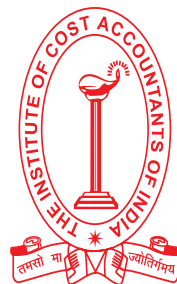


December, 2022

# TAX Bulletin

Volume - 126  
17.12.2022



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

Statutory Body under an Act of Parliament

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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.”

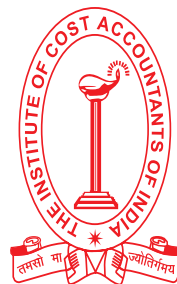
### Objectives of Taxation Committees:

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/ 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
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- ▲ 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**

## MESSAGE FROM THE TAX RESEARCH DEPARTMENT

Dear Sir / Madam,

Warm Greetings, from the Tax Research Department, the Institute of Cost Accountants of India.

The Classes for the Taxation courses are being conducted and all the courses are on the verge of completion. Exams are scheduled to be held on 12<sup>th</sup> of February, 2023.

It is of utmost importance here to announce that the Admissions to the upcoming batches of the following courses have commenced and can be applied at the link: <https://eicmai.in/advsc/Course-Selection.aspx>

- (i) Certificate Course on GST (CCGST13)
- (ii) Advanced Certificate Course on GST (ACCGST 9)
- (iii) Certificate Course on TDS (CCTDS 9)
- (iv) Certificate Course on Filing and Filling of Return (CCFR 9)
- (v) Certificate Course on International Trade(CCIT-3)
- (vi) Advanced Course on Income Tax Assessment and Appeal (ACITAA 6)
- (vii) Advanced Course on GST Audit and Assessment procedure (ACGAAP 6)

The admissions for the workshop on 'GST Litigation and Departmental Audit' has also commenced and details may be viewed and admission taken at: <https://eicmai.in/advsc/DelegatesApplicationForm-New.aspx?Dept=Tax%20Research%20Department>

Special Highlight of the session being a deliberation by Dr. B V Murli Krishna, Addl CCT (e Governance), Karnataka.

The Tax Research Department is also very much active in conducting various courses, quiz on Taxation etc regularly as per schedule. We seek any further suggestions/observations from the esteemed readers for furtherance of the objective of the Department.

Warm Regards

Tax Research Department

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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***





# IT'S ALMOST NO TO ITC.....?

**T**ask Force on Implementation of the Fiscal Responsibility and Budget Management Act, 2003 was of the view that *high import tariffs, excises and turnover tax on domestic goods and services have enormous cascading effects, leading to a distorted structure of production, consumption and exports. This problem can be effectively addressed by shifting the tax burden from production and trade to final consumption, and from savings to consumption. Accordingly, the Task Force recommended that “a well-designed destination-based value-added tax on all goods and services is the most elegant method of eliminating distortions and taxing consumption.*

The Empowered Committee of State Finance Ministers in its report dated 10.11.2009, mentioned that *in the GST, both the cascading effects of CENVAT and service tax are removed with set-off, and a continuous chain of set-off from the original producer's point and service provider's point up to the retailer's level is established which reduces the burden of all cascading effects. This is the essence of GST, and this is why GST is not simply VAT plus service tax but an improvement over the previous system of VAT and disjointed service tax.*

Even the 13th Finance Commission Report submitted on 15th December 2009 also advocated allowing *credit for tax paid on all intermediate goods or services on the basis of invoices issued by the supplier.* As a result, all different stages of production and distribution can be interpreted as a mere tax pass-through, and the tax will effectively 'stick' on the final consumption within the taxing jurisdiction. *This will facilitate the elimination of the cascading effect at various stages of production and distribution.*

So, under the Goods and Services Tax (GST) Acts, Input Tax Credits (ITC) are provisioned to eliminate the cascading effects of taxes on the total cost of any product or service. Double taxation or tax on tax increased the cost of the products or services, and consumers have to pay an extra amount for no value addition. Also, products or services in international markets become unviable. In the overall



**CMA Anil Sharma**  
Cost Accountant

scenario, it impacts economies adversely. So, to make products competitive in the market and also to make available cheap products or services to consumers, the concept of MODVAT/CENVAT/ITC was introduced way back in the late nineties. It also helps the economies to grow as it enhances the purchasing power of consumers.

Provisions of Input Tax Credit (ITC) are introduced in CGST Act, 2017, and Section 16 deals with such provisions. Section 16 empowers registered persons under GST to avail ITC for their inputs, capital goods and input services which can be set off against their outward tax liabilities later on. In some cases, if ITC is not utilized for tax liabilities, the same can be claimed as a refund. The concept of ITC gives big relief to business entities from working capital requirements and saves financial costs. But section 16 also imposes some conditions and restrictions on the registered person while availing the benefits of ITC.

These conditions are summaries as under:

- ★ Registered Person must have in his possession Invoices, DN/CN etc., issued by a registered supplier
- ★ The supplier, who is registered under law must have furnished details of such invoices in his GSTR-1 and must have been communicated to the recipient through GSTR-2B.
- ★ -NN39/2021 dt. 21.12.2021 w.e.f 01.01.2022 ref Finance Act 2021
- ★ Registered Person must have received Goods or Services or both
- ★ ITC on above supplies should not have been restricted u/s 38 (wef 01.10.2022)
- ★ Supplier of goods and/services must have deposited taxes on such supplies to the government accounts; otherwise, the recipient has to reverse the ITC with interest
- ★ Recipient must have filed his return i.e., GSTR-3B
- ★ Recipient must have paid to supplier consideration of such goods/services within 180 days from the invoice date
- ★ Recipient is not entitled to ITC for any invoice of the

respective Financial Year after 30th November of the next financial year.

***No input tax credit shall be availed by a registered person in respect of any tax***

***that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, will full misstatement or suppression of facts –rule 36(3).***

In addition to the restriction imposed u/s 16 of CGST Act, 2017, section 17 of CGST Act, 2017 further restricts or denies the ITC on certain inputs and input services where ITC can't be availed. It added cost to products manufactured/traded and services provided. On one side, it increases finance costs for the business entity on the other side; the consumer is forced to pay more for no value addition. Such goods and services or transactions are listed below:

- ★ ITC is available only if transactions are undertaken for business purposes only,
- ★ ITC for inputs used to manufacture/trade exempted goods or services is not available. It is a case of cascading effects of taxes and increases cost of production and prices of such goods. They may be called exempted goods, but actually, such goods or services have inbuilt taxes. So electricity, health and education services are exempted under GST but have inbuilt taxes and consumers pay more.
- ★ ITC is not available on motor vehicles having seating capacity less than thirteen seats (including driver) purchased for business purposes. However, for the following businesses ITC is available:
  - Trading of such vehicles, i.e., motor vehicle dealers
  - Transportation of passengers i.e., taxes operator/ tour operators/hotels
  - schools for such vehicles
- ★ Similarly, ITC on insurance paid, servicing, repair and maintenance or any other expense incurred on such motor vehicles is not available. However, if such expenses are incurred on motor vehicles used



in the above-mentioned businesses, ITC is available.

- ★ ITC is not available for vessels and air crafts purchased for business purposes. But if these are purchased for following business, ITC is available:
  - further supply of such vessels or aircraft; or
  - transportation of passengers; or
  - imparting training on navigating such vessels; or
  - imparting training on flying such aircraft;
  - for transportation of goods;
- ★ ITC on insurance paid, servicing, repair and maintenance or any other expense incurred on such vessels and air crafts is not available. provided such expenses are incurred in the course of the above-mentioned businesses, ITC is available.
- ★ Further, ITC is also available to a registered person engaged in the services of general insurance with respect to such motor vehicles, vessels and aircraft.
- ★ ITC is also not available for expenses incurred for:
  - food and beverages,
  - outdoor catering,
  - beauty treatment,
  - health services,
  - cosmetic and plastic surgery,
  - leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in the above clauses except when used for the purposes specified therein,
  - life insurance and health insurance

However, ITC is available to a registered person if he is engaged in above said businesses to provide taxable supplies by using such inputs or inputs services.

- ★ ITC for expenses incurred to acquire membership

of club, health and fitness center is also not available for business houses

- ★ ITC for travel expenses incurred for its employee is also not available provided such expenses are incurred to comply with any statute.
- ★ ITC is also not available for expenses (capital in nature) incurred by having “works contract services” from a contractor in relation to the construction, reconstruction, renovation, repair, addition, alteration etc., of immovable property. The immovable property does not include Plant and Machinery.
- ★ However, ITC is available to service provider/ contractor who is engaged in providing taxable “works contract services”.
- ★ ITC not available on expenses incurred for telecommunication towers, pipeline installed outside factory premises

ITC not available for expenses (capital in nature) incurred by a registered person on the purchase of goods and services for construction, re-construction, renovation, repair, addition, alteration of immovable property (other than plant and machinery) for his business.

- ★ ITC is not available to a composite dealer registered u/s 10 of CGST Act.,2017
- ★ goods or services or both received by a non-resident taxable person except on goods imported by him
- ★ goods or services or both used for personal consumption by a registered person
- ★ goods lost, stolen, destroyed, written-off or disposed of by way of gift or free samples
- ★ any tax paid in accordance with the provisions of sections 74, 129 and 130.

