplier were under investigation?

DECISION OF THE CASE

The Hon'ble High Court of Madhya Pradesh in the matter of *M/s Dhara Enterprises v. Appellate Authority & Joint*

Commissioner [Writ Petition No.27676 of 2019 dated May 12, 2022] has upheld the order passed by the Revenue Department imposing the tax liability on the assessee is valid on the ground that the assessee was well aware with the transaction alleged as ineligible on which the benefit of Input Tax Credit was availed by him.

Refund allowed of IGST paid by assessee on ocean freight charges

FACT OF THE CASE:

- M/s Louis Dreyfus Company India Private Limited has engaged in the business of processing of edible oils and coffee etc. has filled the present Special Civil Application prayed to direct the Revenue Department to refund the IGST paid on the amount of ocean freight charges with interest.
- It was further prayed to prohibit the Respondent authorities from collecting the IGST in terms of *Notification No. 10 of 2017 – Integrated Tax (Rate) dated June 28, 2017 read with Notification No. 8 of 2017 – Integrated Tax (Rate) dated June 28, 2017.*
- Relied upon the judgement of the Hon'ble Supreme Court in the case of *Mohit Minerals Pvt. Ltd. vs. Union of India [Special Civil Application No. 726 of 2018 dated January 23, 2020]* wherein it was held the aforesaid notifications are unconstitutional and ultra vires the statute.
- The Petitioner by relying on the decision *Adi Enterprises vs. Union of India being Misc. Civil Application No. 1 of 2020 [Special Civil Application No. 10479 of 2019]*, submitted that refund of the IGST paid pursuant to the aforementioned Notifications, the Court directed the department to refund the amount of the IGST already paid by the

Issue:

Whether the Petitioner is eligible for the refund of IGST on amount of ocean freight?

DECISION OF THE CASE:

The Hon'ble High Court, Gujarat in the matter of *M/S Louis*

Dreyfus Company India Private Limited v. Union of India [SPECIAL CIVIL APPLICATION NO. 11540 of 2021 dated July 07, 2022] has directed the department to grant refund of Integrated Goods and Services Tax (“IGST”) already paid by the assessee on the amount of ocean freight charges.

Bail granted to an Applicant involved in fraudulent ITC

FACT OF THE CASE:

- A bail application has been filed by M/s Paras Jain with a prayer to release him against the complaint file by the Directorate General of G.S.T regarding offences committed under Section 132 (1)(b) of the Central Goods and Services Tax Act, 2017 that fake ITC of INR 40.66 crores on the strength of invoices issued by non-existent firms, M/s JMJ Traders and Ms. Durga Traders.
- The Firms had passed on fraudulent ITC to M/s Balaji Enterprises of INR 57.96 lacs.
- In the search conducted in the registered office of the Buyer wherein the proprietor of the firm stated that some invoices for metal scrap from the Applicant without receiving any goods has been received and admitted his tax liability on account of availing fake ITC.
- The Applicant admitted the that fake invoices from 76 bogus firms to various business buyers without supplying of goods or services were issued and have availed ineligible ITC amounting to INR 343 crores.
- The allegation is that the firms in dispute were non existing. However, the registration number generated by Goods and Services Tax department of the firms are mentioned in the complaint itself and the registration number was granted as per Rule 8 & 9 of the Central Goods and Services Tax Rules, 2017 (“the CGST Rules”) after due verification of their credentials. No demand notice for ascertaining tax claimed has been issued till date as per Section 74 of the CGST Act.
- The offence alleged is punishable upto 5 years. The Applicant is in jail since February 18, 2022. No custodial interrogation of the Applicant is required. The sanction for transaction accorded is based merely on his subjective satisfaction and not as per requirements of the Section 69(1) of the CGST Act.
- The allegations against the Applicant in the

complaint are fully proved.

- Fraudulent availment and utilization of ITC of more than INR 5 crore has been done by the Applicant and offence alleged is cognizable and non bailable as per Section 132(5) of the CGST Act.
- The involvement of the Applicant with 75 fake firms was discovered and no one turned up in response to the summons from 75 firms.

Issue:

Whether bail application of the accused against the complaint by the Respondent regarding offences committed under Section 132 (1)(b) of the CGST Act should be accepted?

DECISION OF THE CASE:

The Hon’ble High Court Allahabad in the matter of ***Paras Jain v Union of India [Criminal Misc. Bail Application No. – 21848 of 2022 dated July 29, 2022]*** granted bail to an Applicant involved in a trial relating to Input Tax Credit (“ITC”) fraud and held that seriousness of the offences alone is not conclusive of the Applicant’s entitlement to bail.

No GST on services provided to educational institution for conducting entrance examination

FACT OF THE CASE:

- M/s MEL Training and Assessment Ltd. has engaged in the business of providing exams, certification, and other services including various types of surveys, assessments, and exam services to various clients.
- The Applicant has entered into contract with All India Institute of Medical Sciences for providing services relating to:
 1. recruitment examination for recruiting various person within the organization.
 2. Conducting entrance examination for granting admission to students.
 3. Semester Examination /Course Examination.
- The Applicant contended that services relating to recruitment and semester examination are liable for the payment of GST and the services relating to entrance examination are exempt from payment of GST as per Entry 66(b) (iv) of ***Notification No. 12/2017 dated June 28, 2017 [“Services rendered by the educational institution”]***

Issue:

Whether the services provided by the Applicant can be exempted under Entry 66(b) (iv) of the Services Exemption Notification.?

