



*Celebrating 7th Year of
Implementation of GST*

OBSERVANCE OF GST DAY 2023

1st JULY 2023

TAX **Bulletin**

JULY, 2023

★ ★ **VOLUME - 139** ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

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

Ph: 091-33-2252 1031/34/35/1602/1492

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

Ph: 091-11-24666100

MISSION STATEMENT

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

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.

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



*Celebrating 7th Year of
Implementation of GST*

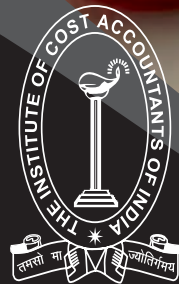
OBSERVANCE OF GST DAY 2023

1st JULY 2023

TAX Bulletin

JULY, 2023

★ ★ VOLUME - 139 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

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

Ph: 091-33-2252 1031/34/35/1602/1492

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

Ph: 091-11-24666100



CMA Vijender Sharma

President

The Institute of Cost Accountants of India

MESSAGE FROM THE PRESIDENT

The 6th Goods and Services Tax (GST) Day was celebrated at the Vigyan Bhawan, Delhi with the vision GST@6 सरलीकृत कर, समग्र विकास with Hon'ble Union Minister for Finance & Corporate Affairs, Smt. Nirmala Sitharaman presiding over as the Chief Guest and Hon'ble Union Minister of State for Finance, Shri Pankaj Chaudhary as the Guest of Honour. Senior officials from Ministry of Finance, Central Board of Indirect Taxes and Customs (CBIC) and Central Board of Direct Taxes (CBDT) and other government departments were present. What I adored the most was the appreciation by the FM during her speech, wherein she called taxpayers co-equal and main force driving the GST success story.

This endeavor of the Government in celebrating the GST day is echoed in our Institute as well. We here celebrate the observance of GST day through our chapters and regional offices as well as at Kolkata and Delhi office through conduct of seminars, webinars and discussion sessions.

I would like to appreciate the efforts of the Tax Research Department that among the various activities, the department also publishes a special edition of the Tax Bulletin every year on 1st of July, marking the observance of GST Day. The Tax Bulletin contains articles informing about the recent developments in taxation, both direct and indirect taxes. It also contains the latest tax rulings, circulars, judgements, press releases, opinions and decisions from Government agencies such as CBIC, CBDT, GST Council to name a few. I sincerely appreciate this effort of TRD and wish them all the luck for future.

Thank You

CMA Vijender Sharma

President

The Institute of Cost Accountants of India

01.07.2023

FROM THE TAX RESEARCH DEPARTMENT

MESSAGE

GST day has been observed by the Tax Research Department of the Institute since its inception in 2017. It has been percolated through the Regional Councils and Chapters who organize day long physical seminars and their locations which huge member participations. The dignitaries in this generally include senior level officials from the GST department of both Central and State Governments. All the sessions have been very informative and enriching for the members. At the headquarters National Level Seminar are organized at various locations year on year.

With the onset of the pandemic in 2020, this mode of observance of GST day has taken a shift and has moved onto online webinars and webints. The audience still remains the same but the pool of knowledge contributors has extensively enlarged by professionals and Government official all across the country participating and providing their inputs.

Publishing of the Special GST Edition of the Tax Bulletin has also been an activity in this regard which requires a special mention here. The articles in this bulletin addresses the issues of the practioners and GST professionals and is designed in a fashion as to bring the whole of GST updates and solutions in one platter.

The Tax Research Department is thankful to the Council for its incessant support in all these activities and we surely look up to them for more guidance and motivation. Words would fall short for us to explain how overwhelming this experience is, to be channelized in the deliverance by the learned Resource Pool and Industry Experts.

Thank You.

Regards

Tax Research Department

01.07.2023

TAXATION COMMITTEES 2022 - 2023

Indirect Taxation Committee

Permanent Invitees

CMA Vijender Sharma - President
CMA Rakesh Bhalla - Vice-President

Chairman

1. CMA Chittaranjan Chattopadhyay

Members

2. CMA Rakesh Bhalla, Vice President
3. CMA Biswarup Basu
4. CMA P Raju Iyer
5. CMA Ashwin G. Dalwadi
6. CMA Debasish Mitra
7. CMA H. Padmanabhan
8. CMA Papa Rao Sunkara
9. CMA (Dr.) V. Murali
10. CMA (Dr.) K Ch A V S N Murthy
11. CA Mukesh Singh Kushwah, Government Nominee
12. Shri Jyoti Prakash Gadia, Government Nominee
13. CS Makarand Lele, Government Nominee
14. CMA Venkateswara Ramakrishnan (Co-opted)
15. CMA Ashok B. Nawal (Co-opted)
16. CMA V.S. Datey (Co-opted)
17. CMA Debasis Ghosh (Co-opted)
18. CMA Sanjay Singh (Co-opted)
19. CMA Mrityunjay Acharjee (Co-opted)
20. CMA T.K. Jagannathan (Co-opted)

Secretary

CMA Rajat Kumar Basu, Addl. Director

Direct Taxation Committee

Permanent Invitees

CMA Vijender Sharma - President
CMA Rakesh Bhalla - Vice-President

Chairman

1. CMA (Dr.) Ashish P. Thatte

Members

2. CMA Ashwin G. Dalwadi
3. CMA Neeraj D. Joshi
4. CMA Niranjana Mishra
5. CMA H. Padmanabhan
6. CMA Papa Rao Sunkara
7. CMA Chittaranjan Chattopadhyay
8. CMA Rakesh Sinha (Co-opted)
9. CMA Subhasish Chakraborty (Co-opted)
10. CMA Arundhati Basu (Co-opted)

Secretary

CMA Rajat Kumar Basu, Addl. Director

TEAM TAX RESEARCH DEPARTMENT

CMA Rajat Kumar Basu	-	Additional Director - Tax Research
CMA Tinku Ghosh Das	-	Deputy Director - Tax Research
CMA Priyanka Roy	-	Assistant Director - Tax Research
CMA Debabrata Das	-	Officer - Tax Research
Ms. Mukulika Poddar	-	Officer - Tax Research

CONTENTS

ARTICLES		
INDIRECT TAX		
01	GST ON ROOMS OF CLINICAL ESTABLISHMENTS	
	FCMA Debasis Ghosh	Page - 1
02	INSPECTION SEARCH AND SEIZURE UNDER GST LAW	
	CMA Virendra Chaturvedi	Page - 3
PRESS RELEASES		
	Indirect Tax	Page - 9
	Direct Tax	Page - 11
NOTIFICATIONS AND CIRCULARS		
	Direct Tax	Page - 13
JUDGEMENTS		
	Indirect Tax	Page - 19
	Direct Tax	Page - 23
TAX CALENDAR		
	Indirect Tax	Page - 29
	Direct Tax	Page - 29
PUBLICATIONS		
	E-Publications of Tax Research Department	Page - 30

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



GST ON ROOMS OF CLINICAL ESTABLISHMENTS



FCMA Debasis Ghosh
Cost Accountant



With effect from 18th July 2012, services provided by a clinical establishment by way of providing rooms [other than Intensive care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neonatal Intensive Care Unit (NICU)] having room charges exceeding Rs 5000/ per day to a person receiving health care services have been subjected to an overall rate of GST of 5% on the condition that the credit of input tax charged on goods & services used in supplying the said service has not been taken.

Simultaneously, an amendment has been brought about in serial no.74 of notification no.12/ 2017-Central Tax (Rate) dated 28/06/2017 to specify that services by way of health care services by clinical establishment shall not apply to the services by way of providing room [other than Intensive care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/ Neonatal Intensive Care Unit (NICU)] having room charges exceeding Rs.5000/ per day to a person receiving health care services. This would mean the exemption to the health care services in terms of clause (a) serial no.74 of the said notification shall not apply to services provided by clinical establishments by way of providing room other than those specified, having room charges exceeding Rs.5000/ per day to a person receiving health care services.

The above amendments appear to contradict

the concept of health care services in as much as no person would be staying in a room of a clinical establishment without having the requirement of health care services. Healthcare services provided by a clinical establishment that includes hospitals and nursing homes also apply to all patients staying there to receive healthcare services. The withdrawal of exemption for rooms in clinical establishments with room tariff exceeding Rs-5000/- or more per day is a forcible measure to deny the exemption that was hitherto applicable to clinical establishments irrespective of room tariff.

What appears to be more of an obvious contradiction to the concept of health care service envisaged under the GST law is flowing itself from the amendments of 18th July 2022, which specifically state that exemption from health care service will not be applicable by way of supply of rooms, other than those specified, having room charges exceeding Rs 5000/ per day to a person receiving health care services. Consequent to the said levy, the amendment has been brought about to take out of the scope of the exemption for the health care services in respect of such rooms. Therefore, all the amendments made in this regard do not at any time deny that the patients admitted in the taxable rooms are also in receipt of health care services; but to justify the levy, have denied the exemption of health care services to such rooms by way



of amendment. Therefore, so long these amendments admit that the patients undergoing health care services in the taxable room also receive health care services, the exemption from health care services cannot be denied in as much as it cannot under any logical analysis be said that for the sole reason of a patient undergoing treatment in a room with a higher tariff, the treatment provided to him, he is not receiving health care services that are exempt.

As mentioned earlier, the amendments do not appear to

be only discriminatory but also not issued in the public interest for the resultant effect of health care services becoming costlier based only on room rates when per se health care services are exempt under GST.

The GST Council may it deems so appropriate. bring about the necessary amendment to restore parity and uniformity in the taxation of health care services.



INSPECTION SEARCH AND SEIZURE UNDER GST LAW



*CMA Virendra Chaturvedi,
Cost Accountant*



GST officer thoroughly checks the GST return of a particular taxpayer based on certain risk parameters to verify its correctness. If he finds any errors, he will issue a scrutiny notice Form GST ASMT 10 seeking an explanation within a period of 30 days from the date of the Notice or extended time. Where possible, Quantify the amount of tax and any other amount payable. On receipt of the Notice Registered person may accept the discrepancies & pay tax and interest or furnish an explanation for the discrepancies in Form ASMT 11. Where the explanation furnished by Assessee is acceptable to Proper Officer (PO), PO shall inform accordingly in GST ASMT-12, and no further action is taken, but If PO is not satisfied with the reply / Explanation of Assessee, In such case, PO can't pass assessment order raising demand but he may recourse to any of the provision like audit u/s 65, Special audit u/s 66, or Inspection, Search & Seizure u/s 67 or Proceed to determine tax and other dues u/s 73 (Non-fraud case) or u/s 74 (Fraud case).