**Section 18(2) of the CGST act put restriction of one year to avail ITC in certain cases as listed u/s 18(1)**

In spite of all above restrictions under different provisions,



cases of wrongly availing and/or availing ITC by a fraudulent manner are increasing. Fake registrations and/or fake invoicing keep the Government agencies on their toe. Though the Government is using all the latest techniques, including artificial intelligence (IA) to curb the cases but struggling hard.

***As per one of the reports, during the financial year, 2020-21, the CGST zones and the Directorate General of GST Intelligence (DGGI) have registered around 8000 cases of fake ITC claims of over Rs. 35000 crores. 426 persons, including 14 professionals, such as CAs, Lawyers and masterminds, beneficiaries, directors, etc., were arrested. It is still going on.***

Considering all, the Government has decided to impose further restrictions to avail ITC on normal business transactions. Accordingly, section 38 has been redrafted completely (the old section has been omitted) vide Notification no 18/2022 dt 28/09/2022 and is effective from 01.10.2020.

**Though omitted but for ready reference, original section 38 is reproduced as under:**

**38. Furnishing details of inward supplies.**

Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under subsection (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both

taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, (51 of 1975) and credit or debit notes

received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed: Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein: Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

The details of supplies modified, deleted or included by the recipient in the return furnished under subsection (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period: Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

New Section 38, as redrafted is reproduced:

**38. Communication of details of inward supplies and input tax credit.**

(1) The details of outward supplies furnished by the

registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

(i) by any registered person within such period of taking registration as may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or

by such other class of persons as may be prescribed.

The newly drafted section 38 has been notified and is effective from 01.10.2022, but rules are yet to be notified. So as of now, it will be difficult to say how this section will work and restrict the registered person from availing ITC. However, for the benefit of readers, we summarized section 38 as under:

A summary of section 38:

- ✳ Details of Invoices and Debit Notes as furnished in GSTR-1 and IFF shall be available to the recipient in GSTR-2B (auto-generated statement) with such restrictions and conditions as prescribed,
- ✳ GSTR-2B is divided into two parts, i.e. ITC available and ITC not available or partly available
- ✳ ITC is not available on account of:
  - If supplies have been received from a newly registered person (up to a prescribed time limit)
  - Supplier has defaulted in payment of taxes for a given period of time
  - Taxes paid in GSTR-3B are less than the taxes calculated in GSTR-1 by a prescribed limit
  - Supplies have been received from a supplier who has availed ITC in GSTR-3B more than GSTR-2B by a limit prescribed,
  - Supplier has paid taxes from Credit Ledger more than a prescribed limit
  - Any other notified person

So now, after having section 38 in place, the Government has put more restrictions in addition to section 16 and section 17 conditions/restrictions to avail ITC. The idea is to reduce the cases of fake invoices and availing ITC through fraudulent means.

**The probable impact of section 38 on regular business transactions is as under:**

- ✳ Government may deny ITC to the recipient of goods and services if such supplies are received from a

registered person who has obtained registration under GST

- ★ six months back or so. In other words, registration of such a supplier is less than six months.
- ★ ITC may be denied if the supplier of such goods and services has defaulted in payment of taxes continuously for a period of three months or so.
- ★ ITC may be denied, if the supplier has paid less tax in his GSTR-3B as compared to liability declared in GSTR-1 for a certain period of time which may be for three months or so. It may be harsh on the recipient as he does not have access to the supplier's workings. It is quite possible that the supplier has done some accounting adjustments while paying his taxes in GSTR-3B.
- ★ Government may deny ITC if the supplier has claimed more ITC in GSTR-3B in comparison to his GSTR-2B for a certain period of time which may be

three or six months. In other words, if ITC availed/ claimed by the supplier in his GSTR-3B is more than the prescribed limit what has been communicated to him in his GSTR-2B.

- ★ ITC can be denied if the supplier has paid his tax liabilities from Electronic Credit Ledger beyond prescribed limits.

### **Conclusion:**

In a total scenario, the Government is going to be tough for ITC benefits. But for any wrong or miscalculated action of the supplier, the recipient will lose his eligible funds. It will, on one side, be against the true spirit of GST laws which talked about the elimination of cascading effects of taxes in the complete supply chain and on the other side will increase the financial burden on the recipient of goods and services. Because of less than one percent of miscreants in the economy, ninety-nine percent of genuine buyers will be hanged for no reason.

TB

# GST- On Beat, Off-Beat and Back Beat



**CMA (Dr) Ashish Prakash Thatte**  
Cost Accountant



**Ms Vijayalakshmi Pattar**  
co-author

## Notices under GST Article 8: FORM GST ASMT-01 to ASMT-05

This is the eighth article in the series of Notices under GST. This article covers Forms GST ASMT-01 to ASMT-05.

These five forms are linked to each other hence I am covering all five in this article.

To understand these forms, we'll have to go through their provisions:

### Background and Legal Provision:

#### **Section 60 of CGST Act 2017:**

This section pertains to Provisional Assessment. Where the taxable person is unable to determine the value of goods or services or both, he/she may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

#### **Rule 98 (1) of CGST Rules 2017: ASMT-01**

As per Rule 98 (1) of the Rules, every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of sub-section (1) of section 60 shall furnish an application along with the documents in support of his request, electronically in FORM GST ASMT 01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

#### **Rule 98(2) of CGST Rules 2017: ASMT-02**

As per rule 98(2) of the Rules, the proper officer may, on receipt of the application under sub-rule (1), issue a notice in FORM GST ASMT 02 requiring the registered person to

furnish additional information or documents in support of his request.

**Rule 98(2) of CGST Rules 2017: ASMT-03**

As per rule 98(2) of the Rules, the applicant shall file a reply to the notice in FORM GST ASMT 03, and may appear in person before the said officer if he so desires.

**Rule 98(3) of CGST Rules 2017: ASMT-04**

As per rule 98(3) of the Rules, the proper officer shall issue an order in FORM GST ASMT 04 allowing the payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security to be furnished not exceeding twenty-five per cent of the amount covered under the bond.

**Rule 98(4) of CGST Rules 2017: ASMT-05**

As per rule 98(4) of the Rules, the registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in FORM GST ASMT 05 along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3):

Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the Act and the rules made thereunder.

Explanation.-For the purposes of this rule, the expression “amount” shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction

**Form ASMT 01:**

FORM GST ASMT - 01 [See rule 98(1)] Application for Provisional Assessment under section60								
1. GSTIN								
2. Name								
3. Address								
4. Details of Commodity / Service for which tax rate / valuation is to be determined								
Sr. No.	HSN	Name of commodity /service	Tax rate				Valuation	Average monthly turnover of the commodity / service
			Central tax	State / UT tax	Integrated tax	Cesses		
1	2	3	4	5	6	7	8	9
5. Reason for seeking provisional assessment								
6. Documents filed								
7. Verification-								
I _____ hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.								
Signature of Authorised Signatory Name Designation / Status ----- Date -----								





**Form ASMT 02:**

**FORM GST ASMT - 02**  
*[See rule 98(2)]*

Reference No.: \_\_\_\_\_ Date: \_\_\_\_\_  
To \_\_\_\_\_  
GSTIN \_\_\_\_\_  
-----Name \_\_\_\_\_  
----- (Address) \_\_\_\_\_

Application Reference No. (ARN) ..... Dated .....

**Notice for Seeking Additional Information / Clarification / Documents for provisional assessment**

Please refer to your application referred to above. While examining your request for provisional assessment, it has been found that the following information/documents are required for processing the same:

<< text >>

You are, therefore, requested to provide the information /documents within a period of<< 15 days>>from the date of service of this notice to enable this office to take a decision in the matter. Please note that in case no information is received by the stipulated date your application is liable to be rejected without any further reference to you.

You are requested to appear before the undersigned for personal hearing on << Date - -- Time --Venue --->>.

Signature  
Name  
Designation

**Form ASMT 03:**

**FORM GST ASMT - 03**  
*[See rule 98(2)]*

**Reply to the notice seeking additional information**

1. GSTIN		
2. Name		
3. Details of notice vide which additional information sought	Notice No.	Notice date
4. Reply		
5. Documents filed		

6. Verification-

I \_\_\_\_\_ hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory

Name  
Designation / Status  
Date



Form ASMT 04:

**FORM GST ASMT – 04**  
[See rule 98(3)]

Reference No.: ..... Date

To

GSTIN -  
Name -  
Address -

Application Reference No. (ARN) ..... Dated .....

**Order of Provisional Assessment**

This has reference to your application mentioned above and reply dated-----, furnishing information/documents in support of your request for provisional assessment. Upon examination of your application and the reply, the provisional assessment is allowed as under:

<< text >>

The provisional assessment is allowed subject to furnishing of security amounting to Rs.----- (in words) in the form of ----- (mode) and bond in the prescribed format by ----- (date).

Please note that if the bond and security are not furnished within the stipulated date, the provisional assessment order will be treated as null and void as if no such order has been issued.

Signature  
Name  
Designation

Form ASMT 05:

**FORM GST ASMT - 05**  
[See rule 98(4)]  
**Furnishing of Security**

1. GSTIN					
2. Name					
3. Order vide which security is prescribed				Order No.	Order date
4. Details of the security furnished					
Sr. No.	Mode	Reference no. / Debit entry no. (for cash payment)	Date	Amount	Name of Bank
1	2	3	4	5	6

Note – Hard copy of the bank guarantee and bond shall be submitted on or before the due date mentioned in the order.