DECISION OF THE CASE:

The AAR, Uttar Pradesh in the matter of *M/s MEL Training and Assessment Ltd. [Advance Ruling No: UP ADRG 02/2022 dated May 02, 2022]* has held that no Goods and Services Tax ("GST") shall be levied on services provided to educational institution for conducting entrance examination.

Rejection of refund on flimsy grounds would defeat the purpose of rebate schemes

FACT OF THE CASE:

- This appeal has been filed by M/s Sethia Oils Ltd against the Order- in- Appeal passed by the Commissioner (Appeals) of CGST & Excise, Kolkata rejecting the refund claimed by the Appellant on the ground that exporter should be registered with the "Export Promotion Council" and being registered with "the Solvent Extractor's Association of India" which is a Trade Promotion Organisation ,would be of

no help in getting the benefit of the Provision as per Para 3(h) of [Notification No.41/2012-ST dated June 29, 2012- (Rebate of service tax paid)]. Aggrieved by the impugned order, the Appellant filed an appeal in the CESTAT.

- The Appellant contented that they are registered with TPO recognized and sponsored by the Government of India, Ministry of Commerce for export of "De-Oiled Rice Bran" and hence the condition of Provision as per Para (3)(h) of the Notification No.41/2012-ST dated June 29, 2012 was satisfied.

Issue:

Whether the Appellant is eligible for the refund claim without having registration with "Export Promotion council"?

DECISION OF THE CASE:

The CESTAT, Kolkata in the matter of *M/s Sethia Oils Ltd. v Commissioner of CGST & Excise, Kolkata North [Final Order No.75397/2022 dated July 13, 2022]* has held that rejection of refund claimed by the exporter on flimsy grounds would defeat the purpose of rebate scheme and traps the exporters under unnecessary litigations. TB

DIRECT TAX JUDGEMENT

Management support service allowable as business expenditure Cargo Partner Logistics India Private Limited Vs ITO (ITAT Kolkata)

Appeal Number: I.T.A. No.: 658/Kol/2017 Date of Judgement/Order: 27/07/2022

FACT OF THE CASE:

- ✓ In the present case, the assessee moved an application under Section 154 of the Act stating that learned AO had made an apparent mistake and has not given the correct effect of the directions of learned DRP.
- ✓ Learned AO observed that there was an apparent mistake and the transfer pricing adjustment was only required to be made towards managerial and technical services at Rs. 2,47,69,939/- and accordingly corrected the assessed income at Rs. 2,41,24,200/- after adjusting the loss of Rs. 6,45,739/- declared by the assessee.

DECISION OF THE CASE

- ✓ The alleged management charges at Rs. 2,47,69,939/- paid towards management support services to the AE-CPA are allowable as business expenditure incurred for the purpose of business of carrying out freight and other cargo forwarding services and by paying the alleged charges the assessee has been able to run the business smoothly and effectively.
- ✓ Therefore, the transfer pricing adjustment made at Rs. 2,47,69,939/- was deleted
- ✓ It was held that payment towards management support services is allowable as business expenditure as the same is paid for smooth and effective running of the business.

Addition merely on the basis of declaration u/s. 132(4) is untenable in law Case Name: Om Builders Vs ACIT (ITAT Indore)

Appeal Number: IT(SS)A No. 18/Ind/2020 Date of Judgement/Order: 26/11/2021

FACT OF THE CASE:

- ✓ AO made addition on the basis of a statement and by

stating that several incriminating documents were confronted for which the assessee was unable to explain.

- ✓ AO, however, did not point out any incriminating loose paper. CIT(A) deleted maximum additions.
- ✓ Being aggrieved, the revenue and the respective assessee are in appeals.

DECISION OF THE CASE

- ✓ It was held that AO failed to bring on record any specific instance of the assessee having earned any undisclosed income or having made any unexplained investment which could justify the addition under reference.
- ✓ The sole basis for making the addition is the statement made by one of the partners.
- ✓ The Ld. A.O. did not make any addition for the documents found.
- ✓ It was held that no addition can be made without finding any incriminating material merely on the basis of the declaration u/s 132(4).

Non-availability of record is reasonable cause for failure to comply with notice u/s 142(1) Case Name: Amita Rajvedi Vs Dy. CIT (ITAT Allahabad)

Appeal Number: ITA Nos. 64 to 67/ALLD/2020 Date of Judgement/Order: 25/07/2022

FACT OF THE CASE:

- ✓ The assessee is a practising Gynecologist.
- ✓ There was a survey under section 133A conducted on 11.9.2018 at the professional premises of the assessee.
- ✓ During survey operations, some papers and other material were impounded by the survey party.
- ✓ AO then issued show cause notice under section 274 r.w.s. 271(1)(b) of the Income Tax Act.
- ✓ AO passed the penalty orders under section 271(1)(b) whereby penalty was imposed on account of default

/ non-compliance of notice issued under section 142(1) of the Income Tax Act.