The Commissioner or an Authorized Officer can purchase any goods and/or services from a taxable person. This will be done to check the issue of Tax Invoices, whether they are maintained correctly, and whether the GST amount is clearly displayed. When the goods are returned, the amount will have to be refunded by the taxable person, and the sales invoice will be canceled. Provision has been made in subsection 12 of Section 67 of the CGST Act.

The GST Act 2017 has given enormous power

in the hand of GST Officers, even to arrest the person evading tax or claiming fake input tax or in case of fraud. In the following article will briefly discuss the Provisions of Inspection, Search & Seizure under Section 67 of the CGST Act.



The term '**Inspection**' is the act of examining something, often closely, Search denotes an action of Government agencies to go, look through or examine carefully a place, area, person, object etc. In order to find something concealed or for the purpose of discovering evidence of concealment of GST. But the search of a person or vehicle or premises etc, can only be done under the proper and valid authority of law. Seize means to take possession of goods through legal process, contrary to the wishes of the owner or to take forcible possession.

Section 67 of the CGST Act gives the power of Inspection, Search and Seizure to Proper Officer. In Circular No. 3/3/2017 – GST dated 05 July 17, Proper officer has been defined under the Central

Goods and Services Tax Act, 2017 or the rules made there under. For the function under section 67 of the CGST Act, proper officer is designated as an officer, not below the rank of Joint Commissioner. So any officer below the rank of Joint Commissioner does not have any power under section 67 until he/she was authorized by a Proper officer.

If the Proper Officer has reasons to believe that the person concerned has suppressed any transaction of supply or stock of goods in hand, claimed excess input tax credit, contravened any provision of the CGST/SGST Act to evade tax, A transporter or warehouse owner has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax, he may authorize in writing to any other Officer of CGST/SGST to inspect any places of business of such taxable person. Such written authority by a Proper Officer to conduct a search is generally called a search warrant. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the details like the violation under the Act, the premise to be searched, the name and designation of the person authorized for search, the name of the issuing officer with full designation along with his round seal, date and place of issue, serial number of the search warrant, period of validity i.e. a day or two days etc. Section 67(10) of the CGST/SGST Act prescribes that searches must be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973. Section 100 of the Code of Criminal Procedure describes the procedure for search.

Reason to Believe

As per the provision of Search and Seizure under GST Law, a Proper Officer can use his power only if he has reasons to believe that the person concerned has contravened any GST law provision, so here the question arises what is “Reason to Believe”? Before issuing authorization for any Search, the Proper Officer has to disclose the material on which his belief was formed. Though it is not required to record invariably in each case. However, it would be better if the materials/information etc, are recorded before the issue of a Search Warrant or before conducting a search.

In the case of Delhi HC in R.J. Trading Co Vs. Commissioner of CGST, Delhi North [W.P.(C) No 4847 of 2021 dated 20.07.21], it was held that no search can be conducted by the Revenue Dept where the jurisdiction ingredients are

absent. Further reason to believe does not carry some connotation as a reason to suspect, and the standard of belief is that of a reasonable and honest person and not one based on mere suspicion.

Similarly, in the case of “Pukhraj v D.R.Kohali, the Supreme Court observed that When we are dealing with a question as to whether the belief in the mind of the officer who effected the seizure was reasonable or not, we are not sitting in appeal over the decision of the said officer. All that we can consider is whether there is ground which prima facie justifies the said reasonable belief.”

Hon’ble Supreme Court in Sheo Nath Singh v. Appellate Asstt. CIT [1971] 82 ITR 147/AIR 1971 SC 2451 held that the Court can examine the materials to find out whether an honest and reasonable person can base his reasonable belief upon such materials, although the sufficiency of the reasons for the belief cannot be investigated by the Court.



Instructions No. 01/20-21 (GST Investigation) Dated 02.02.21 to be followed during Search Operation

It is as per Instructions No. 01/20-21 (GST Investigation) Dated 02.02.21, the following principles should be observed during the Search:

- A valid and justifiable reason for authorizing a search - No search of premises should be carried out without a valid and justifiable reason for authorizing a search warrant issued by the Competent Authority.
- The Search of Residence- In case of a search of residence, There should invariably be a lady officer accompanying the search team



- No Coercive Measure against Family Members -In the case of Pares Nathalal Chauhan vs the State of Gujrat (2020(32) G.S.T.L. 342 (Guj.)) Gujarat HC held that Sec 67(2) does not empower the officer concerned to record the statement of family members through force or coercion or to record their conversation in their mobile phone. It is not permissible for the authorized officer to use coercive measures against family members to find out the whereabouts of the taxable person.
- Circular 122 /2019 states that communication from the CBIC offices for 'Search authorization, Summons, Arrest Memo, Inspection Notices and letters issued in the course of enquiry shall mandatorily bear electronically generated "Document Identification Number (DIN)".
- The name and premises of such a person mentioned on the search warrant can only be searched.
- The Officers, before starting the search, should disclose their identity by showing their identity cards to the person in charge of the premises.
- The Search Warrant should be executed before the start of the search by showing the same to the person in charge of the premises, and his signature should be taken on the body of the Search Warrant in token of having seen the same. The signatures of at least two witnesses should also be taken on the body of the Search Warrant.
- The search should be made in the presence of at least two independent witnesses of the locality. If no such inhabitants are available /willing, the inhabitants of any other locality should be asked to be witnesses to the Search. The witnesses should be briefed about the purpose of the Search.
- Before the start of the Search proceedings, the team of officers conducting the search and the accompanying witnesses should offer themselves for their personal search to the person in charge of the premises being searched. Similarly, after the completion of the Search, all the officers and the witnesses should again offer themselves for their personal search.
- After the Search is over, the Search Warrant duly executed should be returned in original to the issuing

Officer with a report regarding the outcome of the Search. The names of the Officers who participated in the Search may also be written on the reverse of the Search Warrant.

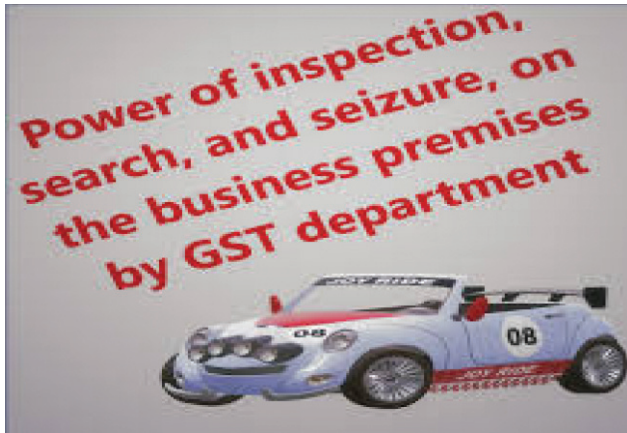
- The issuing Authority of Search Warrant should maintain a register of records of Search Warrant issued and returned, and used Search Warrants should be kept in records.
- A Panchnama / Mahazar of the proceedings of the Search should necessarily be prepared on the spot. A list of all goods, and documents recovered and seized/detained should be prepared and annexed to the Panchnama/Mahazar. The Panchnama / Mahazar and the list of goods/ documents seized/detained should invariably be signed by the witnesses, the in-charge/ owner of the premises before whom the search is conducted and also by the officer(s) duly authorized for conducting the search.
- A copy of the Panchnama / Mahazar, along with its annexure, should be given to the person in-charge/ owner of the premises being searched under acknowledgment.

Confiscation & Seizure of Goods (Sec 67(2) & Rule 139

An Officer carrying out a search has the Power to Search for and seize goods, documents, books, or things which, in his opinion, shall be useful for or relevant to any proceedings under GST Law. Goods become liable to confiscation when a person supplies or receives any goods in contravention of any of the provisions of the GST Act or Rules made there under leading to evasion of tax, If it is not practicable to seize items, the authorized officer may serve an order of prohibition in Form GST INS- 03 on the owner/custodian of the goods for not removing, parting with or otherwise dealing with goods except with prior permission of such officer.

Here it is a point to note that the expression "things" occurring in Sec 67(2) of the CGST Act would cover cash also. GST authorities are empowered to seize cash from assessee, and unless until the investigation is carried out and the matter is finally adjudicated, the question of releasing cash does not arise. It was held in the case of Madhya Pradesh HC in Kanishka Matta vs UOI (Writ petition no.8204/2020 dated 26.08.20)

But In the Recent case of ARVIND GOYAL CA Vs UNION OF INDIA & ORS. (Delhi High Court),W.P.(C) 12499/2021, A Division Bench of the Delhi High Court recently directed to return the amount taken in possession by GST Officers with interest, noting that the GST Officers cannot take possession of cash found during the Search, under Goods and Services Tax Act, 2017 During the course of the Search, at the residence of the petitioners and directed the petitioner to submit the bank guarantee for release of currency.



Power to seal or break the Premises

During the Search, the Officer has the power to break and open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out a Search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it is denied.

In the case of Singhi Buildtech Pvt Ltd Vs Commissioner of Commercial Tax (2019 (22) GSTL.10(KAR)), Karnataka HC held that the Officer shall not seal premises unnecessarily.

In the case of M/s Napin Impex Pvt Ltd Vs Commissioner of DGST, Delhi & Ors, (W.P. (C) 10287/ 2018 Dated 28.09.18 Delhi HC Directed to hand over of premises sealed for over a month, sealing cannot assume "indefinite" life.

In the case of Anopsinh Kiritsinh Sarvaiya Vs State of Gujarat (R/Special application No. 2705 of 2020 dated 06.02.2020, Gujarat HC held that GST Authorities should be concerned with goods or other articles stored in godown, which may be liable to confiscation and there was no point in keeping godown closed with a seal affixed on it.