5. Declaration -

- (i) The above-mentioned bank guarantees submitted to secure the differential tax on the supply of goods and/or services in respect of which I/we have been allowed to pay taxes on provisional basis.
- (ii) I undertake to renew the bank guarantee well before its expiry. In case I/We fail to do so the department will be at liberty to get the payment from the bank against the bank guarantee.
- (iii) The department will be at liberty to invoke the bank guarantee provided by us to cover the provisional assessment in case we fail to furnish the required documents/ information to facilitate finalization of provisional assessment.

Signature of Authorised Signatory  
Name  
Designation / Status -----  
Date -----



**Bond for provisional assessment**  
[Rule 98(3) & 98(4)]

I/We.....of.....,hereinafter called "obligor(s)", am/are held and firmly bound to the President of India (hereinafter called "the President"/ the Governor of .....(State) (hereinafter called the "Governor") in the sum of.....rupees to be paid to the President/ Governor for which payment will and truly to be made. I/We jointly and severally bind myself/ourselves and my/our respective heirs/ executors/ administrators/ legal representatives/successors and assigns by these presents; Dated this.....day of.....;

WHEREAS final assessment of Integrated tax/ central tax/ State tax / Union territory taxon ..... (name of goods/services or both-HSN:.....) supplied by the above bounded obligor from time to time could not be made for want of full information with regard to the value or rate of tax applicable thereto; and whereas the obligor desires that the provisional assessment in accordance with the provisions of Section 60 be made;

AND WHEREAS the Commissioner has required the obligor to furnish bank guarantee for an amount of ..... rupees endorsed in favour of the President/ Governor and whereas the obligor has furnished such guarantee by depositing with the Commissioner the bank guarantee as aforementioned; The condition of this bond is that the obligor and his representative observe all the provisions of the Act in respect of provisional assessment under section 60;

And if all dues of Integrated tax/ Central tax/ State tax/ Union territory tax or other lawful charges, which shall be demandable after final assessment, are duly paid to the Government along with interest, if any, within thirty days of the date of demand thereof being made in writing by the said Officer, this obligation shall be void;

OTHERWISE and on breach or failure in the performance of any part of this condition, the same shall be in full force and virtue:

AND the President/ Governor shall, at his option, be competent to make good all the loss and damages from the amount of bankguarantee or by endorsing his rights under the above-written bond or both;

I/We further declare that this bond is given under the orders of the Central Government/ State Government for the performance of an act in which the public are interested;

IN THE WITNESS THEREOF these presents have been signed the day hereinbefore written by the obligor(s).

Date :  
Place :

Witnesses		
(1) Name and Address		Occupation
(2) Name and Address		Occupation
Date		
Place		
Witnesses		
(1) Name and Address		Occupation
(2) Name and Address		Occupation

Accepted by me this.....day of ..... (month)..... (year)  
..... of ..... (Designation)  
for and on behalf of the President of  
India./ Governor of ..... (state)".

**Important points for consideration****In which cases the taxpayer can apply for provisional assessment?**

- ★ The facility of provisional assessment is available only in the cases of valuation and determination of rate of tax.

**In which cases the taxpayer cannot apply for provisional assessment?**

- ★ The provisions of this section cannot be extended for any other purpose or subject matter. For e.g.
  - Whether (IGST or CGST-SGST) applicable.
  - What will be time of supply.
  - Whether supplies to be treated as “supply of goods” or “supply of services”.
  - Admissibility of ITC.
  - Quantum of reversal of ITC.
  - Whether a particular action is supply or not.

What is a Facilitation Centre? <<<< not sure how it is related to the Provisional Assessment? pls check with the author

To help taxpayer with GST compliance including GST registration and GST return filing, the Government has introduced GST Facilitation Centres across the Country.

Taxpayers requiring any assistance with GST can approach the nearest GST Facilitation Centre for free assistance.

**In which conditions/circumstances the taxpayer can go for Provisional Assessment?**

- ★ If the taxable person is unable to determine the value of goods or services or both, he/she may request the proper officer in writing to give reasons for payment of tax on a provisional basis.

**What are the different forms used for Provisional Assessment?**

- ★ The abovementioned forms are for taxable persons seeking provisional assessment therefore, each

form has a different purpose:

**ASMT 01** - This is an application form for Provisional order under section 60.

**ASMT 02** - This form is a notice for seeking additional information, clarification, and documents.

**ASMT 03** - This form is a reply to the seeking of additional information, clarification, and documents of FORM GST **ASMT- 02**.

**ASMT 04** - This is an order for the payment of tax on a provisional basis.

**ASMT 05** - This is for the taxpayer for furnishing of security.

**Duties of the Registered Person/Tax Payer:**

- ★ The registered person must avail this opportunity of provisional assessment after much thought and careful consideration.
- ★ The registered person is required to furnish all the additional information and documents as required by the proper officer in support of his/ her request for provisional order.

**Common Advice to all the Taxpayers:**

- ★ Taxpayers are always advised to keep track of the details posted on the GST portal as a good practice and timely response to the notice.
- ★ If any irregularity or error is found, the taxpayer should, if possible, attempt to correct the same in the latest return.
- ★ Taxpayers should also reconcile all returns with each other, such as the turnover recorded in GSTR 1 with GSTR 3B and the generated e-way bills.
- ★ Also, ITC reconciliation with GSTR 2A or GSTR 2B was used in GSTR 3B.

# A COMPREHENSIVE ROUND-UP ON RECENT JUDICIAL PRONOUNCEMENTS REGARDING TRUSTS



**CMA Ajith Sivasdas**  
Cost Accountant



**Adv. Srikanth Thamban**

It is an English common law concept to do with the crusades when the knights left their land in the hands of trusted people in case they never returned from battle.” The trusted people (usually the church who turned out to be very untrustworthy and kept a lot of it for themselves) had an obligation to pass on the land to the rightful heir.

Roman law has the notion of trustees, and of trustee duties and obligations, with respect to property in the form of two trust-like devices, *fideicommissum*, and *fiducia*.

The *fideicommissum* developed as an extra-testamentary means of a person being able to dispose of property on his death to X who in turn was under an obligation on the happening of a certain event (e.g., his death or re-marriage) to pass on the property to Y. In fact, Y could also be under an obligation to pass on the property as a part of this chain.

By tradition, private philanthropy in our country has been playing a very special and prominent role in enriching our cultural heritage and in catering to the education, medical, socio-economic, and religious needs of our people. In so doing, it has supplemented the work of a Welfare State, and the State, in turn, has recognized its contribution by giving generous tax exemptions to the donations given to philanthropic institutions and also to the income thereof applied for public, religious or charitable purposes.

Due to their distinct organisation and objective entire income of such charitable or religious trusts are taxed as per the provisions of section 11-13 of the Income Tax Act, 1961, which provides for various tax benefits. In the name of charity, there has been misuse of tax concessions by some of the Charitable Organizations which go undetected. There are various amendments in law relating to these

institutions to curb this practice. Judiciary also have an eminent role in structuring the law and preventing such unethical practices with their landmark judgements. This article envisages on couple of recent pronouncements by Hon. Apex court (New Noble Education Society v. CIT) and Hon High Court of Kerala (Cardinal Mar George Alencherry v State of Kerala), though both are not having direct facts correlated but in both cases, the judiciary stamps its uniqueness for the curbing the façade practices by the trusts in whole.

## Background To The Verdict

The first decision was propounded by the Honourable Supreme Court in *New Noble Education Society v. CIT* which deals with tax exemption to educational institutions, the relevant provisions being Sections 2(15) and 10(23-C) of the Income Tax Act, 1961. The occasion for this decision arose in view of the refusal of the income tax department to deny the exemption to a trust. The fact that an educational institution was indeed being run by the trust was not in dispute. However, the two reasons for denying the exemption were.

- a. The objectives of the trust were not limited to imparting education and, therefore, it could not be considered as “solely” instituted for purpose of education; and
- b. The trust was not registered under state charity law. The Andhra Pradesh High Court had upheld both objections to deny the exemption, the challenge to which was before the supreme court.

Section 2(15) was amended in 2015 to provide that advancement of any other object of a general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, etc unless

- i. Such activity is undertaken in the course of actual carrying out of such advancement of any other object of the general public utility and
- ii. The aggregate receipts from such activities during the previous year, do not exceed 20% of the total receipts, of the trust undertaking such activities, of the previous year.

The Honourable Supreme Court in the *Asst. CIT Vs. Thanthi*

*Trust (2001) 247 ITR 785 (SC)* stated that the scope of sub-section (4A) of Section 11, as amended in 1992, is more beneficial to a trust or institution than the scope of the sub-section before the amendment. After its amendment in 1992, all that is required for the business income of a trust to be exempt from tax is that the business should be incidental to the attainment of the objectives of the trust. A business whose income is utilized by the trust for the purpose of achieving the objectives of the trust is a business that is incidental to the attainment of the objectives of the trust.

