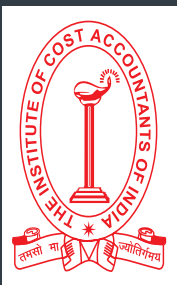


November, 2023

TAX Bulletin

Volume - 148
17.11.2023



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

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“

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.”

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“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.”

Objectives of Taxation Committees:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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CMA (Dr.) V. Murali
Chairman
Direct Taxation Committee, ICAI

FROM THE DESK OF CHAIRMAN

Esteemed Professional Colleague,

Wishing all our readers a wonderful festive season. As we roll into the penultimate month of the year 2023 it is pertinent to note that the CBDT has made some significant changes with regard to issue of refunds.

POINT TO PONDER

Swami Chinmayananda's golden words is something I always follow "**To weep is folly and to smile is wisdom. Keep Smiling!**" Speed is calculated as "**Miles per hour**" whereas life is calculated as "**Smiles per hour**". To increase your life '**mileage**', please enhance your '**smileage**'. Life is like a mirror and we get the best results when we smile at it. Smile is the best accepted 'credit card' – because it is accepted worldwide, auto reload, unlimited usage, no payment and makes everyone happy. Remember Happiness does not follow the laws of mathematics, when you start dividing happiness among others – it actually multiplies manifold.

ACTIVITIES AND PLAN OF ACTION

As far as the activities of the Tax Research Department (TRD) is concerned, I would like to state that the department for this fortnight has been busy with the conduct of the classes of the Taxation courses, publishing of the fortnightly bulletin and conduct of the quiz for the members among all other activities which are being carried on methodically. I hereby acknowledge the dedication and commitment of TRD.

CBDT NEW GUIDELINES FOR ISSUE OF REFUNDS

On the 10th of November CBDT has prescribed the monetary limit of Rs. 10 lakhs or more to withhold refund under section 245(2) of the Income Tax Act.

Section 245(2) empowers the Assessing Officer (AO) to withhold the income tax refund. The AO can pass such an order if the proceedings for assessment or reassessment are pending in the case of such person, and he believes that the refund grant is likely to adversely affect the revenue. After recording the reasons in writing and with the previous approval of the Principal Commissioner or the Commissioner, as the case may be, AO may pass an order to withhold the refund up to the date on which such assessment or reassessment is made.

The Central Board of Direct Taxes (CBDT) has released instructions prescribing the monetary limit of refund to attract provisions of section 245(2). The board has said that the monetary limit for applying provisions of said section will be where the refund value is Rs. 10 lakhs or more. The board also prescribed the procedure to withhold refunds.

WRAP UP POINT

We are part of the society we live in. Swami Vivekananda said, "***The more we come out and do good to others, the more our hearts will be purified.***" Hence, when one treads the path of compassion, warmth and goodness the way to one's goal is smoother. As Wilfred Grenfell put it, "***The service we render to others is really the rent we pay for our room on this earth.***"

Wishing each and every one of you a Life filled with joy, fulfilment, prosperity and bliss at home.

With Warm Professional Regards,

Forever, yours in service,

A handwritten signature in black ink, appearing to read 'V Murali', with a period at the end.

CMA (Dr.) V Murali

Chairman

Direct Taxation Committee, ICMAI

17.11.2023



CMA Rajendra Singh Bhati
Chairman
Indirect Taxation Committee, ICAI

FROM THE DESK OF CHAIRMAN

One of the important announcement for the month of November, 2023 in respect of GST was the release of 23 updated brochures that has been launched by CBIC. The Brochures are intended for the learning purpose and for awareness of GST and its latest updates among the assesseees.

The topics on which these brochures are published includes:

1. Overview of GST
2. GST Benefits
3. Latest Updates in GST
4. Composition Levy Scheme
5. QRMP Scheme
6. Policy Initiatives for MSME Sector
7. Casual Taxable Person
8. Non-Resident Taxable Person (NRTP)
9. e-Invoice Under GST
10. e-Way Bill
11. Registration in GST
12. Job Work under GST
13. Return filing procedure and relief
14. GST Annual Return
15. Cancellation of registration in GST
16. Revocation of cancellation of GST Registration
17. Audit in GST Regime
18. Refund in GST
19. Refund of unutilised ITC
20. Inspection, Search & Seizures and Arrest under GST regime
21. Reward Scheme for Informers
22. Career Opportunities in CBIC
23. GST Audit, Path to compliance

We are sure that these brochures would sincerely serve the purposes for which these have been published.

The activities of the department for this fortnight has been the conduct of the classes of the Taxation courses, publishing of the fortnightly bulletin and conduct of the quiz for the members among all other activities which are being carried on diligently. Exam for GST Course for college and university colleges have been conducted at Scottish Church College, Kolkata.

I appreciate the efforts put forth by Team – Tax Research.

Thank You.

CMA Rajendra Singh Bhati
Chairman
Indirect Tax Committee, ICAI
17.11.2023

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

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

ITC Mismatch – Recent Changes



*CMA S. Venkanna
Practicing Cost Accountant*

A new Form **GST DRC-01C** has been incorporated by the government, a system-generated form for the intimation of the difference in the available ITC in the auto-generated statement that has the ITC information and claimed in the return with regard to the amended inserted **Rule 88D**. This functionality is now live to handle the ITC mismatches between **GSTR-2B** and **GSTR-3B**.

In the CGST Rule 88D, a mechanism is outlined for system-based notification of cases where the ITC claimed in GSTR-3B exceeds the prescribed available ITC amount in GSTR-2B by a certain percentage or amount.

Mismatches can occur between GSTR-2B and GSTR-3B. Some reasons for the ITC reporting differences include:

- Clerical errors or GST rate error and accordingly reflected in GSTR-2B.
- Wrong transactions i.e., instead of business to business (B2B) the transaction is reflected as business to customer (B2C) and accordingly does not reflect in GSTR-2B.
- Wrong classification of inter-state transactions and intra-state and has accordingly incorrectly reflected in GSTR-2B.
- Input tax credit not claimed in previous tax period/s for not receiving purchased goods or services in that tax period. Missed claiming input tax credit in the previous tax period/s.

- Input tax credit on import of goods, that do not appear in GSTR-2B.
- ITC claimed on inward supplies from SEZ, which do not appear in GSTR-2B.
- Excess ITC reversal in the previous tax periods reclaimed in the current tax period.
- Recrediting ITC upon making payment to supplier towards the invoice, where such ITC was reversed under the CGST Rule 37 in the earlier tax period.
- Recrediting ITC upon filing GSTR-1 by the supplier, where such ITC was reversed under CGST Rule 37A in the earlier tax period.
- The taxpayer files GSTR-3B with incorrect details and amends details in the next tax period.

