

APRIL, 2020

TAX Bulletin

★ ★ VOLUME - 62 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

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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.”

VISION STATEMENT

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

Objectives of Taxation Committees:

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

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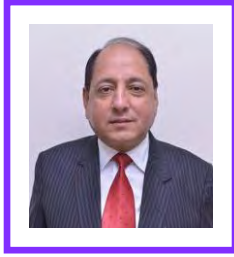
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CMA Rakesh Bhalla
Chairman, Direct Taxation Committee



CMA Niranjana Mishra
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

As Lockdown 2.0 begins on 15.04.2020, the total number of coronavirus cases in India has crossed 12000 now and looking into the gravity of the matter, the Government of India has extended the lockdown till 03.05.2020. The Institute urges all its members, associates, stakeholders to honour this decision of the Government and be safely stationed at their homes.

Though we have been at our homes since last few days but we appreciate that the Tax Research Department is contributing in full swing towards the development of skill and knowledge of its members, learners and stake holders. Two note-worthy publications have been published and a few are still in the pipeline. The department has come up with the revised edition on 'Guidance Note on Anti-profiteering' as well as, it has published two new handbooks on 'Vivad se Vishwas' and 'Addendum to Guidance Note on GST Audit'. We are also grateful to the Resource persons who have contributed their knowledge in this regard.

The Institute is also submitting a representation to the GST Commissionerates of different zones for inclusion of the Cost Accountants as members in the State GST Grievance Redressal Committee Meeting.

We at the Institute of Cost Accountants of India stand by our Government in this national lockdown announced by our Hon'ble Prime Minister Shri Narendra Modiji, which we think is an unprecedented measure in the fight against Covid-19 and is scheduled to end on the 3rd of May, 2020. We would like to reiterate from our last deliberation that we should remember "United we stand, Divided we fall".


We are thankful to our members, Executives of Tax Research department and our resource persons for their continuous contribution to release the Bulletin on time.

Jai Hind



(Rakesh Bhalla)

CMA Rakesh Bhalla
17th April 2020



CMA Niranjana Mishra
17th April 2020

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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



GST – ON BEAT, OFF BEAT AND BACK BEAT

INVOICE – 2 WILFUL INVOICE ERRORS

CMA (Dr.) Ashish Prakash Thatte
Council Member
The Institute of Cost Accountants of India

Apart from Place and Time of supply to decide Value and Actual Invoice to be issued, the problem of Wilful Invoice Error is found to be hurting GST collections too. As we know, one of the prime motives of GST was Invoice matching for input credit however the original idea of the same is yet to be implemented in its original form. Even today E-invoicing is deferred till September 2020 and even after its successful implementation it will cover assesses above Rs. 100 Cr turnover which may not be major chunk. Wilful Invoicing errors are of-course with intention to fraud and having multiple purposes to surpass legal provisions. It's clearly a case of tax evasion and not genuine tax planning. On the other hand in GST Law there are provisions for corrections in Invoices and genuine assesses are correcting it too. Let's see instances of Wilful Invoicing errors falling under violation of Section 31.