The second decision is in the *Cardinal Mar George Alencherry v State of Kerala* wherein the High Court of Kerala had said that Religious and charitable institutions are accumulating wealth and property under the guise of charity and a strong central legislation applicable across the country is required to regulate the activities of such institutions.

Single-judge of High Court, therefore, urged the Central government to consider the possibility of enacting a central regulation to regulate religious and charitable institutions. The Judge on pronouncing the note had included these words:

*Now the term ‘charity’ is largely used to accumulate wealth and property under that guise and to give away the same without accounting the same to any responsible authority. Article 19(1)(c) of the Constitution of India guarantees the right of all citizens to form associations or unions, but that does not mean that it should be without any legal status or legal recognition, when involves the acquisition and accumulation of large quantity of wealth and assets under the guise of charity*

## Decisions Related To The Educational Institutions

The bulk of the decision in *New Noble* is devoted to exemplifying a single expression used in the statutory provision; “solely”. The Supreme Court stated the judgment by reiterating the words “*It has been said that education is the key that unlocks the golden door to freedom*”. The Honourable Apex Court had also taken the views from the *Avinash Mehrotra v Union of India*: where the Supreme Court had underlined the object and value of education in the following words:

“29. Education today remains liberation - a tool for the

*betterment of our civil institutions, the protection of our civil liberties, and the path to an informed and questioning citizenry. Then as now, we recognize education's "transcendental importance" in the lives of individuals and in the very survival of our Constitution and Republic."*

On such account, it acknowledges the parliamentary intent underlying the provisions of the income tax law which is to promote "scholastic instruction" in society by fiscally incentivizing institutions dedicated to its cause. The decision, however, stresses the fact that judicial wisdom dictates, in line with the settled law, that exemption provisions are to be construed strictly with the benefit of the doubt going to the tax department and against the taxpayer.

The Supreme Court has revisited its earlier decisions to highlight that in view of the usage of the expression "solely", which is closer to "only", the intent underlying the exemption appears to be limited to those institutions which are exclusively devoted to the cause of education. To such end, the decision reverses its earlier view which approved the "predominant object test" as the benchmark to examine the availability of the exemption.

The views of the Additional Solicitor General

The Additional Solicitor General had stressed upon the meaning of the Educational Institutions and the word meaning "Solely" through various averments;

*The learned ASG submitted that the ratio in T.M.A Pai Foundation (supra) had established that education per se was regarded as a charitable activity. It could not be regarded as trade or business with a profit motive driving it. There could be some doubt about whether education was to be regarded as a profession; nevertheless, it was covered by the term 'occupation'. It was submitted that the court in this context ruled an 'occupation' would be an activity of a person undertaken as a means of livelihood or as a mission in life. Counsel also pointed to certain portions of the judgment in T.M.A Pai Foundation (supra) to highlight that the rights conferred under Articles 29 and 30 were to be regarded as guarantees to ensure equality to minority communities either based on religion or language.*

*It was submitted that given this enunciation of the principle that education was an occupation and was per se, charitable, it was antithetical to commerce or*

*business. In other words, education could not, either under the Constitution or under the IT Act, be regarded as a business activity. Thus, any commercialization of education would result in the loss of the benefit of tax exemption which an institution would otherwise be entitled to claim legitimately as a charitable trust. The ASG also relied upon the subsequent seven-judge decision in PA Inamdar v State of Maharashtra<sup>11</sup> which had followed the reasoning in T.M.A Pai Foundation (supra).*

*Turning next to the decision in Oxford University Press (supra) the learned ASG pointed out that the majority judgment had recognized that the term 'existing solely for educational purposes and not for the purposes of profit' qualified 'university or other educational institution'. It was submitted that the majority judgment stated clearly that being part of an educational institution was insufficient and the concerned entity had to engage in imparting education itself, and in the course of such activity could generate a surplus. However, the claim that a unit that was part of a university abroad and was thus entitled to be treated as a charity in India was held to be untenable because the assessee's sole activity was to print and publish books for profit.*

### **Supreme Court's Reiteration and Deliberation**

*In order to be eligible for exemption, under section 10(23C) (vi) of the Act, it is necessary that there must exist an educational institution. Secondly, such an institution must exist solely for educational purposes and, thirdly, the institution should not exist for the purpose of profit. (CIT v. Sorabji Nusserwanji Parekh, [1993] 201 ITR 939 (Guj)). In deciding the character of the recipient of the income, it is necessary to consider the nature of the activities undertaken. If the activity has no co-relation to education, the exemption has to be denied. The recipient of the income must have the character of an educational institution to be ascertained from its objects. (Aditanar Educational Institution, [1997] 224 ITR 310 (SC)). The emphasis in section 10(23C)(vi) is on the word "solely". "Solely" means exclusively and not primarily. (CIT v. Gurukul Ghatkeswar Trust, (2011) 332 ITR 611 (AP); CIT v. Maharaja Sawai Mansinghji Museum Trust, [1988] 169 ITR 379 (Raj)). In using the said expression, the Legislature has made it clear that it intends to exempt the income of the institutions established solely for educational purposes and not for commercial activities. (Oxford University Press v. CIT, [2001] 247 ITR 658 (SC)). This requirement would*

*militate against an institution pursuing objects other than education. (Vanita Vishram Trust v. Chief CIT, [2010] 327 ITR 121 (Bom)). Even if one of the objects enables the institution to undertake commercial activities, it would not be entitled to approval under section 10(23C)(vi) of the Act. (American Hotel and Lodging Association Educational Institute, [2008] 301 ITR 86 (SC)). It is only if the objects reveal that the very being of the assessee society, as an educational institution, is exclusively for educational purposes and not for profit, the assessee would be entitled to exemption under section 10(23C)(vi) of the Act. (Gurukul Ghatkeswar Trust, [2011] 332 HR 611 (AP))”.*

The decision of the Supreme Court in *New Noble* is to the effect that the tax officers are permitted to closely monitor the activities of the institution claiming the exemption, by calling for annual financial records, etc. to ascertain the exclusive devotion to education-linked activities. This de facto appraisal is beside the point that even de jure, the trust deed, which marks the birth of the institution, must not contain any objective other than to carry out the educational activities. In addition, confirming their additional monitoring, the Supreme Court has confirmed the view of the High Court that registration of such institutions under the local charity law is mandatory.

In order to avoid disruption and to give time to institutions likely to be affected to make appropriate changes and adjustments, the Supreme Court has given this decision prospective effect.

## Decisions Related To The Religious Institutions

The High Court of Kerala had expounded on the veracity of the ongoing issue of land grabs and encroachment by organized institutions. The High Court had pondered that; *now the term ‘charity’ is largely used to accumulate wealth and property under that guise and to give away the same without accounting the same to any responsible authority. Article 19(1)(c) of the Constitution of India guarantees the right of all citizens to form associations or unions, but that does not mean that it should be without any legal status or legal recognition when involves the acquisition and accumulation of large quantity of wealth and assets under the guise of charity.*

In the guise of Charitable Institutions, the Bona Vacantia had been violated by the culprits with the creation of

unviable Power of Attorneys and thus trying to extinct the options of the Government in a mala fide manner. The High Court had reined in with the keen observation on the said matter and had invoked the judicial review powers inherent within the sou moto laws.

The High Court had vehemently stated in its order that *Article 19(1)(c) of the Constitution of India guarantees the right of all citizens to form association or union, but that does not mean that it should be without any legal status or legal recognition, when involves acquisition and accumulation of large quantity of wealth and assets under the guise of charity.*

Pertinently, the Court emphasized the need for uniform central legislation as the study further revealed that the number of unregistered organizations is much more than the number of registered or formally registered.

Further, the High Court had pressed upon the (Radhasoami Satsung v. VIT [(1992) 193 ITR 321 (SC)]) stating the 7th Schedule of the Constitution of India, of India which means that both the Central and State legislatures are competent to legislate and regulate charitable organizations. The legal framework governing charitable organizations in India is quite complex due to the multiplicity of legislation. The formation of a trust is designed to be on a different footing as it is not necessary to create a trust with a formal document.

Thus, the judicial scrutiny and review had tightly packed the matter of the land encroachments. The judicial review enhanced the views of the Government for proper legislation to clear the clutter that is prevalent in the area where no proper guidelines or regulations are being exercised.

## Common Findings

At a larger level, the decisions converge the judicial ethos with the parliamentary intent that pursuits of charitable objectives are to be promoted, and accordingly granting exemptions to such causes is a core foundational tenet of the fiscal law. At the same time, the decision stresses upon the statutorily carved exceptions to the exemption provision to highlight that their abuse or misuse would not be permitted and to that extent, the tax officers are empowered to examine the affairs of the charitable institution closely to satisfy themselves that the conditions



for grant of exemption are scrupulously complied with.