Analysis of Rule 88D

The new Rule 88D reads as under “Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return

- (1) Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished in FORM GSTR-3B exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax

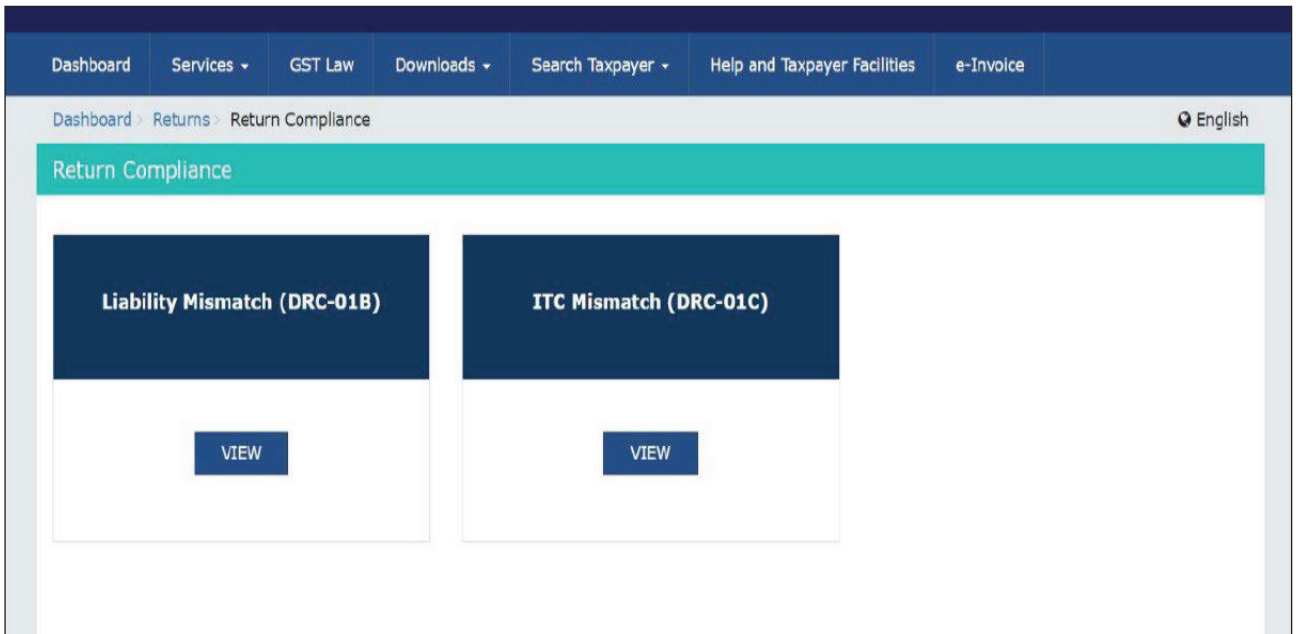
credit in FORM GSTR-2B in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRCOIC, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

- pay an amount equal to the excess input tax credit

availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or

- explain the reasons for the aforesaid difference in input tax credit on the common portal, within a period of seven days.

After Login this feature is live on the GST portal. Liability mismatch can be viewed from Dashboard



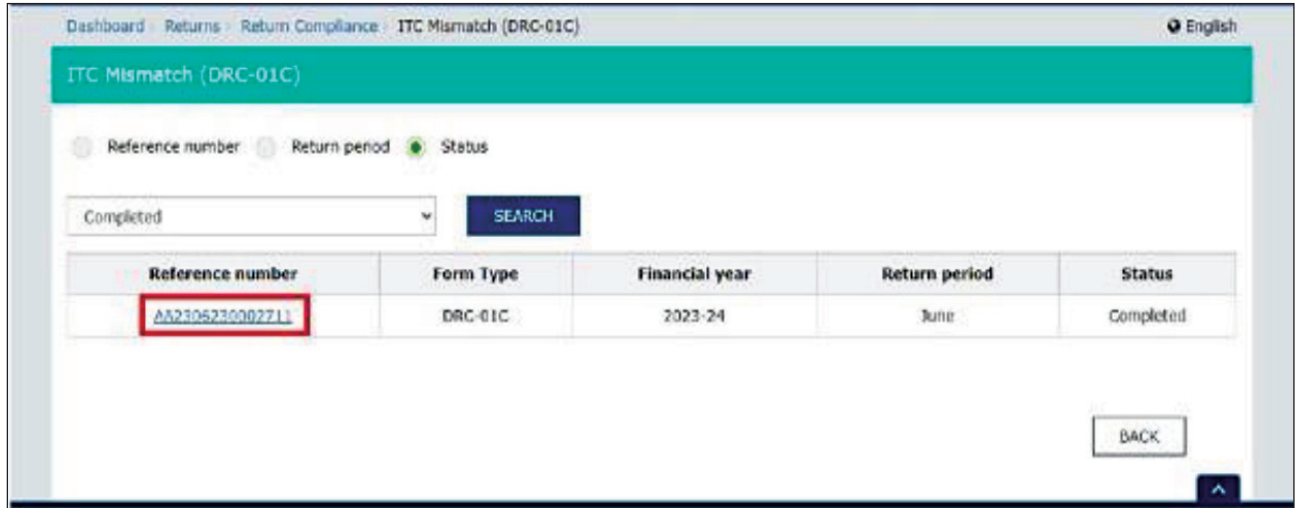
(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in the said sub-rule, either,

- pay an amount equal to the excess input tax credit, as specified in Part A of FORM GST DRCOIC, fully or partially, along with interest payable under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-OIC, electronically on the common portal, or
- furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess input tax credit that has still remained to be paid, if any, in Part B of FORM GST DRC-OIC, within the period specified in the said sub-rule. The time limit that has been prescribed for a taxpayer to take any action is within 7 days.

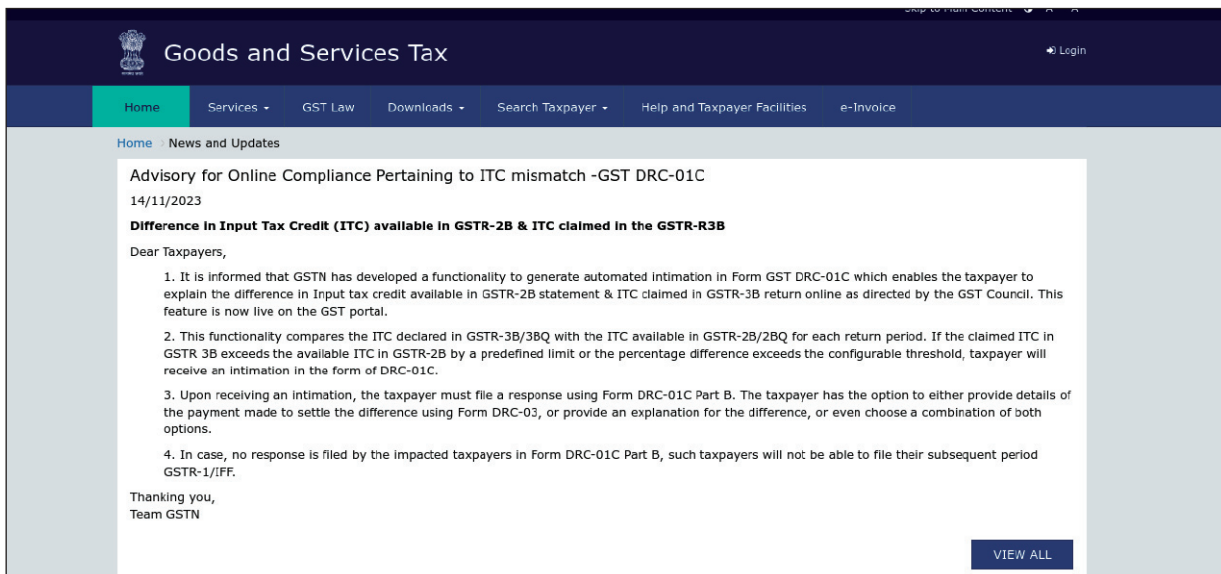
How to do a GSTR-2B Reconciliation with the GSTR- 3B