1. **Invoice is issued with Serial Number of Other Assesse:** This is a typical wilful error wherein offence is committed to the extent of tracking systems of Tax Payers. Such Frauds are done taking advantage of Quarterly Return Assesses in all cases. After a return is filed or when Bonafied Tax Payer tries to file the return such frauds comes into light or may be till that time Credit is taken and used as buffer for Working Capital too. Very rare cases of such wilful errors but still there are possibilities of the same.
2. **Issues invoices without actual supply of Goods or Services:** Thousands and Thousands of Crores of Rupee Frauds have unearthed by Department on such modus operandi. There are several cases wherein without actual moment of goods or supply of services invoices are issued and credit is availed.
 - a. **Company L Case:** In this case pending before Hon. Rajasthan High Court it is revealed that from July, 2017, the company 'L' has not done any business and fake sale purchase bills were prepared and only trading activities were shown. All the trading activities were conducted without any banking transaction or movement of goods. It was also revealed from the statements that input tax credit was wrongly claimed to the tune of more than Rs. 40 crores and 53 lakhs by the company 'L'. From investigation, it is also revealed that no manufacturing process was conducted by the company 'L' and CR Sheet/Coils and Iron Sheets were not used in the manufacturing process. It was also revealed that five companies are related companies to the company 'L' and the total input credit wrongly claimed by the company and its sister concerns is to the tune of Rs. 328 crores. From searches, it was revealed that the company 'L' had taken input tax credit on bills issued by other concerns, whereas CR Sheet/Coils and iron sheets mentioned in the bills never reached the unit. The Company 'L' issued exit pass even when it had not received the goods. The company had thus shown fake purchase of Rs. 225.90 crores and had wrongly claimed input credit to the tune of Rs. 40.53 crores. In the instant case, the petitioner has not disputed the factum of fraudulent availing of input tax on basis of fake invoices.
 - b. **Group Companies fakes Invoices Case as before Hon. Karnataka High Court:** Companies of 'A' group were indulging in continuous issuance of fake invoices without actual supply of goods with an intention to enable them fraudulently avail the input tax credit. It was case of the prosecution that invoices were issued and circulated among the group companies till they reached back to the originating companies, i.e, 'A' groups without actual movement of goods thereby transferring the irregular input credit to the originating companies for payment of GST and sales tax. It was further alleged that the act was an offence and it was criminal in nature. On the basis of the same, complaint was registered.
 - c. **Fake Invoices and Cash Transactions:** a Professional Accountant, was arraigned as an accused on allegation that he in connivance with other accused persons, had allegedly issued GST invoices without any supply of goods to buyers on commission basis causing loss of more than Rs. 98 crores - Thus, petitioner was arrested wherein it was admitted that invoices were issued for goods and service but there was no movement/supply of goods or services in cases of bills

issued by him - It was further found that manner of payment against invoices was RTGS, however, RTGS given by parties went to another account and against said RTGS they received cash which was returned after deducting commission. Such type of Modus Operandi was found in one of the pending cases before Hon. West Bengal High Court in recent times. Hence in invoice frauds it was coupled with Cash Transactions also.

3. **Goods and services are supplied to our own group company by over and under valuation of supplies:** It was found in some cases that to utilize credit in same group company invoices prices were inflated and unused credit was utilized. E.g. Company M & Company N are related parties. Company N is primarily in losses due to change in business dynamics. There was lot of input tax credit pending in company N along with stock which is obsolete. Sales are too slow as goods manufactured for a specific order/ orders are unable to cash market due to stiff market conditions and other reasons. Promoters do not want to write-off stocks as operations are slow but steady. While manufacturing it was found that value additions was also minimal and hence great portion of Input Tax Credit is pending. Now Company M starts receiving goods laying at warehouse at higher prices and pays them too. Here there is actual supply of goods and not fake transactions like seen above. So instead of giving loans to Company N for their survival, group Company M purchases goods at higher prices and exhaust Input Tax Credit to fulfil their working capital requirements. Here Valuation Rules Determination of Value of Supply should in picture to avoid misuse of Credit.

4. **Section 271AAD of Income Tax is introduced to crack on such fake income and profit cases of fraud invoice:** With increase in invoices related frauds, Central Government in Finance Act 2020 made requisite changes to catch hold in case on Income Tax also. The section is provided as under

(1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—

- i. a false entry; or
- ii. an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

Explanation.—For the purposes of this section, “false entry” includes use or intention to use—

- a) Forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence;
- b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or
- c) Invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

Memorandum explaining the provisions in The Finance Bill, 2020 which is reproduced as under:-

In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.

Therefore, it is proposed to introduce a new provision in the Act to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability. The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It is also propose to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also

pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry. The false entries is proposed to include use or intention to use –

- a) Forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or
- b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or
- c) Invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.