The High Court of Kerala referred the matter of Radhasoami Satsung v. VIT [(1992) 193 ITR 321 (SC)] and had stated that

*It is relevant to take note of the study conducted by the Ministry of Statistics & Programme in 2012 and the final report published on non-profit institutions in India. The study took into consideration only those entities which were registered under the Societies Registration Act, of 1816, the Bombay Trust Act, of 1950, and companies registered under the Companies Registration Act, of 1956. The result indicated the existence of 31,74,420 non-profit institutions across India. The study further reveals that the number of unregistered organizations is much more than the number of registered or formally registered. There is no single central legislation that lays down the law governing charity or charitable organizations in India. Now the term 'charity' is largely used to accumulate wealth and property under that guise and to give away the same without accounting the same to any responsible authority. Article 19(1)(c) of the Constitution of India guarantees the right of all citizens to form associations or unions, but that does not mean that it should be without any legal status or legal recognition when involves the acquisition and accumulation of large quantity of wealth and assets under the guise of charity. The Constitution in Part IV lays down Directive Principles of State Policy.*

From another perspective, both these decisions revisit the legal provisions which have been frequently amended, as also the judicial delineation of these provisions to highlight that the initial judicial standards, which required higher compliance, appear to have slipped over time and consequently diluted. Accordingly, these decisions are an exercise in streamlining the legal position by reconciling the deviations through categorical propositions, akin to a needle sewing loose threads together. Further to the observation, The High Court of Kerala emphasized that separate dedicated legislation from the side of the sovereign and the sub-sovereign which are necessary for the scrutiny and safeguarding of Bona Vacantia matters. On that account, the Supreme Court itself has admitted that a revisit to virtually all cases before it, is required to reconfirm the availability of tax exemptions by reviewing the facts of each case on its own merits.

Pertinently, Under the current extent of the income tax law, the scope of "charitable purpose" does not factor in religious orientation; instead, it currently subsumes "relief

of the poor, education, yoga, medical relief, preservation of the environment (including watersheds, forests, and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility". However, the focus of the decisions is largely on the exclusions to these purposes that is "if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity".

### Decisions Governing The Availability Of The Tax Exemptions To Other Charitable Institutions

The decision of the Supreme Court in *Ahmedabad Urban Development Authority* is significantly wider than the decision in the *New Noble* decision. In the former decision, the Supreme Court has set out the rules required to be observed by all non-educational charitable institutions claiming tax exemption. Even in this case, the Supreme Court has streamlined the legal position to set at naught various decisions of the Tax Tribunals and the High Courts in favor of the taxpayers, by enunciating what according to it is the correct interpretation of the exemption provision. However, in doing so, the Supreme Court has not been as magnanimous as in the case of the latter decision, insofar as the decision in *Ahmedabad Urban Development Authority* does not accord any prospective application and requires all past claims to tax exemptions to be revisited in the light of the legal position now declared by the Supreme Court.

The Supreme Court has concluded that the institutions claiming the charitable exemption cannot be engaged in trade, commerce, or business activities used for general public utility purposes. However, highlighting that pre-2016 amendment of the law, a monetary threshold was applicable and post-2016 amendment the law permits up to 20% of the total receipts towards ineligible activities, the Supreme Court has made an across-the-board declaration that non-charitable activities would now be governed by these disqualifying criteria. In doing so, the court has declared the non-application of its earlier "predominant test" and given way to the statutory limitations to the ineligible activities. The institutions claiming the charitable exemption must now, therefore, ensure that "any activity in the nature of trade, commerce or business, or any

activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration” is carried out within these thresholds, the compliance to which end needs to be demonstrated on a year-to-year basis.

## Conclusion

The two decisions of the Honourable Courts have revisited the legal position in vogue for decades to reverse the tide in favour of the tax department by imposing strenuous conditions upon the institutions claiming charitable exemption. Revisiting earlier decisions and discontinuing the “predominant object test” which supported the cause of the institutions, the Supreme Court has applied its followed 2018 trend that the tax authorities have an upper hand in the interpretation of conditions under exemption provisions and the burden is upon the taxpayer to demonstrate strict compliance of these conditions towards claiming preferential status. By doing so, the Supreme Court and High Court of Kerala have tectonically changed the ground rules governing tax exemption and deeds for charitable causes. These decisions will result in a revisit of all claims to exemption (except in the case of educational institutions) of the past assessment periods and also result in the large-scale restructuring of the institutions to align their activities in line with these decisions on a going-forward basis. More critically, given that the clear mandate of the Supreme Court to the tax authorities is to examine the claim on a yearly basis, it is now crucial for such institutions to get their act together and ensure diligence in bookkeeping, and even micromanagement, if need be, to ensure compliance with the rigorous standard for exemption. The need for educational institutions to follow

their objectives strictly rather than changing the course towards any commercial activities is tied-up by the verdict.

Further, the Judicial Review by the High Court of Kerala had put to light the need for the regulation of Religious Charitable Institutions by the chance of legislation from the Central and State Governments, in the guise of religious Charitable Institutions the mismanagement of funds let loose by the society at large.

On the contrary circular 11 of 2008 dated 19/12/2008, S. 11(4) A of the act and amendment in 2(15) in 2015, which restricts the business receipts utilised for the advancement of general public utility, clearly and evidently allows such business income which are incidental to its objects, to be utilised for any other purposes mentioned u/s 2(15) such as relief of poor, Medical relief, education etc. Thereby these decisions analysed earlier shall not be applicable to such genuine and legally abided cases. If Profit making is neither the aim nor object nor the principal activity of the Trust, merely because the assessee carries out the activities for the purpose of achieving the objects relief of the poor or other non restricted purposes, should not be denied the benefit. Various land mark judgements also reinforces this settled position.

Thus, it is concluded by stating that, the law is not against the working of the economy or is not against the gains being created through the shades of trust for the purpose of the objectives, but more critically it is beseechingly against the unjust enrichment being made by the private persons with the facade of the trusteeship, which flares a bad precedent in the society to take the same footprint of washing methodology being done earlier. TB

# NOTIFICATIONS & CIRCULARS

## Indirect Tax

### Notifications

#### Central Tax

#### Notification No. 25/2022-Central Tax

#### Dated 13th December 2022

The Central Government seeks to extend the due date for furnishing FORM GSTR-1 for November, 2022 for registered persons whose principal place of business is in certain districts of Tamil Nadu

G.S.R. ....(E).—In exercise of the powers conferred by the proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 –Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely: —

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

“Provided also that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the tax period November, 2022, for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tiruvannamalai, Ranipet, Vellore, Villupuram, Cuddalore, Thiruvallur, Nagapattinam, Mayiladuthurai and Thanjavur in the State of Tamil Nadu, shall be extended till the thirteenth day of the month succeeding the said tax period.”

*For more details, please follow:*

<https://taxinformation.cbic.gov.in/view-pdf/1009573/ENG/Notifications>

### Notifications

#### Central Excise

#### Notification No. 40/2022-Central Excise

#### Dated 1st December 2022

The central Government seeks to amend No. 18/2022-Central Excise, dated the 19th July, 2022 to reduce the Special Additional Excise Duty on production of Petroleum Crude.

G.S.R.....(E).—In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of the Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2022-Central Excise, dated the 19th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 584(E), dated the 19th July, 2022, namely:-

In the said notification, in the Table, -

(i) against S. No. 1, for the entry in column (4), the entry “Rs. 4,900 per tonne” shall be substituted;

2.This notification shall come into force on the 2nd day of December, 2022

*For more details, please follow*

<https://taxinformation.cbic.gov.in/view-pdf/1009563/ENG/Notifications>



## Notifications

### Central Excise

#### Notification No. 41/2022-Central Excise

Dated 1st December 2022

Seeks to further amend No. 04/2022-Central Excise, dated the 30th June, 2022, to reduce the Special Additional Excise Duty on Diesel

G.S.R. .... (E). -In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 04/2022-Central Excise, dated the 30th June, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 492 (E), dated the 30th June, 2022, namely:-

In the said notification, in the Table, -

(i) against S. No. 2, for the entry in column (4), the entry "Rs. 6.50 per litre" shall be substituted;

2. This notification shall come into force on the 2nd day of December, 2022

*For more details, please visit:*

<https://taxinformation.cbic.gov.in/view-pdf/1009564/ENG/Notifications>

## Notifications

### Central Excise

#### Notification No. 42/2022-Central Excise

Dated 15th December, 2022

The Central Government seeks to amend No. 18/2022-Central Excise, dated the 19th July, 2022 to reduce the Special Additional Excise Duty on production of Petroleum Crude and export of Aviation Turbine Fuel

G.S.R.....(E).-In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of the Finance Act, 2002 (20 of

2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2022-Central Excise, dated the 19th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 584(E), dated the 19th July, 2022, namely:-

In the said notification, in the Table, -

(i) against S. No. 1, for the entry in column (4), the entry "Rs. 1,700 per tonne" shall be substituted;

(ii) against S. No. 2, for the entry in column (4), the entry "Rs. 1.50 per litre" shall be substituted

2.This notification shall come into force on the 16th day of December, 2022

For more details, please follow:

<https://taxinformation.cbic.gov.in/view-pdf/1009576/ENG/Notifications>

## Notifications

### Central Excise

#### Notification No. 43/2022-Central Excise

Dated 15th December, 2022

The Central Government seeks to further amend No. 04/2022-Central Excise, dated the 30th June, 2022, to reduce the Special Additional Excise Duty on Diesel

G.S.R. .... (E). -In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 04/2022-Central Excise, dated the 30th June, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 492 (E), dated the 30th June, 2022, namely:-

In the said notification, in the Table,-

(i)against S. No. 2, for the entry in column (4), the entry "Rs.