To perform a GSTR-2B reconciliation, follow these simple steps:

- **Download the GSTR-2B data:** Start by logging in to the GST portal and downloading the auto-generated GSTR-2B statement for a tax period.
- **Download the draft GSTR-3B_ statement:** Next, download the auto-drafted GSTR-3B return from the GST portal for the same tax period.
- **Identify and rectify differences:** Compare the two to identify any ITC mismatches.



Using an automated GST reconciliation tool will help identify discrepancies here with 100% accuracy as against undertaking this exercise manually. Advisory for online compliance in GST Portal.



(3) Where any amount specified in the intimation referred to in sub-rule (1) remains to be paid within the period specified in the said sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.”

Conclusion

The changes introduced by Rule 88D of CGST Rules, 2017, signify a step towards ensuring correct input tax credit claims and results in better compliance within the GST.

This procedure demands taxpayers’ attention to maintain accurate records and transparent reporting to maintain compliance with the tax regulations. These measures will contribute to a more efficient and transparent taxation system.

Rights Of Person Searched Under The Income Tax Act, 1961



Shri Tapas Majumder
Advocate

Search and seizure are an important tool in the hands of the department under the Statute. Under Section 132(1) of the Income Tax Act Search is one of inherent final tools in the hands of the department to gather the documents, information and/or materials, properties, assets of the person to whom search warrant as initiated or the person who holds or under custody of one or owner thereof. Prior to the discussion thereof the digestive principle U/s 132(1) can be reproduced from the statute as under.

“Search and seizure

132. (1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that—

- (a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922) or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922 or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account, or other documents as required by such summons or notice, or
- (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922) or under this Act, or

- (c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922) or this Act (hereinafter in this section referred to as the undisclosed income or property),

he may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer (hereinafter referred to as the authorised officer) to—

- (i) enter and search any building or place where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
- (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;
- (iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;
- (iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;



- (v) *make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.*
- (2) *The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such officer to comply with such requisition.*
- (3) *The authorised officer may, where it is not practicable to seize any such books of account, other document, money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.*
- (4) *The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922) or under this Act.*
- (5) *Where any money, bullion, jewellery or other valuable article or thing (hereinafter in this section and section 132A referred to as the assets) is seized under sub-section (1), the Income-tax Officer, after affording a reasonable opportunity to the person concerned for being heard and making such enquiry as may be prescribed, shall, within ninety days of the seizure, make an order, with the previous approval of the Commissioner,—*
 - (i) *estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him;*
 - (ii) *calculating the amount of tax on the income so estimated in accordance with the provisions of*

the Indian Income-tax Act, 1922 (11 of 1922) or this Act;

- (iii) *specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of sub-section (1) of section 230A in respect of which such person is in default or is deemed to be in default,*

and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized :

Provided that if, after taking into account the materials available with him, the Income-tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized :

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (ii) and (iii) or any part thereof, the Income-tax Officer may, with the previous approval of the Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case.

- (6) *The assets retained under sub-section (5) may be dealt with in accordance with the provisions of section 132A.*
- (7) *If the Income-tax Officer is satisfied that the seized assets or any part thereof were held by such person for or on behalf of any other person, the Income-tax Officer may proceed under sub-section (5) against such other person and all the provisions of this section shall apply accordingly.*
- (8) *The books of account or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained :*

Provided that the Commissioner shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922) or this Act in respect of the years for which the books of account or other documents are relevant are completed.

- (9) The person from whose custody any books of account or other documents are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.
- (10) If a person legally entitled to the books of account or other documents seized under sub-section (1) objects for any reason to the approval given by the Commissioner under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.
- (11) If any person objects for any reason to an order made under sub-section (5), he may, within thirty days of the date of such order, make an application to such authority, as may be notified in this behalf by the Central Government in the Official Gazette (hereinafter in this section referred to as the notified authority), stating therein the reasons for such objection and requesting for appropriate relief in the matter.
- (12) On receipt of the application under sub-section (10) the Board, or on receipt of the application under sub-section (11) the notified authority, may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.
- (13) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1).
- (14) The Board may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

- (i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available ;
- (ii) for ensuring safe custody of any books of account or other documents of assets seized.

Explanation 1.—In computing the period of ninety days for the purposes of sub-section (5), any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Explanation 2.—In this section, the word “proceeding” means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922) or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.]”

Rules 112, 112A, 112B, 112C and 112D of the Income Tax Rules, 1962 lay down the detailed procedure to be followed while These Rules, conducting a search, making seizures and dealing with the seized assets Besides, we have wisdom of the judge-made law.

To meet the ends of justice and fair play, the person searched has certain rights including those listed in the Ground Rules and Citizens’ Charter. They are listed hereinafter with reference to different stages of search.

At the time of commencement of search

- a. Before the commencement of the search, to see the Warrant of Authorisation and to ensure that it is duly signed and sealed. However, there is no right to have a copy of it;
- b. Identity and search of search party
- i. To verify identity of each member of the search party. All the members of a search party are supposed to carry their identity cards. In case of doubt, it is advisable to note down the serial number of their identity cards.
- ii. Besides, his right to satisfy the correctness of the search warrant, he can also require the authorised officer to show his identity with reference to the



identity card which is normally issued to every officer or Income Tax Inspector of the department.

- iii. Such a safeguard is necessary, unless the occupant is already familiar with the officials. There have been daring instances of daylight robbery on pretence of tax raid. The exemplary illustration of such victimisation is the case of big jewellers merchants, renowned jewellers of Mumbai, despite the fact that they were habituated to face frequent searches from Customs authorities, Gold Control authorities etc.
- iv. To have personal search of all the members of the search party officers before they start the search. In fact, the search officers are expected to offer themselves for the search lest they are accused of planting some documents or evidence in the premises;
- c. To demand presence of two or more respectable and independent residents of the locality as witnesses (also called, "Panchas");
- d. To withdraw, in a case where the building, etc. is in the occupation of a woman, who according to custom, does not appear in public i.e. a pardanashin lady, and
- e. Right to worship He is entitled to observance of his worship at the time at which he is normally expected to do.