Period of Seize and release of Documents , Books or Things etc

As per the 2nd provision of sec 67(2), Seized Documents, Books or things will be retained by the Officer only for the period necessary for examination and for any inquiry or proceeding under GST law, In the case of Universal Dyechem Pvt Ltd vs UOI (2021(46) G.S.TL.119(Guj)) Gujarat HC held that seized documents, books or things produced by a taxable person which have not been relied upon for the issue of notice shall be returned within 30 days of issue of SCN. As per section 67(7), seized goods shall be returned within 6 months of such seizure if no notice is issued within 6 months to the person from whose possession they were seized, period of 6 months may be extended by the proper officer for a further period not exceeding 6 months if sufficient cause being shown.

Photo Copy of Seized Documents

A taxable person shall be entitled to make copies thereof or take extracts therefrom of any documents seized in the presence of an authorized Officer at such time and place decided by the Officer, but GST Officer can deny making copies of documents where the

Proper Officer is of the opinion that making such copies or taking such extracts may prejudicially affect the investigation as mentioned in Section 67(5). But most of the cases like High Ground Enterprises Ltd Vs UOI, Harshvadan Rajnikant Trivedi Vs UOI AND Manish Lalit Kumar Bavishi Vs Additional Director General GST Authorities directed to make available the copied of seized documents.

As per section 67(6) of GST Act, The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be. If a taxable person executes a bond for the value of goods in Form GST INS-04 and furnishes security in the form of a Bank Guarantee equivalent to the amount of tax, interest and penalty payable or pays applicable tax, interest and penalty payable , seized goods can be released on provisional basis but if the taxable person fails to produce the goods on appointed date and place indicated by PO Security shall be en-cashed and adjusted against the tax, Interest and penalty and fine if any payable in respect of such goods.



In the case of the State of U.P. Vs Kay Pan Fragrance Pvt Ltd (Civil Appeal No 8941, 8942 and 8944 of 2019 dated 22 Nov 19, Hon'ble SC held that proper mechanism already provided for in the CGST Act and the rules must be followed for release on a provisional basis upon execution of a bond and furnishing of security , in such manner and of such quantum (even upto the total value of goods involved), respectively as may be prescribed or on payment of applicable taxes, interest and penalty maybe as the case may be as predicated in section 67(6) of the Act.

In the case of Quality Enterprise Vs Assistant state tax officer (W.P.(C) No 18212 of 2020 dated 18.09.20, Kerala HC Held that the Bank Guarantee furnished before the department shall not be en-cashed until orders are passed by the first Appellate Authority as directed and the order communicated to the petitioner.



Seizure and Disposal of goods having perishable or Hazardous Nature

As per section 67(8) the Proper Office may dispose of the goods as soon as may be after its seizure under section 67(2) of the CGST Act in the following circumstances

- I. If there is a constraint on the storage space of the goods or
- II. Goods are of perishable or Hazardous nature
- III. The value of goods depreciates with the passage of time or
- IV. Any other relevant reason for not keeping the goods after the seizure

Notification No. 27/2018-Central Tax dated 13.06.2018 has Notifies categories of such goods which shall, as soon as may be after its seizure under section 67(2) of the CGST Act, be disposed of by the Proper Officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods. In this notification total of 17 categories of goods are specified. Inventory of such goods to be signed and maintained by the person from whose custody such goods are seized.

As per Rule of CGST 141 (1), Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.

141(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the proper officer may dispose of such goods or things, and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

CAN GST OFFICIALS FORCE FOR DEPOSIT OF GST AT THE TIME OF SEARCH AND SEIZURE

GST Officials cannot force the Assessee to deposit the tax at the time of Search and Seizure proceedings. Even if they can't ask for a Post-dated cheque. Such kind of collection/recovery of tax is illegal, and the same is violative to Article 265 of the Constitution of India, which provides that no tax can be recovered without the authority of Law. In the case of M/s Remark Flour Mills Private Limited V State of Gujrat (R/Special Civil Application No 4835/2018) has slammed the practice of collecting post-dated cheques during Inspection/Search & Seizure proceedings. The Hon'ble High Court held that the practice of collecting post-dated cheques during the raid is not permissible means of collection of revenue. A similar view was earlier taken by the Hon'ble Gujarat High Court in the VAT Regime as well in the case of Atul Motors v State of Gujarat (R/Special Civil Application no 959/2015) and Automark Industries (i) Ltd v State of Gujrat (2014) SCC online Gujarat 14217.

Documents asked during Search & Seizure

In General taxable person is asked to provide the Books of Accounts and records required to be maintained by the taxable person, including Trial balance, duly Audited Annual Financial Statements, Tax Audit reports, Cost Audit reports etc .

Precautions during Search & Seizure

Taxable Person should be calm and obedient and shall not hide any documents and records and provide correct information to the Proper Officer. Taxable Person should not interfere or stop any officer conducting the Search. The Search Officer cannot search any other property not mentioned in the Search Warrant. A taxable person can ask the Search Officer to show his identity card, and before the start of the Search proceedings, the team of Officers conducting the Search and the accompanying witnesses should offer themselves for their personal search to the person in charge of the premises being searched. Similarly, after the completion of the Search all the officers and the witnesses should again offer themselves for their personal search. The taxable person should cross verify

the list prepared of all goods, documents recovered and seized/detained

Summon

Even after the Search, Proper Officer has full right to summon and question any person and ask for Information and documents he may deem fit. Where any summons has been issued by the Proper Officer, the person to whom such summon is issued is required to present himself before the officer and provide required evidence or documents when required.

Conclusion

Search and Seizure adversely affect the Taxable person's reputation and paralyze his business activities. Therefore while exercising such powers, the authorities should be rather careful and cautious and must exercise it strictly under the authority of the law. Inspection, Search or Seizure can only be carried out by a proper officer as envisaged by the legislature, only when such proper officer has 'reason to believe' regarding the existence of such exceptional circumstances.



Press Releases

Indirect Tax

CBIC releases National Time Release Study (NTRS) 2023 report

Posted On: 15 JUN 2023 3:30PM by PIB Delhi

Shri Vivek Johri, Chairman, Central Board of Indirect Taxes and Customs (CBIC) along with other Members of the Board released the National Time Release Study (NTRS) 2023 report.

Time Release Study (TRS) as a performance measurement tool aims to present quantitative measure of the cargo release time, defined as the time taken from arrival of the cargo at the Customs station to its out of charge for domestic clearance in case of imports and arrival of the cargo at the Customs station to the eventual departure of the carrier in case of exports.

NTRS 2023 presents port-category wise average release time for the current year, based on the sample period of January 1-7, 2023 (both days included), comparing the same to the performance during the corresponding periods of 2021 and 2022 to, inter alia, assess the progress made towards the National Trade Facilitation Action Plan targets; identify the impact of various trade facilitative initiatives, notably “Path to Promptness”; and identify the challenges to more expeditious reduction in release time.

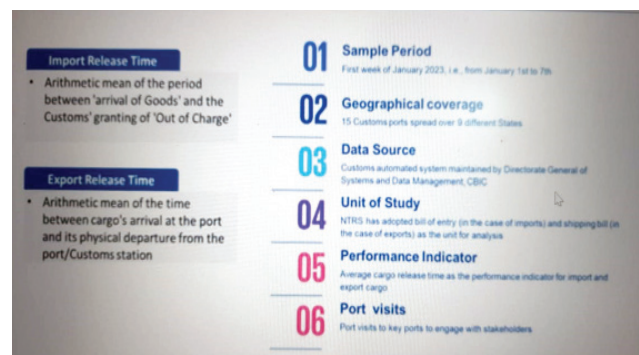
The ports included in the study represent seaports, air cargo complexes (ACCs), inland container depot (ICDs) and integrated check posts (ICPs) which account for approximately 80 percent of bills of entry and 70 percent of shipping bills filed in the country.

The average import release time has continued to improve, achieving 20 percent reduction in release time for ICDs; 11 percent reduction for ACCs; and 9 percent reduction for seaports in 2023 over 2022. In absolute terms, the import release time for seaports, ICDs, ACC and ICPs is 85:42 hrs, 71:46 hrs, 44:16 hrs and 31:47 hrs, respectively. The measure of standard deviation is found to be lower, indicating a greater certainty of expeditious release of imported cargo.

Findings of NTRS 2023 reaffirms the 3-fold ‘Path to

promptness’ comprising advance filing of import documents enabling pre-arrival processing, risk-based facilitation of cargo and benefits of trusted client programme - Authorised Economic Operators. Cargoes wherein all the three features under the Path to Promptness are combined, achieve the NTFAP release time target across all port categories.

Further, in line with the high priority accorded by Government of India on export promotion, NTRS 2023 has placed much greater focus on measurement of export release time. NTRS 2023 recognises the distinction between regulatory clearance (also referred as customs release), which gets completed with the grant of Let Export Order (LEO) and the wider aspect of physical clearance which occurs on completion of logistics processes with departure of the carrier with the goods.



It is observed that adopting the benchmark of regulatory clearance, the NTFAP release time target has been achieved for almost all the port categories. The extent of certainty regarding the bettered average release time has improved.

The improved release time involves the efforts of various stakeholders, including Customs, port authorities, Customs Brokers and Participating Government Agencies (PGAs), in implementing various trade facilitation measures which encourages the continued collaboration to further

expedite cargo clearance and enhance trade efficiency.

The complete findings of the National Time Release Study

2023 can be accessed on CBIC website (<https://www.cbic.gov.in/>)

Important changes w.r.t Liberalised Remittance Scheme (LRS) and Tax Collected at Source (TCS)

No change in rate of TCS for all purposes under LRS and for overseas travel tour packages, regardless of mode of payment, for amounts up to Rs. 7 lakh per individual per annum

Government gives more time for implementation of revised TCS rates and for inclusion of credit card payments in LRS

Increased TCS rates to apply from 1st October, 2023

Posted On: 28 JUN 2023 9:09PM by PIB Delhi

The figures of Direct Tax collections for the Financial Year 2023-24, as on 17.06.2023 show that net collections are at Rs. 3,79,760 crore, compared to Rs. 3,41,568 crore in the corresponding period of the preceding Financial Year i.e. FY 2022-23, representing an increase of 11.18%.