Notes on clauses annexed to the Finance Bill which is reproduced as under:-

Clause 98 of the Bill seeks to insert a new section 271AAD in the Income-tax Act relating to penalty for false or omission of entry in books of account. It is proposed to insert a new section 271AAD, under which penalty shall be levied on a person who is required to maintain books of account, if it is found that the books contain a false entry or that any entry has been omitted which is relevant for the computation of his total income. Such person shall be liable to pay by way of penalty a sum equal to the aggregate amount of such false and omitted entries. Penalty shall also be levied on any other person who causes the person required to maintain books of account to make or causes to make any false entry or omit or cause to omit any entry in books of account. The false entries shall include use or intention to use forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods; or invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

In addition to amendments to Income Tax Act corresponding and supportive changes in CGST Act were also made by Government.

In section 122 of the Central Goods and Services Tax Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.”.

The explanation given for the same is as follows:

Clause 124 of the Bill seeks to insert a new sub-section (1A) in section 122 of the Central Goods and Services Tax Act so as to make the beneficiary of certain transactions at whose instance such transactions are conducted liable for penalty.

In section 132 of the Central Goods and Services Tax Act, in sub-section (1),— (i) for the words “Whoever commits any of the following offences”, the words “Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences” shall be substituted;

(ii) for clause (c), the following clause shall be substituted, namely:—

“(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;”; (iii) in sub-clause (e), the words “, fraudulently avails input tax credit” shall be omitted.

The explanation given for the same is as follows:

Clause 125 of the Bill seeks to amend section 132 of the Central Goods and Services Tax Act so as to make the offence of fraudulent availment of input tax credit without invoice or bill cognizable and non-bailable under sub-section (1) of section 69 and to make any person who retains the benefit of certain transactions and at whose instance such transactions are conducted liable for punishment.

From the above it is very clear that government is very keen to bring the preparatory of False Invoices and Invalid Credits to justice and ensure that no revenue is lost because of such fraudulent activities of Businesses.



DEMYSTIFYING GST PROVISIONS FOR RESOLUTION PROFESSIONAL

CMA Bhogavalli Mallikarjuna Gupta
Product Evangelist
Logo Infosoft Business Technology Private Limited



CMA Manoj Kumar Singh
FCMA IP

Being insolvent is not a crime; it can be for reasons like the change in the market dynamics or change in the regulations or change in consumer habits or reasons beyond anyone's control. There was no time-bound manner for resolution of insolvency, and it used to take ages. As a part of ease of doing business and also provide faster resolution for the creditors and banks, IBC was introduced in 2016 with a time-bound manner for resolution, in case of companies it 180 days and can be extended by another 90 days up to maximum of 330 days including any time taken for legal proceedings. In the case of a start-up, it is 90 days can be extended by another 45 days.

There is a specific provision in the CGST Act 2017 which states that *Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.*

When companies are under liquidation, it means that they are not financially goods, and there will be a liability for GST also. In such cases, will the department have the first charge on the property? The answer is no, and the amount payable to the GST department will be like any other corporate creditor. There is clarity on this, but the other questions which an IRP/RP have while liquidating the company are

- Do they have to pay the taxes on the new supplies which are being made?
- Can they take the input tax credit on their inward supplies?
- Do they have to file the returns of the company if they have not paid?
- How to file the returns if the old returns are pending to be filed and tax payment due?
- Do they have to collect taxes for the assets put on auction?

These questions have been addressed in the recently concluded 39th GST Council Meeting, and the basis on that CBIC has issued the following documents

1. Notification No. 11/2020 – Central Tax Dated 21st March 2020
2. Circular No.134/04/2020-GST dated 23rd March 2020

Clarity has been provided in the following cases

1. After being appointed as an IRP/RP for a corporate debtor, the IRP/RP should use the same GST Registration or take new registration?
The IRP/RP, after being appointed for a corporate debtor, has to take a new registration under GST. They cannot use the existing GST Registration of the Corporate Debtor.
2. In how many days does the IRP/RP has to obtain the GST Registration?
The IRP/RP has to obtain the registration within 30 days from the date of appointment.