During the Search proceedings

- a. To remain present during search - Rule 112(8)
- b. While real occupant away from the premises
 - i. This assumes importance because the search is carried out without any prior notice.
 - ii. The person present in the building may, if he is not the real owner, request the authorised officer to wait for some time for enabling him to inform the real owner about the search. If the real owner is in a position to be present, the authorised officer may be informed accordingly.
 - iii. The authorised officer would normally not accede

to the request and wait indefinitely as search can be kept in abeyance only for a reasonable time. Thereafter, he may proceed with the search in the presence of the witnesses.

- iv. It would, however, be in the interest of fair play, natural justice and even the revenue, if full opportunity is allowed to the person searched to attend the search.
- c. To have his children permitted to go to school, after examination of bags;
- d. To have meals etc. at the normal times;
- e. To demand the presence of an Authorised Representative at the time of the search. However, the absence of the Authorised Representative would not prevent the search party from proceeding with the search;
- f. To demand the presence of technical persons like a valuer,

Right to be absent

- i. The person searched is entitled to attend to his normal business, profession etc. but this is circumscribed by the fact that the assessee has to be present during the course of search for furnishing information or replying to questions regarding the acquisition of the articles or the evidences of the books of account found during the course of the search. But the refusal to permit the assessee to leave the premises has been the subject of a major criticism in the following decisions.

LR. Gupta v. UOI [1992] 194 ITR 32/[1991] 59 Taxman 305 (Del.)

H.L. Sibal v. CIT [1975] 101 ITR 112 (P&H)

- ii. "Since the Income Tax Department does not have the power to arrest and the ground rules authorised on the floor of the Parliament in 1987 specifically lay down the Income Tax authority shall have no power to arrest, the general practice of the search party, preventing an assessee whose premises are searched from leaving the building

to attend to his work must be discontinued. After the person has made the statement required he should be allowed to leave” - The Chelliah Committee, Final Report, Para 10-79(C) 197 ITR (St.) 134

- iii. The proposal in the Finance Bill, 1992 providing for the assessee not leaving the premises till the search is over, has been dropped;
- h. To call medical practitioner, if required; and
- i. To demand that a woman should be searched by another woman with strict regard to decency.

During the course of the statement on Oath

- a. To insist that he will subject himself to the examination (by way of statement on oath) by the search party only after taking proper rest in a case where the search has continued for long hours, say till the early hours of the next day;
- b. To note the proceedings, questions and answers at the time of the recording of a statement;
- c. Every person who is examined under section 132(4) has a right to ensure that the facts so stated by him have been recorded correctly; and
- d. To object to the irregularity in the conduct of the search, if any, and to record such objections in writing.

Drawing of Panchnama

- a. To ensure that the list of articles seized mentions the respective places from where they were found;
- b. To inspect the seals placed on various packages when sealed in course of search and subsequently each time when reopened and sealed;
- c. To place his own seals on the packages containing seized assets
- d. To remain present along with 2 witnesses each time when the seals are proposed to be broken;
- e. To object in a case where books of account,

documents, assets, etc. are brought from other places to the place being searched with a view to enable seizure thereof and to record such fact in his statement. This is important because only the documents, valuables etc. found from the seized premises, enjoy the various presumption contained in section 132(4A) of the Act.;

- f. To have a copy of the Panchnama together with all the Annexures including a list of all items seized/not seized; and
- g. Reference may be made to Case Studies.

Post Search Occurrence

- a. To have inspection of the seized books of account etc. or to take extracts therefrom or copy thereof;
- b. To have a copy of any statement that is used against him by the department;
- c. To make an application objecting to the approval given under section 132(8) of the Act by the Commissioner of Income Tax for retention of books and documents
- d. To have recalled the prohibitory order or restraint order under section 132(3) when wrongly issued.
- e. To get back the disclosed assets which could not have been seized;
- f. To file writ petitions challenging the validity of the search on the ground of misuse of powers or malice or collateral purpose;
- g. To have refund with interest on the amount by which aggregate of money retained under section 132 and the proceeds, if any, of the assets sold towards discharge of any existing liability, exceeds the actual tax liability; and
- h. Reference may be made to Case Studies.

Obligations of the person searched

Rights of the search party culminates into obligation of the person searched. They are narrated herein below.



Sign the warrant

To see the warrant of authorisation and put signature on the same.

Allow entry and access

- a. To allow free ingress to the place and afford all reasonable facilities for carrying out the search;
- b. On being shown the authority for entry into the building, vehicle, vessel, or aircraft, the person in charge of building or vehicle etc. is duty bound to allow free ingress into the building, vehicle etc. He should also afford all reasonable facilities to enable the search party to search the premises of the

vehicle etc. [sub-rule (3)];

- c. If he does not allow such free ingress, the search party is permitted to enter forcibly under sub-rules (4) and (4A);
- d. Similarly, the searched person should, on demand by the authorised officers, open those rooms, lockers, boxes, safe, or any other receptacle in the building, place, vehicle, etc. [sub-rule (4B)]; and
- e. To facilitate inspection and obtaining information from the records maintained on Computers.





Press Releases

Union Government authorises release of tax devolution of ₹ 72,961.21 crore to all State Governments for November, 2023; three days ahead of the usual date of 10th November

Early release enables State Governments to make in-time releases during festival season

Posted On: 07 NOV 2023 5:30PM by PIB Delhi

In view of the upcoming festive season, the Union Government has authorised the release of tax devolution of ₹ 72,961.21 crore to State Governments for the month of November 2023, on 7th November instead of the usual date 10th November.

This will enable the State Governments to make in-time releases and add to the festivities and celebrations among the people. State-wise breakup of amounts released is given in the following table:

State-wise distribution of Net Proceeds of Union Taxes and Duties for November, 2023

Sl. No	Name of State	Total (₹ Crore)
1	ANDHRA PRADESH	2952.74
2	ARUNACHAL PRADESH	1281.93
3	ASSAM	2282.24
4	BIHAR	7338.44
5	CHHATTISGARH	2485.79
6	GOA	281.63
7	GUJARAT	2537.59
8	HARYANA	797.47
9	HIMACHAL PRADESH	605.57
10	JHARKHAND	2412.83
11	KARNATAKA	2660.88
12	KERALA	1404.50
13	MADHYA PRADESH	5727.44



Sl. No	Name of State	Total (₹ Crore)
14	MAHARASHTRA	4608.96
15	MANIPUR	522.41
16	MEGHALAYA	559.61
17	MIZORAM	364.80
18	NAGALAND	415.15
19	ODISHA	3303.69
20	PUNJAB	1318.40
21	RAJASTHAN	4396.64
22	SIKKIM	283.10
23	TAMIL NADU	2976.10
24	TELANGANA	1533.64
25	TRIPURA	516.56
26	UTTAR PRADESH	13088.51
27	UTTARAKHAND	815.71
28	WEST BENGAL	5488.88
	Grand Total	72961.21