The Net Direct Tax collection of Rs. 3,79,760 crore (as on 17.06.2023) include Corporation Tax (CIT) at Rs. 1,56,949 crore (net of refund) and Personal Income Tax (PIT) including Securities Transaction Tax (STT) at Rs. 2,22,196 crore (net of refund).

The Gross collection of Direct Taxes (before adjusting for refunds) for the FY 2023-24 stands at Rs. 4,19,338 crore as compared to Rs. 3,71,982 crore in the corresponding period of the preceding financial year, registering a growth of 12.73% over collections of FY 2022-23.

The Gross collection of Rs. 4,19,338 crore includes Corporation Tax (CIT) at Rs. 1,87,311 crore and Personal Income Tax (PIT) including Securities Transaction Tax (STT)

at Rs. 2,31,391 crore. Minor head wise collection comprises Advance Tax of Rs. 1,16,776 crore; Tax Deducted at Source of Rs. 2,71,849 crore; Self-Assessment Tax of Rs. 18,128 crore; Regular Assessment Tax of Rs. 9,977 crore; and Tax under other minor heads of Rs. 2,607 crore.

The Advance Tax collections for the first quarter of the FY 2023-24 stand at Rs. 1,16,776 crore as on 17.06.2023, against Advance Tax collections of Rs. 1,02,707 crore for the corresponding period of the immediately preceding Financial Year i.e. 2022-23, showing a growth of 13.70%. The Advance Tax collection of Rs. 1,16,776 crore as on 17.06.2023 comprises Corporation Tax (CIT) at Rs. 92,784 crore and Personal Income Tax (PIT) at Rs. 23,991 crore.

Refunds amounting to Rs. 39,578 crore have also been issued in the FY 2023-24 till 17.06.2023, as against refunds of Rs. 30,414 crore issued during the corresponding period in the preceding Financial Year 2022-23, showing a growth of 30.13%.

TB



Press Releases

Direct Tax

I-T Department Conducts Verification of Reporting Entities

Posted On: 30 JUN 2023 7:05PM by PIB Delhi

The Income-Tax Department has been focusing its efforts on promoting voluntary compliance. In this endeavour, information is received about financial transactions of taxpayers from Reporting Entities, such as Banks, Forex Dealers, Sub-Registrars, etc. The information furnished by the Reporting Entities is used for display to the taxpayer, through the e-filing account, in the form of the Annual Information Statement (AIS). This is an important step towards facilitating taxpayers for filing their Return of Income accurately.

While most Reporting Entities are voluntarily complying with the statutory requirements of filing correct and complete Statements of Specified Financial Transactions (SFTs), defaults have been noticed in some cases.

Recently, the Department carried out verification of a prominent Bank based in Tamil Nadu, to address Reporting Entity compliance issues.

During the course of verification, several discrepancies were found. It was seen that the bank had not filed SFTs in certain cases and in some others, had not filed complete/accurate particulars. SFTs were not filed in respect of Cash deposits of over Rs.2,700 crore involving more than 10,000 accounts; specified Credit card payments involving

total transaction value of over Rs.110 crore; Dividend distributed of more than Rs.200 crore and Shares issued of over Rs.600 crore.

Further, SFTs already filed by the Bank were found incomplete in several respects. The bank had failed to report major transactions which included Interest paid of more than Rs.500 crore; Time deposits; Cash deposits and withdrawals in current accounts, etc.

The verification also revealed defective filing of Form 61B for Automatic Exchange of Information (AEOI) about account holders "resident" in other countries.

In the recent past too, verification was conducted by the Department on 2 cooperative banks in Uttarakhand and transactions exceeding few thousand crore, not reported by the banks, were identified.

In order to explain the legal obligations and processes, as well as to address difficulties faced by the Reporting Entities, outreach programmes are being regularly organised by the Department across the country. This is another initiative of the Department to facilitate ease of compliance.

Gross Direct Tax collections for Financial Year (FY) 2023-24 register a growth of 12.73%

Net Direct Tax collections for the FY 2023-24 grown at over 11.18%

Advance Tax collections for the FY 2023-24 stand at Rs. 1,16,776 crore as on 17.06.2023, showing a growth of 13.70%

Refunds aggregating to Rs. 39,578 crore issued in the current fiscal

Posted On: 18 JUN 2023 7:31PM by PIB Delhi

The figures of Direct Tax collections for the Financial Year 2023-24, as on 17.06.2023 show that net collections are at Rs. 3,79,760 crore, compared to Rs. 3,41,568 crore in the

corresponding period of the preceding Financial Year i.e. FY 2022-23, representing an increase of 11.18%.



The Net Direct Tax collection of Rs. 3,79,760 crore (as on 17.06.2023) include Corporation Tax (CIT) at Rs. 1,56,949 crore (net of refund) and Personal Income Tax (PIT) including Securities Transaction Tax(STT) at Rs. 2,22,196 crore (net of refund).

The Gross collection of Direct Taxes (before adjusting for refunds) for the FY 2023-24 stands at Rs. 4,19,338 crore as compared to Rs. 3,71,982 crore in the corresponding period of the preceding financial year, registering a growth of 12.73% over collections of FY 2022-23.

The Gross collection of Rs. 4,19,338 crore includes Corporation Tax (CIT) at Rs. 1,87,311 crore and Personal Income Tax (PIT) including Securities Transaction Tax(STT) at Rs. 2,31,391 crore. Minor head wise collection comprises Advance Tax of Rs. 1,16,776 crore; Tax Deducted at Source of Rs. 2,71,849 crore; Self-Assessment Tax of Rs. 18,128

crore; Regular Assessment Tax of Rs. 9,977 crore; and Tax under other minor heads of Rs. 2,607 crore.

The Advance Tax collections for the first quarter of the FY 2023-24 stand at Rs. 1,16,776 crore as on 17.06.2023, against Advance Tax collections of Rs. 1,02,707 crore for the corresponding period of the immediately preceding Financial Year i.e. 2022-23, showing a growth of 13.70%. The Advance Tax collection of Rs. 1,16,776 crore as on 17.06.2023 comprises Corporation Tax (CIT) at Rs. 92,784 crore and Personal Income Tax (PIT) at Rs. 23,991 crore.

Refunds amounting to Rs. 39,578 crore have also been issued in the FY 2023-24 till 17.06.2023, as against refunds of Rs. 30,414 crore issued during the corresponding period in the preceding Financial Year 2022-23, showing a growth of 30.13%.





NOTIFICATIONS & CIRCULARS

Direct Tax

Notification
Direct Tax
Notification No. 43/2023
Dated 21st June, 2023.

The Central Government provides forms for intimating the choice sheet for new tax regime.

21AGA. Exercise of option under sub-section (6) of section 115BAC. -

(1) The option to be exercised in accordance with the provisions of sub-section (6) of section 115BAC by a person, being an individual or Hindu undivided family, or an association of persons (other than a co-operative society) or a body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, for any previous year

relevant to the assessment year beginning on or after the 1st day of April, 2024, shall be, -

(a) in Form No. 10-IEA on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for such assessment year, in the case of a person having income from business or profession;

(b) in the return of income to be furnished under sub-section (1) of section 139 for such assessment year, in the case of a person not having income from business or profession as referred to in clause (i).

(2) The withdrawal of option under the proviso to sub-section (6) of section 115BAC shall also be in Form No. 10-IEA. The form is available as under.

“FORM No. 10-IEA

[See rule 21AGA]

Application for exercise of option under clause (i) of sub-section (6) of section 115BAC or withdrawal of option under the proviso to sub-section (6) of section 115BAC of the Income-tax Act, 1961

To,
The Assessing Officer

.....
.....

Sl.No.			
1.	Name	:	
2.	PAN	:	
3.	Status of the person referred to in sub-section(1A) of section 115BAC	:	
4.	Assessment year for which the form is being furnished	:	yyyy - yy
5.	Whether opting out of or re-entering the regime provided under sub-section (1A) of section 115BAC	:	Opting out/ Re-entering
6.	If re-entering as per inputs in 5, provide details of the option exercised earlier.	Date of exercising the option for opting out under clause (i) of sub-section (6) of section 115BAC in Form No. 10IEA	First assessment year for which the option was exercised.
		Dd/mm/yyyy	20....
7.	Whether having any Unit in International Financial Services Centre (IFSC), as referred to in sub-section (1A) of section 80LA (if re-entering as per row 5)	:	Yes/No

8.	If yes in 7, provide details regarding Units in IFSC: (Add number of columns depending on number of Units)		Unit 1	Unit 2	Unit 3	
		(1)	(2)	(3)	(4)	
		Name of Unit				
		Address of Unit				
		Nature of activities undertaken in Unit				

Undertaking

I(Name in full and in block letters) having PAN.....son/daughter/wife of..... (in case of individual) do hereby declare that to the best of my knowledge and belief what is stated in the Form above is correct and complete. I further declare that I am furnishing such statement in my capacity as.....(designation) and that I am competent to make this declaration and furnish this Form.

I further declare that the person referred to at serial no. 1 having PAN at serial no. 2 has income under the head "Profits and gains from business or profession" during the assessment year referred to at serial no. 4.

I also declare re-entering sub-section (1A) of section 115BAC of the Act shall render the person referred to at serial no. 1 having PAN at serial no. 2 ineligible for opting out of sub-section (1A) of section 115BAC.

Place:
Date:

Yours faithfully,

Signature*.....
Name.....
Designation.....
Address.....

*Signature of the person competent to verify the return of income of the Individual/ HUF / association of persons (other than a co-operative society)/body of individuals, whether incorporated or not/ an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 in accordance with the provisions of section 140 of the Act.