3. What should the existing IRP/RPs do who have been appointed before this notification being published?
The existing IRP/RPs who have been appointed before the issue of the notification should apply for registration within 30 days of the commencement of the information.
4. The IRP/RP who have to obtain new registration under GST, have to take GST Registration on their PAN Number or on what basis?
The IRP/RP has to obtain a new registration under GST as a distinct person of the corporate debtor. As per the provisions of GST, a distinct person is one who has the same PAN number across registrations.
5. Should the IRP/RP surrender the existing GST Registration of the Corporate Debtor?
The existing registration of the corporate debtor will remain active, and in case if an application for cancelation has been filed, the jurisdictional officer has to keep the registration under “Suspension” status.
6. What should the RP/IRP do if the registration number of the corporate debtor is already cancelled?
If the registration number of the corporate debtor is already cancelled, the RP/RIP should apply for revocation of the same if time has not lapsed.
7. Should IRP/RP file returns for the corporate debtor who has not filed returns for the pre CIRP period?
The IRP/RP need not file the returns of the corporate debtor for the pre CIPR Period, where returns have not been filed.
8. Can the GST Department initiate recovery proceedings on the corporate debtor when the resolution process is going on?
No, as per Section 14 of the IBC Act 2016, it is prohibited.
9. How will the department recover the tax liability from the corporate debtor?
The tax liability for GST will also be treated as operational debt as per the provisions of the IBC, and the concerned officer has to file a claim in prescribed Form B before IPR/RP.
10. If the Corporate Debtor has GST Registrations in different states, in such case how it should be filed?
If the corporate debtor has multiple registrations in different states, then it is recommended to file each claim for each state.
11. Does the IRP/RP have to file returns after obtaining the registration as a distinct person of the corporate debtor?
Yes, the IRP/RP has to file returns as normal taxpayers from time to time till the resolution process is over.
12. Can input tax credit be taken on supplier invoices with the corporate debtors GSTIN after obtaining the new GSTIN as a distinct person of corporate debtor?
Yes, the Input tax credit can be availed on the supplier invoices with corporate debtors GSTIN.
13. Will, all the provisions of the input tax credit, will be applicable for the IRP/RP who obtained registration as a distinct person of corporate debtor?
Yes, all the provisions of the input tax credit as per GST will be applicable except for the provision of availing input tax credit on tax invoices or debit notes in a time-bound manner as specified in Section 16(4) of the CGST Act 2017 and Rule 36(4) which relates to availing input tax credit not more than 110% of GSTR – 2A.
14. Can the recipients avail input tax credit on the invoices issued by the corporate debtor before the appointment of IRP/RP?
Yes, they can avail input tax credit on the supplies made by the corporate debtor from the date of appointment of IRP/RP or within 30 days of issue of Notification No 11/2020, Central Tax dated 21st March 2020.

15. Cash has been deposited by the IRP/RP into the cash ledger of the corporate debtors GSTIN. Can refund be claimed in such cases?
Yes, the refund can be claimed if cash is deposited into the cash ledger of the corporate debtors GSTIN.
16. Are all the issues resolved with the issue of the notification and circular related to the IBC?
No, all the issues are not resolved; some of them still need to be issued. Some clarity if required in the following areas
- a) When the resolution process is over, and the amount of GST liability is recovered with a haircut, in such cases, is it required to file the GST Returns? If yes, how to show the amount of haircut in the returns? Or it has to be cancelled or surrendered?
 - b) Is the corporate debtor required to file the Final Return as on date of CIRP commencement?
 - c) What should be the treatment of the input tax credit lying in the input tax credit ledger of the Corporate debtor (old)?
 - d) Is IRP/RP are required to surrender and file the final return the GST Registration after the end of CIRP?
 - e) After the end of the CIRP, does the IRP/RP have to surrender their registration? What will happen to the unutilized input tax credit in the ITC ledger?