DIRECT TAX

Gross Direct Tax Collections for FY 2023-24 up to 09.11.2023

Gross Direct Tax collections FY2023-24 upto 9.11.2023 are Rs. 12.37 lakh crore; growth of 17.59% Y-o-Y

Direct Tax collection, net of refunds, stands at Rs. 10.60 lakh crore; growth of 21.82% Y-o-Y
Net growth in Corporate Income Tax collections is 12.48% .and Personal Income Tax collections is 31.77% Y-o-Y respectively

Refunds worth Rs. 1.77 lakh crore issued for FY2023-24 upto 09.11.2023

Posted On: 10 NOV 2023 3:45PM by PIB Delhi

The provisional figures of Direct Tax collections up to 09th November, 2023 continue to register steady growth. The Gross Direct Tax collections are at Rs. 12.37 lakh crore, which is 17.59% higher than the gross collections for the corresponding period of last year. Direct Tax collection, net of refunds, stands at Rs. 10.60 lakh crore which is 21.82% higher than the net collections for the corresponding period of last year. This collection is 58.15% of the total Budget Estimates of Direct Taxes for F.Y. 2023-24.

So far as the growth rate for Corporate Income Tax (CIT) and Personal Income Tax (PIT) in terms of gross revenue collections is concerned, the growth rate for CIT is 7.13% while that for PIT is 28.29% (PIT only)/ 27.98% [PIT including Securities Transactions Tax (STT)]. After adjustment of refunds, the net growth in CIT collections is 12.48% and that in PIT collections is 31.77% (PIT only)/ 31.26% (PIT including STT).

Refunds amounting to Rs. 1.77 lakh crore have been issued during 1st April, 2023 to 09th November 2023.





NOTIFICATIONS & CIRCULARS

Notifications

GST

No. 53/2023– CENTRAL TAX 2nd November, 2023

1. In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:
2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.
3. No appeal shall be filed under this notification, unless the appellant has paid-
 - (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-

five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub-section (1) of Section 107 of the said Act.
5. No appeal under this notification shall be admissible in respect of a demand not involving tax.
6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

No. 54/2023- CENTRAL TAX 17th November, 2023

In pursuance of the powers conferred by sub-rule (4B) of rule 8 of the Central Goods and Services Tax Rules, 2017, the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue) No. 27/2022-Central Tax, dated the 26th December, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 903(E), dated the 26th December, 2022, namely:-

In the said notification, for the words, “State of Gujarat and the State of Puducherry”, the words “States of Andhra Pradesh, Gujarat and Puducherry” shall be substituted.

Customs (Non-Tariff) Notification No. 81/2023 - Customs (N.T.) 2nd November, 2023

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the



Notification No. 76/2023-Customs(N.T.), dated 19th October, 2023 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 3rd November, 2023, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl No (1)	Foreign Currency (2)	Rate of exchange of one unit of foreign currency equivalent to Indian rupees (3)	
		(For Imported Goods)	(For Export Goods)
1	Australian Dollar	54.85	52.45
2	Bahraini Dinar	228.30	214.30
3	Canadian Dollar	61.20	59.25
4	Chinese Yuan	11.55	11.20
5	Danish Kroner	12.00	11.65
6	EURO	89.85	86.75
7	Hong Kong Dollar	10.85	10.45
8	Kuwaiti Dinar	278.00	261.40
9	New Zealand Dollar	50.45	48.15
10	Norwegian Kroner	7.60	7.35
11	Pound Sterling	103.30	99.85
12	Qatari Riyal	23.55	22.15
13	Saudi Arabian Riyal	22.90	21.55
14	Singapore Dollar	62.05	60.05
15	South African Rand	4.65	4.35
16	Swedish Kroner	7.60	7.35
17	Swiss Franc	94.05	90.50
18	Turkish Lira	3.05	2.85
19	UAE Dirham	23.40	22.00
20	US Dollar	84.15	82.40

SCHEDULE-II

Sl No (1)	Foreign Currency (2)	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees (3)	
		(For Imported Goods)	(For Export Goods)
1	Japanese Yen	56.30	54.55
2	Korean Won	6.40	6.00



Notification No. 82/2023 - CUSTOMS (N.T.)
15th November, 2023

In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

TABLE – 1

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	849
2	1511 90 10	RBD Palm Oil	861
3	1511 90 90	Others – Palm Oil	855
4	1511 10 00	Crude Palmolein	865
5	1511 90 20	RBD Palmolein	868
6	1511 90 90	Others –Palmolein	867
7	1507 10 00	Crude Soya bean Oil	1001
8	7404 00 22	Brass Scrap (all grades)	4633

TABLE – 2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	634 per 10 grams
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	723 per kilo-gram
3	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	723 per kilo-gram



4	71	<p>(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage.</p> <p>Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.</p>	634 per 10 grams
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TABLE – 3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	8068 (i.e., no change)

This notification shall come into force with effect from the 16th day of November, 2023.

**Notification No. 83/2023 - Customs (N.T.)
15th November, 2023**

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following amendments in the Central Board of Indirect Taxes and Customs Notification No. 81/2023-CUSTOMS (N.T.), dated 2nd November, 2023 with effect from 16th November, 2023. In the SCHEDULE-I of the said Notification, for serial No.16 and the entries relating thereto, the following shall be substituted, namely: -

Sl No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Export Goods)
(1)	(2)	(3)	
16	Swedish Kroner	7.95	7.70

**Notification No. 84/2023 - Customs (N.T.)
16th November, 2023**

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 81/2023-Customs(N.T.), dated 2nd November, 2023 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 17th November, 2023, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

**SCHEDULE-I**

SI No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(3)	(3)
(1)	(2)	(For Imported Goods)	(For Export Goods)
1	Australian Dollar	55.10	52.75
2	Bahraini Dinar	228.15	214.20
3	Canadian Dollar	61.75	59.70
4	Chinese Yuan	11.65	11.30
5	Danish Kroner	12.30	11.90
6	EURO	91.75	88.60
7	Hong Kong Dollar	10.85	10.50
8	Kuwaiti Dinar	278.20	261.60
9	New Zealand Dollar	51.15	48.85
10	Norwegian Kroner	7.80	7.55
11	Pound Sterling	104.80	101.40
12	Qatari Riyal	23.55	22.15
13	Saudi Arabian Riyal	22.90	21.50
14	Singapore Dollar	62.60	60.55
15	South African Rand	4.70	4.40
16	Swedish Kroner	8.00	7.75
17	Swiss Franc	95.50	91.85
18	Turkish Lira	3.00	2.80
19	UAE Dirham	23.35	22.00
20	US Dollar	84.10	82.35