3.5 per litre” shall be substituted

2.This notification shall come into force on the 16th day of December, 2022

For more details, please follow:

<https://taxinformation.cbic.gov.in/view-pdf/1009577/ENG/Notifications>

**Notification**  
**Central Excise**  
**No. 04/2022-Central Excise (N.T.)**  
**Dated 1st December 2022**

Appointment of the Commissioner of Central Excise and Service Tax (Appeals) as Central Excise officer for the entire territorial jurisdiction of the Principal Chief Commissioner/

Chief Commissioner of Central Excise and Service Tax for the purpose of passing Orders-in-Appeal for the CX & ST appeals filed after 30.06.2017-reg.

GSR ... (E).In pursuance of clause (b) of section 2 of the Central Excise Act, 1944(1 of 1944) read with clause (55) of section 65B of the Finance Act, 1994 (32 of 1994), rule 3 of the Central Excise Rules, 2017, rule 3 of the Service Tax Rules, 1994, and clause (f) of sub-section (2) of section 174 of the Central Goods and Services Tax Act,2017 (12 of 2017), the Central Board of Indirect Taxes and Customs here by appoints the officers mentioned in Column(2) of the Table below as the Central Excise officers for the jurisdiction mentioned in Column (3) of the said Table and vests such officers with all powers under the Central Excise Act, 1944 and the rules made thereunder and the Finance Act,1994 and the rules made thereunder for the purpose mentioned in Column(4) of the said Table.

TABLE

SL.NO	Rank and designation of Central Excise officer	Jurisdiction	Purpose
(1)	(2)	(3)	(4)
1.	Any Commissioner of Central Excise and Service Tax (Appeals)who is posted vide an administrative order issued by the Central Board of Indirect Taxes and Customs in the territorial jurisdiction of a –(a) Principal Chief Commissioner of Central Excise and Service Tax; or (b)Chief Commissioner of Central Excise and Service Tax.	The jurisdiction of such Principal Chief Commissioner of Central Excise and Service Tax or Chief Commissioner of Central Excise and Service Tax as specified in Notification Number13/2017-CentralExcise (N.T.) dated9thJune, 2017	Passing orders in appeal with respect to appeals filed after 30thJune,2017 undersection 35 of Central Excise Act,1944 (1 of1944)and section 85 of the Finance Act, 1994 (32of 1994) with the Commissioner of Central Excise and Service Tax (Appeals), in the territorial jurisdiction of such Principal Chief Commissioner of Central Excise and Service Tax or Chief Commissioner of Central Excise and Service Tax, as may be assigned.

For more please visit,

<https://taxinformation.cbic.gov.in/view-pdf/1009566/ENG/Notifications>

**Notifications**  
**Customs**  
**Notification No. 103/2022- Customs (N.T.)**  
**Dated 9th December 2022**

The Central Government makes amendment to the Exports by Post Regulations, 2018

G.S.R.... (E).- In exercise of the powers conferred by section 157 read with section 84 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following regulations to amend the Exports by Post Regulations, 2018, namely: -

1. Short title and commencement. - (1) These regulations may be called the Exports by Post (Amendment) Regulations, 2022.



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

2. In the Exports by Post Regulations, 2018 (hereinafter in these regulations referred to as the said regulations), in regulation 3, in sub-regulation (1), for the words “international credit and debit cards and as specified”, the words “various electronic means and in accordance with the guidelines issued” shall be substituted.

3. In the said regulations, the appended forms shall be substituted with the new forms.

*For more details, please visit:*

<https://taxinformation.cbic.gov.in/view-pdf/1009568/ENG/Notifications>

**Notification  
Customs (N.T.)**

**Notification No. 104/2022-Customs (N.T.)  
Dated 9th December 2022**

The Central Government seeks to makes amendment to Postal Export (Electronic Declaration and Processing) Regulations, 2022

G.S.R.....(E). - In exercise of the powers conferred by section 157 read with section 84 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 the Postal Export (Electronic Declaration and Processing) Regulations, 2022.

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

2. Application. - These regulations shall apply to export of goods by any person, holding a valid Import-Export Code issued by the Director General of Foreign Trade, in furtherance of business through a foreign post office appointed by the Board under clause (e) of sub-section (1) of section 7 of the Customs Act, 1962

*For more, details please visit:*

<https://taxinformation.cbic.gov.in/view-pdf/1009569/ENG/Notifications>

**Notification**

**Customs (N.T.)**

**Notification No. 105/2022-Customs (N.T.)**

**Dated 9th December 2022**

The Central Government makes amendment of Proper Officer Notification No. 26/2022-Customs (NT) dated 31.03.2022

S.O. (E).-In exercise of the powers conferred by sub-sections (1A), (4) and (5) of Section 5 read with sub-section (34) of section 2 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 26/2022-Customs (N.T.), dated the 31st March, 2022, published in the Gazette of India Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 1542(E) , dated the 31st March, 2022, namely :-

In the said notification, in the Table,

In Sr. No.3, in column (3), after the entry (xxvii), the following entry shall be inserted, namely

(3)
(xxviiia) Section 84 (Re-assessment of entries relating to postal goods)

In Sr. No.5, in column (3), after the entry (xx), the following entries shall be inserted, namely

(3)
“(xxa) Section 84 (assessment) (xxb) Section 84 (clearance)”

In Sr. No.7, in column (3), after the entry (vii), the following entry shall be inserted, namely

(3)
(viia) Section 84 (examination)



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

*For more, please visit*

<https://taxinformation.cbic.gov.in/view-pdf/1009570/ENG/Notifications>

## **Notification**

### **Customs (N.T.)**

#### **Notification No. 106/2022-Customs (N.T.)**

**Dated 12th December 2022**

The Central Government seeks to amend notification regarding inclusion of two Land Customs Stations in Notification No. 208/77 -Cus (N.T.) dated 01.10.1977

G.S.R. (E).-In exercise of the powers conferred by sub-section (2) of section 76 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No.208/1977-Customs, dated the 1st October, 1977, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1318, dated the 1st October, 1977, namely:-

In the said notification, in paragraph 2, in clause (c), for the words “Gauriphanta and Dharchula”, the words “Gauriphanta, Dharchula, Bhithamore and Barhni” shall be substituted.

*For more details, please follow:h*

<https://taxinformation.cbic.gov.in/view-pdf/1009571/ENG/Notifications>

## **Notification**

### **Customs (N.T.)**

#### **Notification No. 107/2022-Customs (N.T.)**

**Dated 13th December 2022**

The Central Government seeks to notify Kakrawah as LCS for clearance of any class of goods imported or exported by land by amendment of Principal Notification No. 63/1994-Customs (N.T.) dated 21st November, 1994

S.O.(E).-In exercise of the powers conferred by sub clause (b) and (c) of sub-section (1) section 7 of the Customs

Act, 1962 (52 of 1962), The Central Board of Indirect Taxes and Customs, here by makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.63/1994-Customs (N.T), dated the 21st November 1994, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 830 (E), dated the 21st February, 1994, namely:-

In the said notification, in the opening paragraph, the tenth proviso, namely: -

“Provided also that Kakrawah is appointed as land customs station for the purpose of clearance of baggage, passenger vehicles and tourist vehicles”,

Shall be omitted

*For more details, please follow*

<https://taxinformation.cbic.gov.in/view-pdf/1009572/ENG/Notifications>

## **Notification**

### **Customs (N. T.)**

#### **Notification No. 108/2022-CUSTOMS (N.T.)**

**Dated 15th December 2022**

The Central Government fixes of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver- Reg.

S.O. ... (E).– In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:

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



“Table -1

Sl. No.	Chapter/ heading/ sub-heading/ tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	977
2	1511 90 10	RBD Palm Oil	978
3	1511 90 90	Others – Palm Oil	978
4	1511 10 00	Crude Palmolein	985
5	1511 90 20	RBD Palmolein	988
6	1511 90 90	Others – Palmolein	987
7	1507 10 00	Crude Soya bean Oil	1275
8	7404 00 22	Brass Scrap (all grades)	4904

2. This notification shall come into force with effect from

column (3) thereof, for the purpose of the said section, relating to imported and export goods.

**Schedule I**

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
1	2	3	
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	57.85	55.40
2.	Bahraini Dinar	226.15	212.70
3.	Canadian Dollar	62.00	59.95

the 16th day of December, 2022.