Note: For status of the person one of the following codes to be selected:

Sl.No.		Code
(i)	Individual	1
(ii)	Hindu Undivided Family (HUF)	2
(iii)	association of persons (other than a co-operative society)	3
(iv)	Body of individuals, whether incorporated or not	4
(v)	An artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act	5

For more details, please visit

<https://incometaxindia.gov.in/communications/notification/notification-43-2023.pdf>

**Circular
Direct Tax
Circular No. 9 of 2023
Dated 28th June, 2023.**

Order under section 119 of the Income-tax Act, 1961 for extension of time limits for submission of certain TDS/TCS Statements — Reg.

The Central Board of Direct Taxes, in exercise of its powers under section 119 of the Income-tax Act, 1961 provides relaxation in respect of the following compliances, namely —

- (1) The statement of deduction of tax for the first quarter of the financial year 2023-24, required to be furnished in Form No. 26Q or Form No. 27Q, on or before 31st July, 2023 under Rule 31A of the Income-tax Rules, 1962 ("the Rules"), may be furnished on or before 30th September, 2023.
- (2) The statement of collection of tax for the first quarter of the financial year 2023-24, required to be furnished in Form No. 27EQ, on or before 15th July, 2023 under Rule 31AA of the Rules, may be furnished on or before 30th September, 2023.

For more details, please follow

<https://incometaxindia.gov.in/communications/circular/circular-9-2023.pdf>



**Circular
Direct Tax
Circular No. 10 of 2023
Dated 30th June, 2023.**

The Central Government provides Circular to remove difficulty in implementation of changes relating to Tax Collection at Source (TCS) on Liberalised Remittance Scheme (LRS) and on purchase of overseas tour program package - reg.

Finance Act, 2023 has amended sub-section (1G) of section 206C of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') to, inter alia,

- (i) increase the rate of Tax Collection at Source (TCS) from 5% to 20% for remittance under LRS as well as for purchase of overseas tour program package; and
- (ii) remove the threshold of Rs 7 lakh for triggering TCS on LRS.

These two changes did not apply when the remittance is for education and medical purpose. 2. Subsequently, the Government had notified Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023 vide an e-gazette notification dated 16th May, 2023 to remove the differential treatment for credit cards vis à vis other modes of drawal of foreign exchange under LRS. This change has now been postponed for the time being.

Comments were received about the practical difficulties that may arise from the removal of the threshold for LRS payments other than for education and medical treatment. During meetings with the RBI, Banks and Card networks, some financial institutions have desired more time to modify their current IT systems to address issues arising from the implementation of the provision of TCS on credit card transactions.

In order to address these issues, a Press Release dated 28.6.2023 was issued by Ministry of Finance wherein the decisions relating to income-tax have been taken

For more details, please follow,
<https://incometaxindia.gov.in/communications/circular/circular-10-2023.pdf>

**Notifications
GST
Notification No. 14/2023-CENTRAL TAX
Dated 19th June 2023**

The Central Government Seeks to extend the due date for furnishing FORM GSTR-1 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.

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, in the fourth proviso: -

- (i) for the words, letter and figure – tax period April, 2023 the words, letter and figure – tax periods April 2023 and May 2023 shall be substituted;
- (ii) for the words, letters and figure –thirty-first day of May, 2023, the words, letter and figure –thirtieth day of June, 2023 shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023

For more details, please visit
<https://taxinformation.cbic.gov.in/view-pdf/1009753/ENG/Notifications>

**Notifications
GST
Notification No. 15/2023-Central Tax
Dated 19th June 2023**

The Central Government Seeks to extend the due date for furnishing FORM GSTR-3B for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.

G.S.R..... (E). —In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on

the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2023 –Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 385(E), dated the 24th May, 2023, namely: –

- (i) for the words, letter and figure – month of April, 2023 the words, letter and figure – months of April, 2023 and May, 2023 shall be substituted;
- (ii) for the words, letters and figure –thirty-first day of May, 2023, the words, letter and figure –thirtieth day of June, 2023 shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023.

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009754/ENG/Notifications>

Notifications GST

Notification No. 16/2023-Central Tax Dated 19th June 2023

The Central Government Seeks to extend the due date for furnishing FORM GSTR-7 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.

G.S.R.....(E).—In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2019 –Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:—

In the said notification, in the first paragraph, in the fifth proviso: -

- (i) for the words, letter and figure “month of April, 2023” the words, letter and figure “months of April 2023 and May 2023” shall be substituted;

- (ii) for the words, letters and figure “thirty-first day of May, 2023”, the words, letter and figure “thirtieth day of June, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009755/ENG/Notifications>

Notifications GST

Notification No. 16/2023-Central Tax Dated 27th June 2023

The Central Government Seeks Extension of due date for filing of return in FORM GSTR-3B for the month of May 2023 for the persons registered in the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat upto 30th June 2023.

G.S.R.....(E).—In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in **FORM GSTR-3B** for the month of May, 2023 till the thirtieth day of June, 2023, for the registered persons whose principal place of business is in the the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2.This notification shall be deemed to have come into force with effect from the 20th day of June, 2023.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009757/ENG/Notifications>

Notifications Customs

Notification No. 40/2023-CUSTOMS Dated 30th June 2023

The Central Government Seeks to increase the standard tariff for LPG in 1st Schedule of Customs Tariff Act, 1975

G.S.R.(E). --WHEREAS, the Central Government on being satisfied that the import duty leviable on Liquefied



Petroleum Gas falling under tariff items 27111910, 27111920 and 27111990 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), should be increased and that circumstances exist which render it necessary to take immediate action.

NOW, therefore, in exercise of the powers conferred by sub-section (1) of section 8A of the said Customs Tariff Act, the Central Government, hereby directs that the First Schedule to the said Customs Tariff Act, shall be amended in the following manner, namely: -

In the First Schedule to the said Customs Tariff Act, in Chapter 27, for the entry in column (4) occurring against tariff items 27111910, 27111920 and 27111990, the entry "15%" shall be substituted.

2.This notification shall come into force on the 1st day of July, 2023.

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009759/ENG/Notifications>

**Notifications
Customs
Notification No. 41/2023-CUSTOMS
Dated 30th June 2023**

The Central Government Seeks to amend notification no. 50/2017-Customs dated 30.06.2017 to prescribe BCD rate for LPG

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

I. in the Table, after S. No. 155 and the entries relating thereto, the following S. No. and entries shall be inserted, namely

(1)	(2)	(3)	(4)	(5)	(6)
"155A	27111910, 27111920, 27111990	Liquified Petroleum Gas (LPG)	5%	-	-

2.This notification shall come into force on the 1st day of July, 2023.

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009760/ENG/Notifications>

**Notifications
Customs
Notification No. 42/2023-CUSTOMS
Dated 30th June 2023**

The Central Government Seeks to amend notification no. 50/2017-Customs dated 30.06.2017 to prescribe BCD rate for LPG

G.S.R.(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 124 of the Finance Act, 2021 (13 of 2021), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 11/2021-Customs, dated the 1st February, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 69(E), dated the 1st February, 2021, namely: -

In the said notification, in the TABLE, after Sl. No. 10, and the entries relating thereto, the following Sl. No. and entries shall be inserted, namely:

(1)	(2)	(3)	(4)
"10B	27111910, 27111920, 27111990	All goods	15%

2.This notification shall come into force on the 1st day of July, 2023.

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009761/ENG/Notifications>



**Notifications
Customs
Notification No. 48/2023-CUSTOMS (N.T.)
Dated 30th June 2023**

The Central Government Seeks to amend Notification
No.19/2022 Customs (NT) dated 30.03.2022

S.O. (E). — In exercise of the powers conferred by sub-section (4) of section 51A of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs, on being satisfied that it is necessary and expedient to do so, hereby makes the following further amendments to the notification No.19/2022-Customs (N.T.) dated the 30th March 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. 1512 (E), dated the 30th March, 2022, namely,

2. In the said notification, in para 2, for the words, `1st July, 2023`, the words `1st October, 2023` shall be substituted.

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009762/ENG/Notifications>

**Notifications
Customs
Notification No. 49/2023-CUSTOMS (N.T.)
Dated 30th June 2023**

The Central Government Seeks to amend Notification
No.18/2022 Customs (NT) dated 30.03.2022

S.O. (E). — In exercise of the powers conferred by sub-section (4) of section 51A of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs, on being satisfied that it is necessary and expedient to do so, hereby makes the following amendments to the notification No.18/2023-Customs (N.T.) dated the 30th March 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. 1528 (E), dated the 30th March, 2023, namely, - In the said notification, in para 2, for the words, `30th June, 2023`, the words `30th September, 2023` shall be substituted

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009763/ENG/Notifications>

TB



JUDGEMENT

INDIRECT TAX

Limitation period for filing appeal under section 107 of GST Act is not 120 days but four months: HC

Facts of the case - Shri Ram Ply Product v. Additional Commissioner Grade 2 Appeal State Tax - [2023] (Allahabad)

The petitioner filed writ petition challenging the order of Appellate Authority wherein the appeal was rejected. The Appellate Authority dismissed the appeal on the ground that it was filed beyond the maximum period. The petitioner contended that the appeals under Section 107 of CGST Act, 2017 were to be filed within 4 months of adjudication order and not 120 days.

Decision of the case :

- The Honorable High Court noted that bare reading of the provisions of Section 107 of CGST Act, 2017 reflects that the time period is not 120 days, but it is four months. In the instant case, the appeal was filed on 121st day i.e. within four months as it would depend upon date on which Adjudicating Authority passed the order. The four months might be of 121 days or 122 days depending upon months.
- Therefore, it was held that the dismissal of appeal only on ground that it was beyond 120 days by computing four months as each month would be of 30 days was not proper. The Court directed to restore appeal and Appellate Authority was directed to proceed with appeal and decide it on merit in accordance with law.

HC directed assessee to avail alternate remedy of appeal against detention order

Facts of the case - T.V.H.Express v. State Tax Officer - [2023] (Madras)

The assessee-transporter, transported hosiery garments which were detained by the GST department. Thereafter, an order of detention was passed under section 129(1) and SCN was issued under section 129(3) alleging that

the goods were without valid documents and the driver of assessee had not produced relevant documents related to goods in conveyance.