SCHEDULE-II

SI No	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
		(3)	(3)
(1)	(2)	(For Imported Goods)	(For Export Goods)
1	Japanese Yen	55.90	54.15
2	Korean Won	6.60	6.20



**Customs (Anti-Dumping Duty)
NOTIFICATION No. 11/2023-Customs (ADD)
17th November, 2023**

Whereas, in the matter of “Toughened Glass for Home Appliances having thickness between 1.8 MM to 8 MM and area of 0.4 SqM or less” (hereinafter referred to as the subject goods), falling under chapter 70 of the First Schedule of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from People’s Republic of China (hereinafter referred to as subject country) and imported into India, the designated authority in its final findings, vide notification F. No. 06/10/2022-DGTR, dated the 28th August, 2023, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 28th August, 2023, has come to the conclusion, inter alia, that-

- (i) the product under consideration has been exported to India at a price below the normal value, resulting in dumping;
- (ii) the imports from the subject country have increased in absolute as well as relative terms throughout the injury investigation period;
- (iii) the domestic industry has accordingly suffered material injury. The injury caused to the domestic industry is not on account of any other known factor,

and has recommended imposition of anti-dumping duty on imports of the subject goods, originating in, or exported from the subject country and imported into India, in order to remove injury to the domestic industry.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act 1975 (51 of 1975) read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under the tariff items of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry

in column (6), which are imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (7), in the currency as specified in the corresponding entry in column (9) and as per unit of measurement as specified in the corresponding entry in column (8) of the said Table.

The full notification can be read at:

<https://taxinformation.cbic.gov.in/view-pdf/1009940/ENG/Notifications>

**Central Excise
Notification No. 39/2023-Central Excise
15th November, 2023**

1. In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 04/2022-Central Excise, dated the 30th June, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 492 (E), dated the 30th June, 2022, namely:-In the said notification, in the Table, against S. No. 2, for the entry in column (4), the entry “Rs.1 per litre” shall be substituted.
2. This notification shall come into force on the 16th day of November, 2023

**Notification No. 38/2023-Central Excise
15th November, 2023**

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

In the said notification, in the Table, -



(i) against S. No. 1, for the entry in column (4), the entry “Rs. 6300 per tonne” shall be substituted;

2. This notification shall come into force on the 16th day of November, 2023

Circulars

Circular No 28/2023 - Customs 8th November, 2023

Subject: Allowing advance assessment of Courier Shipping Bills – regarding

1. Representations have been received in the Board to allow advance assessment of Courier Shipping Bills that would further reduce the dwell time.
2. Based on the inputs from the stakeholders and with a view to further enhancing the ease of doing business, it has been decided to provide for advance assessment of Courier Shipping Bills on the Express Cargo Clearance System (ECCS). The Directorate General of Systems has confirmed the enabling of appropriate technical changes in the ECCS export workflow for this purpose. An Advisory No. 11/SYS/WZU/2023 dated 19.10.2023 has also been issued by DG (Systems).
3. The field formations are requested to issue suitable Public Notice etc. for guidance.
4. Difficulty, if any, may be brought to the notice of the Board.

19

JUDGEMENT INDIRECT TAX

Order imposing penalty for expired e-way bill to be set aside in absence of deliberate or willful intent to evade tax: HC

Facts of the case -

Ishaan Plastics (P.) Ltd. v. Deputy Commissioner of State Tax - [2023] (Calcutta)

In the present case, the department intercepted a vehicle and found that goods were transported with e-way bill which was already expired. The Adjudication Order was passed imposing penalty for transporting goods in vehicle with expired e-way bill and Appellate Order was also passed confirming Adjudication Order. The petitioner filed writ petition by submitting that there was no intention of any evasion of tax and challenged the order of appellate authority.

Decision of the case :

- The Honorable High Court noted that the department could not make out any case against petitioner that there was any deliberate or wilful intention of petitioner to avoid and evade tax. There was a time gap between the expiry of the bill and interception of the vehicle of about 9 hrs., which was less than a day.
- In view of facts and circumstances of case, the Court held that the impugned orders of appellate authority and adjudicating authority were liable to be set aside and petitioner would be entitled to get refund of penalty.

ITC benefit rightly denied to assessee who failed to prove and establish actual physical movement of goods: HC

Facts of the case -

Malik Traders v. State of U.P. - [2023] (Allahabad)

In the present case, the petitioner had challenged the adjudication order passed by the department demanding approx. Rs. 12 lacs as wrong availment of input tax credit

(ITC). The department confirmed the demand on the ground that the petitioner had only brought on record tax invoices, e-way bills, GR and payment through banking channel, but details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof were not provided.

Decision of the case :

- The Honorable High Court noted that as per Section 16 of GST Act, 2017, ITC would be allowed subject to fulfilment of certain conditions and credit can't be availed without actual physical movement of goods or genuineness of transaction. In the instant case, the petitioner was required to prove and establish beyond doubt the actual physical movement of goods and genuineness of transportation by furnishing details such as payment of freight, toll receipts etc.
- Therefore, in absence of these documents, actual physical movement of goods, genuineness of transportation as well as transaction could not be established. Thus, the Court held that proceedings under Section 74 had rightly been initiated against the petitioner.

Blocking of Electronic Credit Ledger by an Officer of rank below Assistant Commissioner could not be sustained: HC

Facts of the case -

Guru Storage Batteries v. State of Maharashtra - [2023] (Bombay)

In the present case, the petitioner had challenged blocking of Electronic Credit Ledger. It was contended by the petitioner that order was passed by the State Tax Officer who was an Officer below the rank of Assistant Commissioner.

Decision of the case :

- The Honorable High Court noted that as per Rule



86A, the blocking of Electronic Credit Ledger can be done by Commissioner or an officer authorized by him in this behalf, not below rank of Assistant Commissioner. In the instant case, it was not in dispute that Electronic Credit Ledger had been blocked by an Officer of rank below that of Assistant Commissioner.

- The Court further noted that Notification ORDER EO No-9 dated 24.01.2020 was relied upon to delegate powers to officer for blocking Electronic Credit Ledger, but same was not applicable as notification was under state GST laws, and accepting delegation by notification would contemplate a delegation by way of amendment to Rule 86A. Therefore, The Court held that the action of blocking Electronic Credit Ledger of petitioner could not be sustained and same was quashed and set aside.

Parallel proceedings by SGST dept. on different subject matter of different period were not invalid: Bombay HC

Facts of the case -

Yash Alloys India v. Union of India - [2023] (Bombay)

In the present case, proceedings under Central GST Act were initiated against petitioner in respect of fraudulent ITC relating to period from 1-7-2017 to 31-3-2021. Thereafter, another proceedings were initiated by State GST Department under Maharashtra GST Act. It filed writ petition to challenge the proceedings under State GST Act and prayed for stay the investigation since proceedings already going on.