The circular and the notification have answered many of the unanswered questions and make the resolution process now simple and with clarity. Still there are some questions to be answered and as it is evolving process, we expect the above questions or any other questions to be resolved over a period of time. For any Act to gauge it is successful or not it requires about 3 to 5 years of time and in this case both the laws IBC and GST are new once. So it will take definitely some time to settle all these issues.

Disclaimer

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GST EXEMPTIONS TO HEALTH CARE PROFESSIONALS – OUR COVID 19 WARRIORS

CMA Mohammad Abbas
Practicing Cost Accountant

In the global war against coronavirus, doctors, nurses, pathologists and paramedics, ambulance drivers, medical cleaners and hospital administrators etc. are risking their lives in the seemingly unending battle against COVID 19. They are our true heroes. That's the state of the global army today that's taking on a pandemic which has already claimed thousands of lives and affected lakhs of people around the world. The noble services performed by the healthcare professionals towards the society deserve certain tax exemptions from the government. How the Goods & Services Tax provides exemptions to the Health Care Services has been enumerated below.



EXEMPTION TO HEALTH CARE SERVICES UNDER GST

Exemptions are provided vide Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 and Notification No.9/2017 – Integrated Tax (Rate) dated 28-06-2017.

Exemption to Health Care Services by way of:

- (1) Health Care Services by a Clinical Establishment, an Authorised Medical Practitioner or Para-Medics;
- (2) Services provided by way of Transportation of a patient in an Ambulance other than those specified in (a)above.

AUTHORISED MEDICAL PRACTITIONER	CLINICAL ESTABLISHMENT	HEALTH CARE SERVICES
Medical Practitioner Registered with any of the Councils of the recognized systems of Medicines established or recognized by law in India & includes a medical professional having requisite qualification to practice in any recognized systems of medicines in India.	Hospital, Nursing Homes, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilitates requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.	Service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India & includes services by way of transportation of the patient to & from a clinical establishment, does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, development abnormality, injury or trauma.

REQUIREMENT OF REGISTRATION

A Doctor providing both exempted & non exempted services has to consider the total turnover from exempted & non exempted services. Thus, if the total turnover from all services exceeds the exemption threshold limit GST registration would be required. Aggregate turnover includes taxable as well as exempted supplies. A GST registered Medical Professional has to report both the exempt & non-exempt turnover in the GST return.

SERVICES PROVIDED BY THE HEALTH CARE PROFESSIONALS & THEIR TAXABILITY

OUT PATIENT DEPARTMENT SERVICES (OPD)	Medical consultancy and treatment without admitting a patient in the Hospital. These services are exempted from GST. However, GST is payable on supply of Medicines, implants, consumables to out-patients through hospital owned pharmacy to outpatients.
INPATIENT DEPARTMENT SERVICES (IPD)	Supply of Medicines, consumables, implants, charges for room rent, consultancy charges, food & beverages, bed charges, operation theater rent, equipment charges, Doctor fees, pharmacy consumed, various testing like blood test etc. It is a Composite Supply. These services are exempted from GST. However, if food & Medicine is supplied separately on optional basis, it is not a composite supply. Hence, GST is payable.
RENTING	GST is leviable on rent paid/payable for premises, given on lease by hospital. E.g. Medical Shops on rent in Hospital Premises, pathology on rent in hospital.
WASTE TREATMENT FACILITY	Services provided by operators of the common bio-medical waste treatment facility to clinical establishment by way of treatment or disposal of bio-medical or the processes incidental thereto are EXEMPT.
MEDICAL TEST SERVICES	Medical Test (either done in own Clinical establishment or done in the separate clinical establishment setup specially for such test) are exempt under GST.
MEDICAL COUNSELLING SERVICES	If consultancy has been given for the purpose of CURE then it is exempted but if the purpose is CARE then GST will be payable.
CORD BLOOD BANK SERVICES	Services provided by the Cord Blood Banks by way of preservation of stem cells or other service in relation to such preservation are EXEMPT.
BEAUTY TREATMENT SERVICES.	Beauty treatment services are mostly provided for the CARE purpose and not for the CURE purpose. Hence GST will be payable.
SUPPLY OF FOOD WITH HEALTH CARE SERVICES	Food supplies to patients as part of health care services is composite supply & not separately taxable.
SERVICES PROVIDED BY VETERINARY DOCTORS	Services in relation to health of animals and birds are exempt from GST.
AMBULANCE SERVICES	Ambulance services are also exempt from the ambit of GST.