It filed writ petition and contended that the driver produced invoices and lorry receipts for movements of goods, but the GST department passed detention order and proposed penalty of Rs.5,80,000 under SGST Act and equal penalty under CGST Act.

Decision of the case :

- The Honorable High Court noted that the remedy by way of appeal was available before appropriate authority against the impugned order. However, it was clear from the records that the petitioner had not filed any appeal against the impugned order.
- Therefore, the Court without going into merits and factual aspects of matter, directed the assessee to file appeal against impugned order and the Appellate Authority was directed to dispose of the same, on merits and in accordance with law, within a period of one month from the date of filing of the appeal after giving an opportunity of hearing to the assessee.

Incentives received for promotion of sale of products purchased through distributors can't be excluded from taxable value: AAAR

Facts of the case - Appellate Authority for Advance Ruling, Maharashtra MEK Peripherals India (P.) Ltd., In re - [2023] (AAAR-MAHARASHTRA)

The appellant entered into agreement with foreign manufacturer to resell goods purchased through distributors. It filed an application for advance ruling to determine whether incentive received under agreement for completion of targets would be considered as trade discount or not. The Authority for Advance Ruling held that incentives received for promotion of sale of products purchased through distributors would not be

treated as trade discount.

It filed appeal against advance ruling holding that incentive received from manufacturer under agreement would not be treatable as trade discount and the same would liable to be included in taxable value.

Decision of the case :

- The Appellate Authority for Advance Ruling noted that the agreement was entered between appellant and manufacturer and not with distributors. The incentive was directly received from manufacturer which was not specifically linked to invoices of goods purchased from distributors.
- Therefore, the prescribed conditions for exclusion of incentive as trade discount from taxable value were not satisfied as incentives received were separate from transaction with distributors. Thus, it was held that the incentives would not be treated as trade discount and can't be excluded from taxable value.

HC set aside order passed under section 73 which was not signed by concerned authority

Facts of the case - Marg ERP Ltd. v. Commissioner of Delhi Goods & Service Tax - [2023] (Delhi)

The department issued a Show Cause Notice (SCN), calling upon the petitioner to furnish a reply along with supporting documents as evidence in support of its claim. The SCN didn't spell out the allegation which was required to be addressed by the petitioner.

The petitioner didn't file reply and the department issued order raising demand of Rs. 49,26,623. It filed writ petition and contended that the SCN didn't provide any reason and the impugned order was not signed by the concerned authority or officer.

Decision of the case :

- The Honorable High Court noted that the impugned order was not signed by concerned officer. This issue was already covered by the decision of a coordinate Bench of this Court in *Railsys Engineers Private Limited & Anr. v. The Additional Commissioner of Central Goods and Services Tax (Appeals-II) & Anr* [2022] 141 taxmann.com 527 (Delhi) wherein it was held that show cause notice and consequential orders are required to be signed by concerned officer and

same have to be affixed with digital signature if they are uploaded on GST portal.

- Therefore, following the above decision, it was held that the impugned order could not be sustained as it was unsigned. However, the Court noted that the department has already issued another notice pointing out that there was some differences/ excess ITC. Thus, the Court also directed the concerned authority to pass an order afresh after affording the petitioner, an opportunity to be heard.

Notice issued and order passed simultaneously without granting opportunity of hearing are not sustainable: HC

Facts of the case - Sangam Wires v. State of Bihar - [2023] (Patna)

The petitioner's vehicle was detained due to expired e-way bill and penalty was imposed by the department. It filed appeal against such order but the appeal was rejected by Appellate Authority. It filed writ petition and contended that due to breakdown of vehicle in transit, the same could not move within validity of e-way bill. It was also contended that notice and order determining penalty were issued simultaneously on same day without giving an opportunity to show cause.

The department opposed the petition and argued that interception of vehicle was 7 days after expiry of e-way bill and extension of e-way bill was permissible only within 8 hours from time of expiry.

Decision of the case :

The Honorable High Court noted that the notice under Section 129(1)(a) as well as the order imposing penalty were passed on the same date and both were issued by the proper officer simultaneously. Also, the order imposing penalty did not record the fact of the petitioner's appearance or hearing prior to passing of the order. Therefore, it was held that the impugned order was liable to be set aside and the matter was remanded back to authority.

GST is leviable on movement of goods from one unit to another unit in different State on lease: AAAR

Facts of the case - Appellate Authority for Advance Ruling, Maharashtra CHEP India (P.) Ltd., In re -



[2023] (AAAR-MAHARASHTRA)

The appellant was engaged in business of pallets, crates and containers. It filed an application for advance ruling to determine whether movement of equipment from appellant's Karnataka unit to Tamil Nadu unit on instruction from Maharashtra unit can be stated as mere movement of goods and not supply under section 7 of CGST Act, 2017.

Decision of the case :

- The Authority for Advance Ruling held that the movement of goods from Karnataka unit to Tamil Nadu unit as per instruction of Maharashtra unit would amount to supply of leasing service and value shall be the amount charged by the recipient branch from the ultimate customers. It filed appeal against the order.
- The Appellate Authority for Advance Ruling noted that in the instant case, the Karnataka unit was in possession of goods whereas Maharashtra unit was the owner and Karnataka unit had to give back goods on termination of contract of lease but due to requirement in Tamil Nadu unit, material was transferred to Tamil Nadu unit. Therefore, the Karnataka unit facilitated transport and acted as an agent in respect of said goods.
- Therefore, it was held that the movement of goods from Karnataka unit to Tamil Nadu unit as per instruction of Maharashtra unit would amount to supply and shall be treated as supply of leasing service. Moreover, the Rule 28 of CGST Rules, 2017 would be applicable for present transaction as supply was between distinct persons. Thus, the value declared in invoice raised by Maharashtra unit on its unit in other States would be treated as taxable value as per second proviso to Rule 28 when recipient was eligible for full input tax credit.

HC directed dept. to produce records relating to SCN to verify whether reasons to believe existed for issuance of notice

Facts of the case : Marjit Basumatary v. Union of India - [2023] (Gauhati)

The petitioner was engaged in works contract services by way of construction of roads and bridges of Government bodies. The department issued show cause notice and alleged that correct turnover in GSTR-3B for financial years 2017-18 and 2018-19 was not declared and tax on

machinery rental income and on royalty paid to forest department had not been paid.

The petitioner filed writ petition challenging the legality and validity of show cause notice and submitted that the issue of levy of GST on mining lease and/or royalty paid to the State Government is the subject matter of decision by a larger Bench of the Supreme Court of India.

Decision of the case :

- The Honorable High Court noted that in the instant case, the demand for GST was not only based on mining lease and/or royalty paid to State Government which was before Larger Bench of Supreme Court but also based on other claims. Therefore, it was held that before issuance of notice, the Court was inclined to examine records relating to show cause notice to examine whether 'reasons to believe' existed or it was mere pretence. The Court directed department to produce records relating to SCN for perusal of the instant Court, however copy of same was not to be made available to petitioner.
- HC directs appellate authority to dispose appeal filed against imposition of penalty on goods imported within 12 weeks

Facts of the case - Healthcubed India (P.) Ltd. v. Deputy Commissioner (ST) GST - [2023] (Madras)

The petitioner was engaged in developing medical technology, diagnostics and healthcare devices and it was providing various healthcare services across India. It ordered oxygen cylinders from China. The lorry in which the imported consignments were loaded was intercepted and the GST department levied penalty. It filed writ petition against the order levying penalty.

Decision of the case :

- The Honorable High Court noted that the petitioner had earlier preferred a writ petition before this Court seeking provisional return of goods, wherein this court disposed the same. Thereafter, the department passed an order confirming the penalty as stipulated in the show-cause notices. The petitioner had already preferred appeal which was pending for disposal.
- Therefore, in view of facts and circumstances, the Court disposed the petition and directed the department

to dispose of appeal filed by the petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order, after hearing the petitioner, in accordance with law.

Writ petition can't be entertained since appellate remedy is available and question of facts are involved: HC

Facts of the case : TVL. Veera Agencies v. Assistant Commissioner (ST) - [2023] (Madras)

In the instant case, the assessee filed writ petition to quash the assessment orders which were passed by the department. The department had denied input tax credit (ITC) on ground of non-receipt of goods indicating absence of sale transaction.

The petitioner contended that the personal hearing was not granted by adjudicating authority. It was also claimed that only reason for rejecting ITC was that seller's premises was found to be closed and GST registration was cancelled.

Decision of the case :

- The Honorable High Court noted that the notices and reminders for personal hearing were issued but the petitioner had neither filed manual reply nor online reply. The department had denied ITC by concluding use of the fake invoices for availing ITC since the address of supplier was not a shop and no business was carried out since the premises had been vacated a year ago.
- The Court further noted that the arguments advanced by the petitioner such as taxes were paid, copy of inspection report not submitted etc. were factual and could not be considered while exercising writ jurisdiction. Therefore, the Court held that writ petition was liable to be dismissed since effective appellate remedy would be available with direction to file appeal before Appellate Authority.

HC set aside adverse order passed without hearing since notice mentioned "NA" in column of "Date of personal hearing"

Facts of the case - Mohini Traders v. State of U.P. - [2023] (Allahabad)

The department issued a notice was issued to petitioner seeking reply within 30 days and the order was passed on determining the liability. As per the notice, the Assessing Authority had at that stage itself chosen to not give any opportunity of hearing to the assessee by mentioning "NA" against column description "Date of personal hearing".

Therefore, the petitioner filed writ petition and submitted that no opportunity of oral hearing was given but the Assessing Authority was bound under section 75(4) of CGST Act, 2017 to afford opportunity of personal hearing before passing an adverse assessment order.

Decision of the case :

- The Honorable High Court noted that the petitioner was denied opportunity of hearing because he had tick marked the option 'No' against the option for personal hearing in the reply to the show-cause-notice. However, this fact would have no legal consequence since it has been laid down by way of a principle of law that assessee is not required to request for "opportunity of personal hearing" and it remains mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order.
- The Court further noted that not only such opportunity would ensure observance of rules of natural of justice but it would also allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a better appreciation to arise at the next/appeal stage, if required. Thus, it was held that the impugned was liable to be set aside and petition was allowed.