**For more details, please follow:**

<https://taxinformation.cbic.gov.in/view-pdf/1009574/ENG/Notifications>

**Notifications**

**Customs**

**Notification No. 109/2022-CUSTOMS (N.T)**

**Dated 15th December, 2022**

The Central Government Fixes Exchange rate vide Notification No. 109/2022

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 101/2022-Customs(N.T.), dated 1st December, 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 16th December, 2022, be the rate mentioned against it in the corresponding entry in



Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
1	2	3	
		(For Imported Goods)	(For Export Goods)
4.	Chinese Yuan	12.05	11.70
5.	Danish Kroner	12.05	11.65
6.	EURO	89.70	86.55
7.	Hong Kong Dollar	10.80	10.45
8.	Kuwaiti Dinar	278.15	261.45
9.	New Zealand Dollar	54.75	52.35
10.	Norwegian Kroner	08.60	08.30
11.	Pound Sterling	104.20	100.75
12.	Qatari Riyal	23.25	21.85
13.	Saudi Arabian Riyal	22.70	21.35
14.	Singapore Dollar	62.30	60.30
15.	South African Rand	04.95	04.65
16.	Swedish Kroner	08.25	07.95
17.	Swiss Franc	91.00	87.65
18.	Turkish Lira	04.55	04.30
19.	UAE Dirham	23.20	21.85
20.	US Dollar	83.55	81.80



Schedule II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
1	2	3	
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	62.00	60.05
2.	Korean Won	06.55	06.15

**For more details, please follow:**

<https://taxinformation.cbic.gov.in/view-pdf/1009575/ENG/Notification>



# NOTIFICATIONS & CIRCULARS

## Direct Tax

### **Circular**

### **Direct Tax**

**Dated 12th November 2022**

Partial relaxation with respect to electronic submission of Form 10F by select category of taxpayers in accordance with the DGIT (Systems) Notification No. 3 Of 2022

Reference is invited to Notification No. 03/2022 dated 16th July 2022 issued by Directorate of Income Tax (Systems) New Delhi in exercise of powers conferred under Rule 131(1)/ (2) of the Income-tax Rules mandating, inter alia, furnishing of Form 10F electronically.

2. On consideration of the practical challenge being faced by non-resident (NR) taxpayers not having PAN in making compliance as per the above notification, and with a view to mitigate genuine hardship to such taxpayers, it has been decided by the Competent Authority that such category of Non-resident taxpayers who are not having PAN and not required to have PAN as per relevant provisions of the Income-tax Act, 1961 read with Income-tax Rules, 1962, are exempted from mandatory electronic filing of Form 10F till 31st March 2023. For the sake of clarity, it is reiterated that such category of taxpayers may make statutory compliance of filing Form 10F till 31st March 2023 in manual form as was being done prior to issuance of the DGIT (Systems) Notification No. 3 of 2022

**For more details, please follow:**

<https://incometaxindia.gov.in/communications/notification/notification-e-filing.pdf>

# JUDGEMENT INDIRECT TAX

## **Initiation of proceedings under GST for transition of CENVAT Credit being inadmissible under existing law to be quashed: HC**

### **Facts of the case - Usha Martin Ltd. v. Additional Commissioner, Central GST and Excise - [2022] (Jharkhand)**

The proceedings were initiated against petitioner by issuance of show cause notice in Form GST-DRC-01 proposing recovery of transitioned CENVAT credit in terms of Section 73(1) of the CGST Act, 2017 along with interest and penalty. It filed writ petition and raised the question of lack of jurisdiction of the adjudicating authority to decide upon the availment of CENVAT credit by the petitioner.

It was contended that proceedings for wrongful availment of CENVAT Credit had been initiated by revenue under Section 73 (1) of CGST Act instead of relevant provisions of Finance Act read with Rule 14 of Cenvat Credit Rules 2004 and disallowed CENVAT credit carried forward by petitioner by filing TRAN-1.

### **Decision of the case :**

- i. The Honorable High Court noted that as per Section 73 of CGST Act, 2017, the proceeding can be initiated for non-payment of any tax or short payments or for erroneous refund or for wrongfully availing or utilizing input tax credit which are available under CGST Act. However, Section 73 does not speak of CENVAT Credit as CGST Act does not provide for CENVAT Credit rather term has been subsumed in expression input tax credit both relating to supply of good or services. The assumption of jurisdiction to determine whether CENVAT Credit was admissible under existing law by invoking provisions of Section 73 of CGST Act was not proper in the eyes of law.
- ii. Therefore, the Court held that the initiation of proceedings under Section 73 (1) of CGST Act, 2017

against petitioner for transition of CENVAT Credit as being inadmissible under existing law was beyond jurisdiction.

## **Supreme Court granted bail to applicant since investigation was complete for allegations of GST evasion**

### **Facts of the case - Ratnambar Kaushik v. Union of India - [2022] (SC)**

The petitioner filed application seeking bail in the proceedings initiated under Section 132 before the High Court. The allegations against the petitioner were with regard to the transportation of unmanufactured tobacco and it was alleged that such procurement of unmanufactured tobacco was for clandestine manufacture and supply of zarda without payment of leviable duties and taxes. However, the High Court of Rajasthan dismissed the application. Therefore, the petitioner filed special leave petition before the Supreme Court.

### **Decision of the case :**

The Honorable Supreme Court noted that the petitioner was arrested on 21.07.2022 and while in custody, the investigation had been completed. Moreover, the charge sheet had been filed and the alleged evasion of tax by the petitioner under Section 132(1)(i) would be punishable with imprisonment which may extend to 5 years and fine. The Court also noted that the petitioner had already undergone incarceration for more than four months and completion of trial would take some time. Therefore, it was held that the bail should be granted as there can be no apprehension of tampering, intimidating or influencing in view of the fact that evidence to be tendered by the department would essentially be documentary and electronic.

## **HC dismissed writ against non-service of order cancelling GST registration being disputed question of fact**



### **Facts of the case - Uma Shree Tour & Travels v. State of Madhya Pradesh - [2022] (Madhya Pradesh)**

The department passed the order cancelling GST registration of the petitioner. The petitioner filed writ petition before the High Court contending that no opportunity of hearing was granted and order of cancellation of registration was not served. Therefore, it could not avail statutory remedy of revocation of cancellation of registration.

#### **Decision of the case :**

The Honorable high Court noted that SCN was issued and in response to which petitioner preferred a reply which was taken into account by the department. However, the contention of the petitioner that order was not served can't go into writ jurisdiction since it involves disputed question of facts. Therefore, the Court disposed the petition and directed the petitioner to avail remedy under Section 30 of Central Goods and Services Tax Act, 2017 for revocation of cancellation and condonation of delay.

### **HC directed dept. to consider representation of assessee to rectify GSTR-1 as certain entries mistakenly shown in B2C instead of B2B**

### **Facts of the case - T.M.C. - HI - TECH. v. Assistant Commissioner State GST - [2022] (Calcutta)**

The petitioner filed GST returns and while submitting returns, certain inadvertent mistakes were committed. Due to these mistakes, some invoices were not available in GSTR-2A of recipient for which petitioner was advised to correct GSTR-1. But the petitioner was not getting access to online portal and it made requests to department authorities which were not replied by them. Therefore, it filed writ petition before the Court.

#### **Decision of the case :**

The Honorable High Court noted that certain entries of

outward supply were shown in B2C instead of B2B column by the petitioner and said entries were not available in GSTR-2A of recipient. However, the department submitted that no decision on the petitioner's representation has been taken as yet. Therefore, the Court held that department should consider representation to rectify GSTR-1 form of assessee and pass a reasoned order after hearing and the petitioner will also be at liberty to rely upon any decision of the Court of law at the time of hearing.

### **No GST on notice pay recovery by employer being not a consideration for tolerating act of premature quitting of employee: HC**

### **Facts of the case - Manappuram Finance Ltd. v. Assistant Commissioner of Central Tax and Excise - [2022] (Kerala)**

In the instant case, the issue was whether petitioner-employer liable to pay tax on notice pay received from its former employees. The writ petition was filed by the petitioner against the order of appellate authority which rejected the claim for refund made by the petitioner for a refund of GST paid on notice pay received from the erstwhile employees. It submitted that it had no other remedy since the GST Appellate Tribunal has not been constituted.

#### **Decision of the case :**

The Honorable High Court noted that the CBIC has already clarified through Circular No. 178/10/2022-GST, dated 3-8-2022 that amounts recovered by employer not as consideration for tolerating act of such premature quitting of employment but as penalties and therefore employer would not be liable to pay GST on notice pay. The Circular is binding on Department and since Circular is clarificatory in nature so it would apply retrospectively. Therefore, it was held that order rejecting refund of GST paid on notice pay received from erstwhile employees was liable to be quashed.

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# JUDGEMENT DIRECT TAX

## **Time-barred appeal should be allowed if it involves a substantial question of law: HC**

### **Facts of the case - PCIT v. Soorajmul Nagarmull - [2022] (Calcutta)**

The assessee filed its return of income for the relevant assessment year. The Assessing Officer (AO) issued notices and asked the assessee to explain why the interest payable on the loan should not be treated as cessation of liability.

After considering the assessee's reply, AO concluded that there was the cessation of trading liability and thus interest was deemed to be profit and gain of business or profession. The assessee filed an appeal against such an addition. CIT(A) granted relief to the assessee which was further affirmed by the Tribunal.

Aggrieved by the order of Tribunal, an appeal was filed by AO before the Calcutta High Court.

The appeal was filed after a delay of 627 days along with an application to condone the delay. The assessee filed an affidavit-in-opposition objecting to the prayer for condonation.

### **Decision of the case :**

- i. The Calcutta High Court held that the explanation offered by the AO for not preferring the appeal within the period of limitation wasn't satisfactory. Thus, it is open for the court to dismiss the appeal as time-barred.
- ii. However, it will not be appropriate to reject an appeal based on a technical ground when the statute stipulates the requirements to consider the existence of a substantial question of law.
- iii. The High Court has to consider whether any substantial question of law arises for consideration if an appeal has been filed under Section 260A of the Income Tax, Act, 1961. Thus, the request for condonation of delay was to be allowed.