Decision of the case :

- The Honorable High Court noted that as per Section 6(2)(b) of Maharashtra GST Act, where a proper officer under CGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by proper officer under MGST Act on same subject matter.
- However, in the present case, the proceedings under MGST Act were in respect of period from 1-4-2021 to 4-10-2023 and scope of investigation was in respect of illegal refunds. Therefore, the Court held that the provisions of Section 6(2)(b) of the MGST

Act, in any manner, wouldn't be attracted in the facts of the present case to bar MGST proceedings.

Demand issued on ground of non-payment of tax by supplier can't sustain since recipient was composition dealer: HC

Facts of the case -

Rama Brick Field v. Additional Commissioner, Grade-2 - [2023] (Allahabad)

In the present case, the petitioner who had opted for composition scheme for the period of 1-10-2017 to 21-3-2019 received a notice from the GST department. It was alleged that one of its supplier was found non-existent at the time of survey and demand of tax along with interest and penalty was raised. It filed writ petition against the demand and contended that no input tax credit was availed since it had opted for composition scheme.

Decision of the case :

- The Honorable High Court noted that the disputed purchases pertained to period May, 2018 to June, 2018, which fell under the period of composition and question of taking credit would not arise. Moreover, the petitioner adduced evidence such as tax invoice, e-way bill, G.R., payment receipts etc. to show that purchases were made from registered dealer whose registration was cancelled in October, 2019.
- Also, it was noted that at time of transaction in question, seller was a registered firm under GST Act and at subsequent time, the seller was found non-existence. Thus, the Court held that the impugned order raising demand for entire amount of tax could not be sustained in eyes of law and matter was remanded back.

JUDGEMENT DIRECT TAX

AO needs evidence to label share sale as bogus proving assessee converted unaccounted funds through fictitious loss

Facts of the case -

PCIT v. Champalal Gopiram Agarwal - [2023] (Gujarat)

Assessing Officer (AO) received information from DDIT (Inv) that assessee had entered into trading of penny stock of two companies and claimed bogus loss. As a result, a notice under section 148 was issued upon the assessee.

Later, AO passed an order and made an addition to an account of alleged bogus loss on the sale of shares. On appeal, the Commissioner (Appeals) partly allowed the appeal of the assessee. However, ITAT deleted the addition.

Aggrieved-AO filed the instant appeal before the High Court.

Decision of the case :

- The High Court held that the Tribunal found that assessee had discharged the initial burden cast upon it under provisions of section 68. Shares of companies were purchased online, payments were made through banking channels, and shares were dematerialized. Additionally, the shares were transferred from the dematerialized account and received consideration through legitimate banking channels.
- AO did not have any independent source or evidence to show an agreement between the assessee and any other party to convert unaccounted money by taking the fictitious loss. The decision of AO was unsupported by any material on record, and the finding was purely on an assumption basis. Thus, no substantial question of law arose from the order of the Tribunal, and the same was to be upheld.

AO can't doubt residential status without being

backed by substantive evidence if NR holds valid TRC: ITAT

Facts of the case -

Saif II-Se Investments Mauritius Ltd. v. ACIT - [2023] (Delhi - Trib.)

Assessee, a tax resident of Mauritius, operated as an investment company for undertaking various investments. Assessee's holding company acquired 5 per cent unlisted equity shares of NSE transferred to assessee in the year 2009. Assessee received net long-term capital gain on part disposal of said shares and claimed long-term capital gain to be exempt under Article 13(4).

Assessing Officer (AO) held that the assessee had no commercial substance and had been set up as a conduit company under a scheme of arrangement to get tax advantage under the India-Mauritius tax treaty. He held that the assessee could not be treated as a tax resident of Mauritius and would not be entitled to treaty benefits.

The Dispute Resolution Panel upheld the decision of the AO. Aggrieved assessee filed the instant appeal before the Tribunal.

Decision of the case :

- The Tribunal held that undisputedly, on perusal of the certificate of incorporation issued by the Registrar of Company, Mauritius, it is observed that the assessee was incorporated on 7-1-2008 as a private limited company. The Category 1 GBL was issued in favour of the assessee by the Financial Services Commission, Mauritius, on 16-1-2009.
- Further, from its incorporation, the Mauritius Revenue Authorities have issued TRCs in favour of the assessee. Even in the impugned assessment year, the assessee holds a valid TRC. The AO did not dispute these facts.
- Once the assessee holds a valid TRC, it proves the residential status of the assessee as resident

of Mauritius. Hence, it will be eligible for treaty benefits. The various allegations of AO regarding the residential status of the assessee, lack of commercial substance, etc., were in the nature of vague allegations without being backed by substantive evidence,

- Unfortunately, DRP has endorsed the view AO expressed without properly analyzing the facts and evidence brought on record. Thus, the capital gain derived by the assessee from the sale of shares would fall within the ambit of Article 13(4) of the tax treaty.

Section 269SS does not apply to a cash loan obtained by a company from its director: ITAT

Facts of the case -

Thamira Green Farm (P.) Ltd. v. Additional Commissioner of Income-tax - [2023] (Chennai - Trib.)

Assessee-company received loans in cash from its director to purchase lands in its name. Assessing Officer (AO) issued a notice seeking an explanation for receipt of a loan over Rs. 20,000 otherwise than by Account payee Cheque/ Bank Draft in contravention of provisions of section 269SS.

In response, the assessee contended that it did not have any bank account at the given time, and the land sellers were residing in remote places and insisted on cash payments. However, AO considered invoking section 269SS and continued to levy penalty under section 271D.

On appeal, the CIT(A) sustained the penalty levied by the AO. Aggrieved by the order, the assessee filed an appeal to the Chennai Tribunal.

Decision of the case :

- The Tribunal held that section 273B deals with reasonable cause. If there is a reasonable cause in accepting loans in violation of provisions of section 269SS, then such transactions need to be taken out of the rigorous of section 271D. The assessee's explanation needs to be considered to consider whether there is a reasonable cause in violation of relevant provisions. If the assessee's explanation is bonafide and reasonable, then said explanation needs to be considered in light of reasonable cause as provided under section 273B.

- In the instant case, based on the assessee's explanation, there appeared to be a reasonable cause for accepting a loan from the director in contravention of provisions of section 269SS for two reasons. Firstly, the entire amount of the loan was utilized to acquire capital assets for the business of the company. Secondly, the assessee and the director both had disclosed transactions in their books of accounts for the relevant previous year. Further, the director explained the loan source given to the assessee.
- Since, all these paramount's were satisfied, the genuineness of the transactions was not in doubt. Moreover, it was a case of loan between the director and the company. Although the company and its director were separate legal entities, they cannot be considered separate for these transactions. If there are transactions between the company and director, then said transactions inter-se cannot be considered as loans or deposits within the meaning of section 269SS. This principle was also supported by the decision of the Delhi High Court in the case of CIT v. M/s. Muthoot Financiers in ITA No. 336/2002, dated 3-2-2015.
- Therefore, it was opined that the transactions between the assessee and director were in the nature of current account transactions, which did not come under the purview of loan and deposit as per section 269SS. Accordingly, the penalty levied under section 271D was deleted.