JUDGEMENT DIRECT TAX

Partner's/Director's nationality will not suffice company's residency; treaty benefits to be given based on TRC: ITAT

Facts of the case - Qawareb Ship Management LLC v. ITO (International Taxation) - [2023] (Rajkot - Trib.)

Assessee was a UAE-based company engaged in the shipping business. It filed a provisional return of income under section 172 through a local agent in India. The local agent produced certain documents and after taking cognisance of the said documents, the Assessing Officer (AO) observed that the said company was not resident of UAE as per Article 4 of DTAA as its place of effective control and management situated out of UAE.

AO made additions and denied the exemption claimed by the assessee based on DTAA between India and UAE. The matter reached Rajkot Tribunal.

Decision of the case :

- The Tribunal held that it is an undisputed fact that the assessee was a non-resident limited liability company. Regarding the company's commercial licence, the same was issued by Dubai Maritime City (UAE). Besides this, the assessee also submitted Bank details of Standard Chartered Bank related to outward payment customer advise that of UAE only. All the partners/directors, except for one, hold Yemeni nationality. However, the residence of that particular partner/director is solely located in Dubai, United Arab Emirates (UAE).
- The UAE court (Ministry of Finance) has also issued Tax Residency Certificate to the assessee, which set out that the licence was given to it, which was domiciled in the UAE. Merely Partner's/Director's nationality will not suffice for the company's residency when the company was registered and operational in UAE and obtained the business licence there.
- Since the company was incorporated, managed and controlled only in UAE, it was a tax resident of the UAE. Thus, the treaty between India and UAE will be applicable.

Sum paid to contract teachers can't be treated as 'fee for professional services'; No Sec. 194J TDS

Facts of the case - Dist. Intermediate Educational Office v. ITO (TDS) - [2023] (Hyderabad - Trib.)

Assessee was an authority appointed by and working under the directions of the State Government. Its primary function was to disburse the Honorarium/Remuneration to the teachers with whom the colleges agreed to perform the teaching work entrusted by the college committee following the curriculum of the intermediate syllabus.

During the assessment proceedings, the Assessing Officer (AO) held that the payments to teachers fall within the ambit of 'fee for professional services' as per section 194J. Accordingly, the AO made additions and treated the assessee as 'assessee-in-default' for non-deduction of tax on payment to contracted teachers under section 194J.

The matter reached the Hyderabad Tribunal.

Decision of the case :

- The Tribunal held that for section 194J, "professional services" shall mean services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as notified by the Board.
- Notification No. 88/2008 dated 28/01/2008 issued by CBDT notified the services rendered by the following persons in relation to the sports activities as "Professional Services":
 - a. Sports Persons,
 - b. Umpires and Referees,
 - c. Coaches and Trainers,
 - d. Team Physicians and Physiotherapists,
 - e. Event Managers,

f. Commentators,

g. Anchors and

h. Sports Columnists.

- The words 'fee for professional services means' left no scope for interpretation, and the categories mentioned therein as on the date are exhaustive by the explanation itself or by the notification of CBDT. Such an exhaustive definition excludes the payments to contract teachers in intermediate colleges.
- Either in the explanation to section 194J or in the notification issued, the contract teachers referred to as teaching professionals by AO are not covered. Thus, payments made to contract teachers did not answer the 'fee for professional services' description to levy TDS under section 194J.

Customs valuation would yield a more reliable result for TP if there is no diff. in contract terms and product quality

Facts of the case - Louis Dreyfus Company India (P.) Ltd. v. DCIT - [2023] (Delhi - Trib.)

Assessee-company made international transactions relating to import and export of oil, grain and cotton during the relevant assessment year. In the Transfer Pricing (TP) study report containing prices published by industry associations and brokerages along with third party transactions, assessee used Comparable Uncontrolled Price (CUP) as the most appropriate method (MAM).

Transfer Pricing Officer (TPO) rejected the TP study report submitted. However, he accepted CUP as MAM after making verification from tire data collected from the Customs department and proposed adjustment. TPO observed that a gap could exist between the contract date and actual contract realization date. Ultimately, TPO proposed ar. adjustment and made additions to the assessee's income.

The Dispute Resolution Panel (DRP) rejected objections of the assessee against the use of customs data under CUP. The matter reached before the Delhi Tribunal.

Decision of the case :

- The Tribunal held that as per Customs Valuation Rules, the comparison was made on the transaction

value/tariff value of similar/identical products at the time of import/export. A gap could exist between the contract date and actual contract realization date. The OECD Commentary on TP guidelines also allow for the adoption of a price-setting date which is different from the stated contract date.

- Under such circumstances, the prices of comparable products on their respective invoice/shipment date as considered in customs valuation would yield a more reliable result. Customs data serves as a more reliable CUP as it compares the value of identical or similar goods imported/exported at or around the same time.
- It is also observed that the customs data at the port of shipment/delivery would better reflect the price of the commodity as it is inclusive of interest, insurance, freight costs, storage expenses, foreign currency terms, country of origin charges, transportation charges from place of origin to place of destination, port charges, customs clearance charges etc. Such data would be a more reliable indicator of the uncontrolled arm's length transaction value (inclusive of the relevant costs) of identical or similar transactions between independent parties.
- Since, prices published by industry associations or industry reports and third party transactional data also include other related party transactions which may influence the average prices which may not reflect the accurate price for benchmarking.

Sum paid to educational trust by bank following Govt.'s directions isn't donation; allowable as deduction u/s 37: ITAT

Facts of the case - Union Bank of India (Erstwhile Corporation Bank) v. DCIT - [2023] (Bangalore - Trib.)

Assessee is a public sector bank governed by the Banking Regulation Act 1949 provisions. It paid a certain sum to a trust having objects to set up training centres for educating and training people to create awareness, developing local leadership among the community etc. While furnishing the return of income, the assessee claimed a deduction of the amount paid to the trust under section 37(1).

During assessment proceedings, the Assessing Officer (AO) held that those payments were not wholly and exclusively for the purpose of business and were in the nature of the



donation. Thus eligible for deduction under section 80G.

On appeal, the CIT(A) upheld the order of AO. Aggrieved-assessee filed the instant appeal before Bangalore Tribunal.

Decision of the case :

- The Tribunal held that the trust came into existence by virtue of a deed of declaration of trust with the object of taking up developmental activities, particularly for the upliftment of the economically weaker sections of the society. Trust also played a catalyst role in the process of social economic development.
- The Government of India, Ministry of Rural Development, instructed public sector banks to be lead institutions in managing and running such institutes. It was in that context that the assessee contributed such sum to trust.
- The provisions of sections 37(1) and 80G are not mutually exclusive. If the contribution by the assessee is in the form of a donation, it must be of the category specified in section 80G. If it could be termed as an expenditure under section 37(1), then the right of the assessee to claim the whole of it as allowance under section 37(1) cannot be denied. However, such money must be laid out wholly or exclusively for the purpose of business.
- Where the Government of India framed guidelines on corporate social responsibility for central public sector enterprises, such public sector is bound to formulate a policy in terms of the said guidelines and if an obligation springs from complying with the said guidelines, it has to be regarded as expenditure incurred on the grounds of commercial expediency.
- Therefore, the expenditure satisfied the requirements of section 37(1), and thus, the deduction claimed by the assessee was to be allowed in full.

Sec. 8 notice isn't necessary when statutory notice in winding up petition was served for treating plea u/s 9: NCLAT

Facts of the case - Rajeev Srivastva v. Ahluwalia Contracts (India) Ltd. - [2023] (NCLAT- New Delhi)

In the instant case, the corporate debtor awarded construction work through a contract agreement to the

operational creditor. However, the work was suspended due to certain Government restraints. The operational creditor demanded compensation for idle costs, administrative costs, depreciation, losses etc. which were settled by the corporate debtor vide e-mail.

Since the construction work did not start, the operational creditor sent a notice under the Companies Act to the corporate debtor and filed a winding-up petition against the corporate debtor before the High Court. The said petition was transferred to the Adjudicating Authority (NCLT) after the enforcement of the IBC.

Decision of the case :

- Upon receiving the record, the NCLT issued notices to both sides. The operational creditor then presented an application under section 9 before the NCLT, which was admitted vide the impugned order.
- The appellant i.e. a suspended director of the corporate debtor contended that the section 9 application filed by the operational creditor without serving mandatory notice of demand u/s 8 was not maintainable.
- The NCLAT held that since the operational creditor had already given a statutory notice in the winding-up petition, it was not necessary or mandatory to serve a notice u/s 8 of the IBC for treating the winding-up petition. Therefore, the NCLAT ruled that the application u/s 9 was maintainable without the service of notice. Thus, there was no merit in the instant appeal and the same was to be dismissed.

CIT(E) can't question purpose of creation of trust without disputing its objects & activities: ITAT

Facts of the case - B.M.L. Welfare Trust v. Commissioner of Income-tax (Exemptions) - [2023] (Amritsar - Trib.)

Assessee-trust filed an application for registration under section 12AA. The Commissioner (Exemption) observed that the assessee had created an arrangement with land owners wherein land was given on lease to the assessee, by a pass-through entity, at an exorbitant amount of rent resulting in the laundering of its income and also diversion of the same in the hands of trustee/members.

Thus, Commissioner (Exemptions) rejected the assessee's application for registration under section 12AA holding that the assessee was not only established for charity but

was misused as an instrument in the hands of trustees/members and involved in non-genuine activities. The matter reached before the Amritsar Tribunal.

Decision of the case :

- The Tribunal held that the department had not disputed that the assessee-trust was a charitable trust as the Commissioner (Exemptions) never objected to the charitable nature of objectives and genuineness of the trust's activities while denying the registration under section 12AA.
- Merely questioning the purpose of the creation of trust without disputing the charitable nature of objects, genuineness of activities, and the manner of carrying out the activities of the trust in consonance with its objectives renders the impugned order of the Commissioner (Exemptions) perverse to the facts on record.
- Further, the only requirement for granting the registration is that the society's object should be charitable and its activities be genuine. Basic principles for allowing registration by observing that section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and the genuineness of its activities and grant a registration only if he is so satisfied.
- The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits under sections 11 and 12.
- In other words, if it appears that the objects of the trust and its activities are not genuine, that is to say, not charitable, the Commissioner is entitled to refuse and, in fact, bound to refuse such registration. Thus, the Commissioner (Exemptions) was directed to grant registration to the assessee-trust from the date of application.