## **Any amount due against permission to use trademark in relation to licensed products shall be treated as operational debt: NCLAT**

### **Facts of the case - Somesh Choudhary, Suspended Director at Global Fragrances (P.) Ltd. v. Knight Riders Sports (P.) Ltd. - [2022] (NCLAT- New Delhi)**

In the instant case, a Corporate Insolvency Resolution Process (CIRP) was initiated against Corporate Debtor. A license agreement was entered into between the corporate debtor and the respondent, who was the registered trademark owner of the trademark (KKR).

In terms of the agreement, respondent granted an exclusive right and a licence to use its trademark with the licensed products manufactured and sold by the corporate debtor, and the corporate debtor was obliged to pay certain consideration in form of 'compensation' to respondent as stated in the agreement.

Later, respondent raised invoices for an amount towards minimum guaranteed royalties payable by corporate debtor under license agreement. Despite several reminders corporate debtor failed in making payment. Consequently, respondent issued a demand notice and filed application under section 9 and same was admitted by NCLT.

Pursuant to which a appeal was preferred claiming that the appellant-director of the corporate debtor submitted that the claim arose out of non-payment of Minimum Guaranteed Royalties, which did not arise out of non-payment of any goods or services and, therefore, could not be an operational debt.

### **Decision of the case :**

- iv. Hon'ble NCLAT observed that, corporate debtor was permitted to use trademark in relation to its licensed products, there was temporary transfer/permission to use, constituting 'provision of service' rendered by respondent and, therefore, same fell within definition of service and any amounts 'due

and payable' arising out of such service was an operational debt.

- v. Further, Hon'ble NCLAT held that granting an exclusive right and license to corporate debtor to use trademark in association with licensed products had a direct nexus with business operations and sales also with actual supplied products by corporate debtor and, therefore, claim in respect of such provisions of 'goods and services', under terms of agreement, fell within ambit of definition of operational debt.

### **Marked-to-market loss from forward contracts deductible under Section 37(1): Delhi High Court**

#### **Facts of the case - PCIT v. Simon India Ltd. - [2022] (Delhi)**

The assessee was engaged in the business of providing engineering, consultancy, and related services. The assessee claimed a loss of Rs. 9.20 crores against a forward contract entered into to hedge the risk against foreign exchange fluctuations to cover the exports and imports. Out of the total loss, the loss of Rs. 7.12 crores was related to unmatured forward contracts.

The Assessing Officer (AO) held that the loss on forward contracts was speculative and to be disallowed in terms of the CBDT Instruction No. 3/2010. The said Instruction explained 'Marked to Market' as a concept where financial instruments are valued at market rate to report their actual value on the date of reporting. Such 'Marked to Market' losses represent notional losses and are required to be added back to compute taxable income.

On appeal, the CIT(A) set aside the disallowance. On further appeal, the Tribunal concurred with the decision of the CIT(A) and held that the loss on forward contracts could not be disallowed in terms of the CBDT Instruction. Aggrieved-AO filed the instant appeal before the Delhi High Court.

The main questions raised before the High Court were whether the losses on account of foreign exchange fluctuations on forward contracts are allowable under Section 37(1) and covered as hedging transactions under Section 43(5)(a) or should be disallowed as speculation losses under Section 43(5) of the Act in view of the CBDT Instruction No. 3/2010?

### **Decision of the case :**

1. The High Court held that there is no dispute that the forward contracts were entered into by the assessee to hedge against foreign exchange fluctuations. Thus, the transaction falls within the exceptions of proviso (a) to Section 43(5) of the Act and should not be treated as speculative. The Court held that the forward contracts, in the present case, are hedging transactions.
2. On the issue of the deductibility of the loss, the High Court relied on the case of the CIT v. Woodward Governor India Pvt. Ltd. [2009] (SC), wherein the Supreme Court had referred to AS-11. In terms of AS-11, the exchange difference arising on foreign currency transactions must be recognized as income or expense in the period in which they arise, except in cases of exchange differences arising on repayment of liabilities for acquiring fixed assets.
3. Applying the above ratio, the High Court held that as the assessee was reinstating its debtors and creditors in connection with the execution of contracts entered into with foreign entities based on the value of the foreign exchange, the loss on account of forward contracts would require to be recognized.
4. The Court upheld the order of CIT(A) and the Tribunal in finding that the loss, on account of Forward Contracts, cannot be considered speculative, and the AO had erred in disallowing the same.

### **High Court releases attached bank accounts as Fixed deposit suffices to protect revenue interest**

#### **Facts of the case - FCS Manufacturing (India) (P.) Ltd. v. Deputy Director of Income-tax, (Investigation) - [2022] (Gujarat)**

Assessee-company engaged in the business of manufacturing injection moulding machines. During the relevant assessment year, a search was conducted on the assessee's premises and books of accounts were seized by the authorities. The bank accounts of the assessee were also attached.

The attachment led to the stoppage of payment of day-to-day expenses and creditors and instigated the stoppage

of business. As the balance in bank accounts was more than the demand raised by the department, a request pertaining to the release of such an attachment was made but failed.

Aggrieved by order of the Assessing Officer (AO), the assessee preferred a writ petition to the Gujarat High Court.

### **Decision of the case :**

1. The Court held that the AO must exercise the powers relating to provisional attachment only in appropriate cases after recognising valid reasons. These provisions cannot be implemented merely based on the phraseology of the section, and such provisional orders cannot be passed based only on the opinion of the AO.
2. Although the provisional attachment order was passed after obtaining all the required approvals, the attachment is proven drastic under the said circumstances. The attachment has become a hindrance in the continuation of the business of the assessee.
3. It was held that the interest of the revenue could be protected by directing a particular amount furnished by way of a Bank Guarantee to the authority. Provisional attachment of both bank accounts is unnecessary if the Fixed Deposit furnished is sufficient to protect the revenue's interest.
4. Therefore, the assessee was directed to provide an undertaking to the department stating to fulfill the obligations in future if the assessments result in enhanced demand. The assessee made fixed deposit with one of the bank accounts, and thus, AO was ordered to release the other bank account.

### **Demerger sanctioned by NCLT is tax-compliant only if conditions in Sec. 2(19AA) are satisfied**

#### **Facts of the case - Grasim Industries Ltd. Vs. DCIT [2022] (Mumbai - Trib.)**

Assessee-company engaged in the business of viscose staple fiber, chemicals, textiles, etc. The Board of Directors of the assessee approved the scheme or arrangement of demerger of the financial service segment of the assessee.

The scheme of such a demerger was subsequently approved by the National Company Law Tribunal [NCLT]. In this arrangement, the assessee transferred its assets, employees, and some liabilities and issued equity shares to the shareholders.

While the scheme in public domain, Assessing Officer (AO) issued a notice to assessee asking the assessee to submit the details with respect to the composite scheme of merger and demerger. AO noticed that the financial service business does not fulfill the requirement of an undertaking as per Explanation 1 to Section 2(19AA). Thus, he held that the demerger of the "financial services business" by assessee to the resulting company is not a tax-compliant demerger.

### **On appeal, the CIT(A) confirmed the order of the Tribunal. The matter was reached before the Mumbai Tribunal.**

#### **Decision of the case :**

- i. The Tribunal held that the order of NCLT merely approves the scheme of demerger. Such approval of NCLT does not preclude revenue from examining the scheme for tax compliances. Determining the tax liability with respect to a demerger is AO's responsibility. He is duty-bound to examine the terms and conditions of the scheme in accordance with chargeability of deemed dividend and tax neutrality.
- ii. The assessee contended that AO was rewriting the scheme which was already approved by NCLT. However, there was no such attempt by him to tinker with the scheme approved by NCLT. The circular of the Ministry of Corporate Affairs and instructions by the CBDT also states that if revenue has any objections to the scheme, the matter should be placed before NCLT.
- iii. Both these above instructions and circular does not prevent AO from applying the provisions of the income tax act to the return of income of the assessee filed in compliance with the scheme approved by NCLT.
- iv. Therefore, even if a scheme is approved by Adjudicating Authority, it cannot override the provision of the existing provisions of the act. Hence, the revenue's appeal is allowed.





# Tax Calendar

## Indirect tax

Returns	Due Date
GSTR-3B (Nov, 2022)	Dec 20th, 2022
GSTR-5A (Nov, 2022)	Dec 20th, 2022
RFD-10	18 Months after the end of quarter for which refund is to be claimed

# Tax Calendar

## Direct tax

Returns	Due Date
<b>30 December 2022</b>	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of November, 2022
<b>30 December 2022</b>	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of November, 2022
<b>30 December 2022</b>	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of November, 2022
<b>30 December 2022</b>	Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2021 to December 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.
<b>30 December 2022</b>	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S in the month of November, 2022
	Note: Applicable in case of specified person as mentioned under section 194S
<b>31 December 2022</b>	Filing of belated/revised return of income for the assessment year 2022-23 for all assessee (provided assessment has not been completed before December 31, 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

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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.

## Disclaimer:

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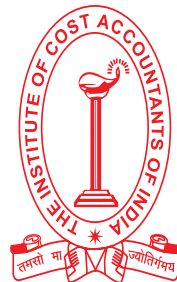
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