Assessee can adopt provisions of Act for one source of Income and apply DTAA provisions for another source: ITAT

Facts of the case -

Indium IV (Mauritius) Holdings Ltd. V. DCIT - [2023] (Mumbai - Trib.)

Assessee-company, a tax resident of Mauritius, was engaged in investment activities in India through the Foreign Direct Investment Route or through subsidiaries. During the year, it had earned gains and incurred losses on the alienation of shares of Indian companies.

It had claimed Short Term Capital Gain (STCG) as exempt from tax in India in accordance with article 13(4) of the India Mauritius DTAA. It sought to carry forward the Long

Term Capital Loss (LTCL) under section 74(1).

The Assessing Officer (AO) rejected the assessee's claim, observing that since capital gains derived by the assessee in India were exempt, the question of carrying forward capital losses from similar transactions doesn't arise.

On appeal, the CIT(A) upheld the decision of the AO. Aggrieved by the order, an appeal was filed to Mumbai Tribunal.

Decision of the case :

- The Tribunal held that with regard to Choice of Act or Treaty Provisions is qua stream of Income, in terms of section 90(2), the assessee is eligible to apply the provisions of the Act or the Treaty, whichever is more beneficial to it. As per Article 13 of the India-Mauritius Treaty, gains derived by a resident of Mauritius from the alienation of shares shall be taxable only in Mauritius.
- It is observed that the classification of capital assets between long-term and short-term is determined depending on the holding period. Further, taxation of Short Term Capital Gain (STCG) and Long Term Capital Gain (LTCG) is also governed under different sections being 111A in case of STCG and 112/112A in respect of LTCG. Accordingly, the scheme of the Act itself recognizes STCG/STCL and LTCG/LTCL to be separate and distinct sources of Income.
- This distinction is highlighted upon perusal of section 70 governing intra-head set-off of current-year losses. Section 70 clarifies that the STCL can be carried forward or adjusted intrahead while the LTCL can be carried forward, but intra-head adjustment cannot be made against the STCL/STCG. Therefore, the Legislature has kept this difference in carry forward and intra-head adjustment separate for LTCG/LTCL and STCG/STCL.
- On further perusal of section 70 to section 74, it can be seen that the Legislature has recognized LTCG/LTCL and STCG/STCL as two distinct sources owing to computational dissimilarities. Accordingly, the assessee, under the provisions of section 90(2), is eligible to claim the beneficial provisions of the Treaty in respect of STCG and with regard to LTCL, the assessee has the option to apply the provisions of section 74, accordingly chose to carry forward

LTCL.

- Therefore, the assessee was allowed to claim beneficial provisions of the India-Mauritius DTAA in respect of STCG and carry forward the LTCL as per section 74.

Compensation paid to seller for waiving off its absolute right from land to be treated as cost of improvement: ITAT

Facts of the case -

Nareshbhai Ishwardas Patel v. ITO - [2023] (Ahmedabad - Trib.)

The assessee and the co-owner sold 5% of the land, and the remaining 95% of land was transferred to the partnership firm as the partner's capital contribution at a certain amount. Assessee, against the sale of land and transfer of land to the partnership firm, claimed a certain amount incurred as cost of improvement, including compensation paid to a person for waiving off its absolute right from land in favour of the assessee.

Assessing Officer (AO) noted that the assessee failed to file a copy of the ITR of the third party and failed to demonstrate that said party had offered income on account of compensation paid by the assessee. Thus, he disallowed the claim of index cost of improvement on account of compensation and stamp duty charges.

The matter reached before the Ahmedabad Tribunal.

Decision of the case :

- The Tribunal held that it was noted that the lower authority failed to point out any infirmity in evidence made available by the assessee regarding payment of compensation. The assessee's claim was rejected merely because such documents did not contain details of payment and based on the fact that the seller party had not offered income on receipt of such compensation.
- Further, revenue had accepted an identical claim of cost of improvement on account of compensation made by the co-owner, i.e., the brother of the assessee, in the assessment framed under section 143(3). Thus, the claim of the cost of an improvement on account of compensation paid by the assessee was to be allowe



Tax Calendar

Indirect Tax

Due Dates	Returns
Dec 10th, 2023	GSTR - 8 (Nov, 2023)
Dec 10th, 2023	GSTR - 7 (Nov, 2023)
Dec 11th, 2023	GSTR-1 (Nov, 2023)
Dec 13th, 2023	IFF (Optional) (Nov,2023)
Dec 13th, 2023	GSTR-5 (Nov, 2023)
Dec 13th, 2023	GSTR-6 (Nov, 2023)
Dec 20th, 2023	GSTR-3B (Nov, 2023)
Dec 20th, 2023	GSTR-5A (Nov, 2023)

Direct Tax

Due Date	Returns
Nov 30th, 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194-M & 194-S in the month of October, 2023
	Return of income for the assessment year 2023-24 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
	Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2022-23
	Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during previous Year 2022-23 (Form No. 64)
	Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2022-23) to units holders
	Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager. (if the assessee is required to submit return of income on November 30, 2023)
	The due date of furnishing of Return of Income in Form ITR-7 for the Assessment Year 2023-24 in the case of assessee referred to in clause (a) of Explanation 2 to section 139(1).
	Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company has any international/specified domestic transaction]
	Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is November 30, 2023).
	Due date to exercise option of safe harbour rules for international transaction by furnishing Form 3CEFA & 3CEFB
Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2022-23. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A	



Dec 7th, 2023	Due date for deposit of Tax deducted/collected for the month of November, 2023. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
Dec 15th, 2023	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of November, 2023 has been paid without the production of a challan
	Third instalment of advance tax for the assessment year 2024-25
	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194-M & 194-S in the month of October, 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 Nov, 2023



E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Guide Book for GST Professionals	Handbook on Special Economic Zone and Export Oriented Units
Handbook for Certification for difference between GSTR-2A & GSTR - 3B	Handbook on GST on Service Sector
Taxation on Works Contract	Handbook on Works Contract under GST
Impact of GST on Real Estate	Handbook on Impact of GST on MSME Sector
Insight into Customs-Procedure & Practice	Insight into Assessment including E-Assessment
Input Tax Credit & In depth Discussion	Impact on GST on Education Sector
Exemptions under the Income Tax Act, 1961	Addendum_Guidance Note on GST Annual Return & Audit
Taxation on Co-operative Sector	An insight to the Direct Tax-Vivadse Vishwas Scheme 2020
Guidance Note on GST Annual Return & Audit	International Taxation and Transfer Pricing
Sabka Vishwas _Legacy Dispute Resolution Scheme 2019	Handbook on E-Way Bill
Guidance Note on Anti Profiteering	

For E-Publications, Please Visit Taxation Portal-

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TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

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

Disclaimer:

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