DECISION OF THE CASE

- ✓ It was held that till the dates of initiation of penalty proceedings u/s. 271(1)(b), the Assessing Officer did not supply the documents impounded during the survey.
- ✓ Therefore, this is not a case of issuing notice u/s. 142(1) prematurely but the show cause notice issued u/s. 274 r.w.s. 271(1)(b) was without supplying the assessee copies of the impounded material and thereby the assessee could not comply with the notice u/s. 142(1) of the Income Tax Act.
- ✓ AO finally supplied the copies of the impounded material only on 28.01.2019 whereas the impugned order under section 271(1)(b) was passed on 30.01.2019.
- ✓ In fact, supplying the copies of the seized document just before passing the penalty order goes to prove that assessee was deprived of the relevant record required for compliance of notice issued u/s. 142(1) of the Act.
- ✓ Therefore, assessee was having a reasonable cause for non-compliance of the notice u/s. 142(1) of the Act for want of the necessary record impounded by the Department and copies of the same was not supplied to the assessee in time so as to do the needful for compliance of notice under section 142(1) of the Act. Accordingly, in the facts and circumstances of the case, we are of the considered view that the assessee was having a reasonable cause for failure to comply with the notice u/s. 142(1).
- ✓ Hence, in view of our finding on levy of penalty u/s. 271(1)(b) for the AY 2014-15 to 2016-17, the penalty levied u/s. 271(1)(b) for AY 2017-18 is not justified.

Deduction u/s 80IA is allowed unit wise
Case Name: DCIT Vs Gujarat JHM Hotels Ltd.
(ITAT Surat)

Appeal Number: ITA No. 27/SRT/2017 Date of Judgement/Order: 25/07/2022

FACT OF THE CASE:

- ✓ The assessee is engaged in the business of hotel and also have power generation windmills.

- ✓ During the reassessment, AO noted that the assessee has incurred losses from the eligible business of generation of power.
- ✓ The assessee claimed deduction u/s 80IA(iv) of Rs. 1,06,84,759/-.
- ✓ AO was of the view that deduction u/s 80IA is allowable only when the income is earned i.e. profit is shown from the eligible business.
- ✓ AO held that the assessee maintained consolidated figure of power generation units and no separate and independent books of account was maintained by the assessee for each and every wind mill, hence, the profit/loss of each wind mill cannot be ascertained from the incomplete record, therefore, deduction under Section 80IA of Rs. 1.068 crore was disallowed. CIT(A) allowed the deduction u/s 80IA.
- ✓ Being aggrieved, the revenue has preferred the present appeal.

DECISION OF THE CASE

It was held that there is no question of adjusting loss of any other business against the business income of eligible undertaking for deduction under Chapter VIA and the deduction under Section 80IA is to be allowed unit wise without deducting incurred loss by the other unit of eligible business.

It was also held that as per the spirit of Section 80IA of the Act, the assessee is eligible to claim deduction of profit of each undertaking from different period.

Thus, each undertaking has to be considered as a separate undertaking and cannot be clubbed in order to compute the deduction under Section 80IA of the Act.

In view of the aforesaid factual and legal discussion, we affirm the order of Id. CIT(A) with this additional observation

Subsidy for dispersal of industries in less developed area is capital receipt
Case Name: DCIT Vs Aurangabad Electricals Limited (ITAT Pune)

Appeal Number: ITA No. 199/PUN/2019 Date of Judgement/Order : 20/07/2022

FACT OF THE CASE:

- ✓ The assessee is a company engaged in the

manufacture of Automobile and Brake System Components and the Generation of power through windmills.

- ✓ AO treated subsidy received from the Govt. of Maharashtra under the Industrial Promotion Subsidy Package Scheme, 2007 of Rs.5,98,28,000/- as revenue receipt.
- ✓ Being aggrieved, the assessee preferred appeal before CIT(A). CIT(A) deleted the addition of subsidy by holding it as capital receipt.
- ✓ Being aggrieved, revenue preferred the present appeal.

DECISION OF THE CASE

- ✓ The decisive factor for considering the nature

of subsidy as a capital or revenue receipt is the 'purpose' for which the subsidy has been granted and not the manner of its disbursal.

- ✓ It was held that simply because the subsidy has been disbursed in the form of a refund of VAT and CST, it will not alter the purpose of granting the subsidy, which is nothing but the establishment of new industrial units in less developed areas of the State.
- ✓ It was also held that since the subsidy was granted actually as incentives for encouraging the dispersal of industries to the less developed areas of the State of Maharashtra, the subsidy cannot be treated as revenue receipt.

Direct Tax Calendar – August 2022

30.08.2022	<ul style="list-style-type: none"> ● Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of July, 2022 ● Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of July, 2022 ● Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of July, 2022
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Due dates in GST – August 2022

GSTR-5 (July, 2022)	Aug 20th, 2022	GSTR-5A (July, 2022)	Aug 20th, 2022
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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/>

Notes

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TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

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

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