Compensation paid for delayed allotment of plot of land isn't interest; no sec. 194A TDS: ITAT

Facts of the case - Sawhney Builders (P.) Ltd. v. ACIT (TDS) - [2023] (Delhi - Trib.)

Assessee was a builder and had taken registration amounts

from applicants for allotment of plots/flats for its upcoming projects. However, he could not deliver the promises of allotment of plot/flat on time to the applicants, and due to said delay, the assessee had to pay compensation for non-compliance.

During the survey proceedings, the Assessing Officer (AO) noticed that the assessee had paid interest to the parties for a certain period of time. However, later, the name of expenses thereto had been changed as compensation on cancellation in its books of account by the assessee and in the auditor's report after survey proceedings. Considering that tax was not deducted on such interest under section 194A, the AO treated the assessee as assessee-in-default as per section 201(1)/201(1A)

On appeal, the CIT(A) upheld the order of AO, and the matter reached Delhi Tribunal.

Decision of the case :

- The Tribunal held that till a certain period, the assessee deducted tax under section 194A treating the amount of compensation as interest under inadvertent mistake which was later corrected. In fact, it's an amount of compensation/damages to the allottees to compensate for the delay as the assessee could not deliver the promises to them. This factual position had not been controverted except alleging that when the assessee itself was treating the amount of payment as interest, then what prompted the assessee to convert the nomenclature of payment from interest to compensation and non-complying the TDS provision of section 194A.
- The assessee was consistently committing mistakes, treating the compensation amount as interest, and making the payment after deducting the tax. Thereafter, keeping in view the tax expert's advice to rectify the mistake, the assessee was right in changing the nomenclature as per the factual position and intention of payment.
- Therefore, merely because under an advertent mistake, the assessee was treating the payment as interest, it cannot be compelled to commit the same mistake continuously after the advice of a tax consultant. Thus, such inadvertent mistake of the assessee does not entitle the AO to treat the assessee-in-default for taking action against the assessee on



account of non-deduction of tax.

- Since the impugned payment was nothing but compensation paid by the assessee to its allottees, it cannot be tagged as interest under section 2(28A). Therefore, the TDS provision of section 194A was not applicable towards such payment.

Copy of construction permission from Gram Panchayat isn't sufficient to prove actual construction; no sec. 54F relief

Facts of the case - Smt. Amarnath Sarala v. ITO - [2023] (Bangalore - Trib.)

Assessee, an individual, earned long-term capital gains on selling two properties. Assessee claimed exemption under section 54F of the amount of capital gains for the construction of the residential property.

The assessee had bought the land nearly towards the completion of three years from the property's sale date. During the proceedings, a certificate from a Chartered Engineer giving the completion status of the house was furnished. As the assessee did not construct the house completely, Assessing Officer (AO) disallowed the exemption claimed under section 54F.

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

Decision of the case :

- The Tribunal held that if the assessee constructed any residential house, the assessee was required to place necessary evidence to prove that the construction had taken place. Before the lower authorities, no evidence has been furnished regarding the construction of new house to show that the sale proceeds of the land were utilised for the construction of the new house.
- It is needless to say that when the assessee claimed deduction under section 54F, it was incumbent upon the assessee to place necessary evidence in support of its claim. The onus lies on the assessee to prove by way of evidence to justify their claim for deduction.
- The assessee had not placed any convincing evidence, so it can be inferred that a residential building was constructed out of the sale proceeds of the sale of land and also did not place evidence for the purchase of any materials relating to the construction

of residential building. Merely producing a copy of permission from Gram Panchayat with regard to construction permission itself cannot discharge the assessee from proving actual construction.

- In the absence of any material to suggest the construction of the house out of the sale proceeds of the land, the assessee was not entitled to deduction under section 54F.

Bombay HC allows capital gain exemption to Singapore-based FII; limitation of benefit clause can't be invoked

Facts of the case - Commissioner of Income-tax Vs. Citicorp Investment Bank - [2023] (Bombay)

Assessee, a tax resident of Singapore, registered as a Foreign Institutional Investor (FII) in the debt segment with the Securities and Exchange Board of India (SEBI). During the year under consideration, the assessee declared capital gains on the sale of debt instruments and claimed exemption under Article 13(4) of the India-Singapore Double Taxation Avoidance Agreement (DTAA).

During the assessment proceedings, the Assessing Officer (AO) invoked Article 24, contending that though the provisions of Article 13(4) allow exemption of capital gains in the source country, i.e., India, provisions of Article 24 of DTAA provides for restriction of exemption of such capital gains to the extent of repatriation of such income to other country, i.e., Singapore.

In response, the assessee furnished a certificate from Singapore Authorities confirming the assessee's taxation in Singapore. Unsatisfied, AO made additions to the assessee's income by denying the exemption.

The Dispute Resolution Panel (DRP) upheld the AO's order which the Mumbai Tribunal reversed. Accordingly, an appeal was filed by the AO before the Bombay High Court.

Decision of the case :

- The High Court held the assessee would come under Article 13(4) of DTAA, which says gains from the alienation of any property (debt instrument in this case) shall be taxable only in Singapore, of which the alienator (the assessee) is a resident. Thus, the entire capital gain shall be taxed in Singapore.
- Applying Article 24, if income from sources in India

is exempted from or taxed at a reduced rate in India, and if under Singapore's current laws, the capital gain is taxed based on the remitted or received amount in Singapore rather than the full amount, then the tax exemption or reduction of tax allowed under DTAA in India will apply only to the portion of income that is remitted to or received in Singapore.

- When under the laws in force in Singapore, the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, then in that case, Article 24(1) would not apply.
- In the instant case, Singapore authorities have themselves certified that the capital gain income would be brought to tax in Singapore without reference to the amount remitted or received in Singapore. Such certificates issued by the Singapore Tax Authorities will constitute sufficient evidence for accepting the legal position.
- Therefore, the entire capital gain shall be taxed in Singapore as per Article 13 without invoking Article 24 of the Tax Treaty.

Penalty proceedings are to be confined only to grounds mentioned in penalty notice: Karnataka HC

Facts of the case - Kshema Geo Holdings (P.) Ltd. v. ITO - [2023] (Karnataka)

Assessee, a private limited company, issued equity shares at premium. The Assessing Officer (AO) observed that aggregate consideration received for such shares exceeded the Fair Market Value (FMV) of shares. Thus, he added said differential amount as 'income from other

source' under section 56(2)(viib).

Consequently, a notice under section 274 read with section 271(1)(c) was also issued to initiate penalty proceedings upon the assessee. On appeal, the Commissioner (Appeals) confirmed the Assessing Officer's order. On further appeal, the ITAT remanded the matter for fresh consideration in accordance with the law.

Assessee filed the instant appeal against said remand order. Assessee contended that the impugned penalty order passed upon the assessee was unsustainable.

Decision of the case :

- The High Court held that a careful perusal of the same shows that AO was of the view that assessee had concealed true and correct particulars of its income, whereas the ground on which the notice was issued is 'have furnished inaccurate particulars of income'. Notably, five words 'have concealed particulars of income' have been struck off in the notice.
- Under section 271(1)(c), the satisfaction of the existence of ground was sine qua non for initiating proceedings, and penalty proceedings should be confined only to those grounds specifically stated in notice. AO had issued notice only with regard to furnishing inaccurate particulars. Whereas the satisfaction recorded is with regard to the concealment of income particulars, and the very ground had been struck off. The notice has been issued on the specific premise that assessee had furnished inaccurate particulars of income.
- Since the very ground for initiation of penalty in notice had been struck off in order, the impugned penalty order was not sustainable in law.





Tax Calendar

Indirect tax

Due Dates	Returns
Jul 10th, 2023	GSTR-7 (Jun, 2023)
Jul 10th, 2023	GSTR-8 (Jun, 2023)
Jul 11th, 2023	GSTR-1 (Jun, 2023)
Jul 13th, 2023	GSTR-6 (Jun, 2023)
Jul 13th, 2023	GSTR-5 (Jun, 2023)
Jul 13th, 2023	GSTR-1 (Apr-Jun, 2023)

Tax Calendar

Direct tax

Due Dates	Returns
7 July 2023	Due date for deposit of Tax deducted/collected for the month of May, 2023. However, all sum deducted/collected by an office of the government shall be Central Government on the same day where tax is paid without production of an Income-tax Challan
7 July 2023	Due date for deposit of TDS for the period April 2023 to June 2023 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H
15 July 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of May, 2023
15 July 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of May, 2023
15 July 2023	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of May, 2023
15 July 2023	Due date for issue of TDS Certificate for tax deducted under section 194S in the month of May, 2023
15 July 2023	Note: Applicable in case of specified person as mentioned under section 194S
15 July 2023	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending June, 2023
15 July 2023	Quarterly statement of TCS deposited for the quarter ending June 30, 2023 Note: The due date of furnishing TCS statement has been extended from June 30, 2023 to September 30, 2023 vide Circular no. 9/2023, dated 28-06-2023
15 July 2023	Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending June, 2023
15 July 2023	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of June, 2023

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

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

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

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. 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:

The Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, users should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in these documents does not cover every situation and is not intended to replace the law or change its meaning.

The opinion expressed in Article is fully based on the views of the experts. This information is provided for public services only and is neither an advertisement nor to be considered as legal and professional advice and in no way constitutes an attorney-client relationship between the Institute and the User. Institute is not responsible or liable in any way for the consequences of using the information given.

© The Institute of Cost Accountants of India

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

Contact Details:

Tax Research Department
12, Sudder Street, KolKata - 700016

Phone: +91 33 40364717/ +91 33 40364798/ +91 33 40364711

E-mail: trd@icmai.in



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

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

Ph: 091-33-2252 1031/34/35/1602/1492

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

Ph: 091-11-24666100