FEW HEALTHY PRESCRIPTIONS FROM CBIC CIRCULARS

Question: Hospitals hire senior doctors/ consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?

Answer: Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017- CT(Rate) dated 28.06.2017 as amended refers]. Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt. **(CBIC circular No. 32/06/2018-GST dated 12-02-2018)**

Question: Hospitals charge the patients, say, Rs.10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will

GST be applicable on such money retained by the hospitals?

Answer: Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India[para 2(zg) of notification No. 12/2017- CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt. (CBIC circular No. 32/06/2018-GST dated 12-02-2018)

Question: Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST

Answer: Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable. (CBIC circular No. 32/06/2018-GST dated 12-02-2018)

CLARIFICATION TABLETS

1	The supply of medicines and allied items provided by the hospital through the pharmacy to the in-patients is part of composite supply of health care treatment and hence not separately taxable. The supply of medicines and allied items provided by the hospital through the pharmacy to the out-patients is taxable.
2	Taking of X –ray photographs is nothing but rendering professional services and does not involve any element of sale. It is not a commodity can be sold by the radiologist to the patient. In the GST, it would be treated as composite supply, where healthcare services is principle supply.
3	GST is not applicable on ambulance services provided to Government under National Health Mission.
4	GST is leviable on rent paid/payable for premises, given on lease by Hospital.
5	Services provided by diagnostic centre is a clinical establishment and providing healthcare services is exempted from GST.

Role of CMA

CMAs can provide Value Added services to this sector like Impact of GST on Health Care Industry, Price Fixation of various Health Care Services, Supply Chain & Logistics Distribution Management of various Medical Equipments, Participation in development of Systems, Process and Controls, Complete analysis and evaluation of an ERP or Accounting System of Health Care Organization.





TAXATION FOR NON-GOVERNMENT AND NON PROFITABLE ORGANIZATIONS

CMA Niranjan Mishra
Council Member (2019-23 Term)
Chairman, Indirect Taxation Committee
The Institute of Cost Accountants of India

Since years together, Government is trying its level best through various legislations to regulate the NGO/NPO sectors. However, due to some legal glitches and interpretation of the laws in a different ways by different quarters, some of the organizations coming under this sector are enjoying absolute privileges taking shelter of the exemption either U/s 10 or 11 or combination of both. In past the definition of Charitable and religious has been viewed in such a manner that not only Government is losing the revenue but also some honest organizations are facing harassment due to interpretation of law. Despite of initiatives and sincere efforts from the Government to regulate these sectors through legislative changes but no way it was helpful to Government by bringing revenue but also accumulation of cases in different forum increased. Thus harassment created to the real players in these filed.

Some of the judicial pronouncements in interpreting the laws are enumerated below.

- 1. The Commissioner (Exemption), Patna, in IT /Appeal/Memo No. CIT E/Pat/12AA/04(167)/2018-19/358-62, dated 14-5-2018. IN THE ITAT, RANCHI BENCH, ITA No. 269/Ran/18 dated 5th April, 2019**
The Court held that, Assessee society was also providing medical relief and facilities to every person, conducting blood donation, eye operation, tikakaran, family planning, mother child safety, and awareness to general public by way of awareness of medical camps. Therefore, to run the medical shop inside the hospital is fully charitable purpose and not for commercial purpose. The assessee was not maintaining separate books of account for the said medical shop did not mean that the assessee is not entitled for obtaining registration under section 12AA.
- 2. [2016] 70 taxmann.com 181 (Bombay), HIGH COURT OF BOMBAY Director of Income-tax (Exemptions) v. Khar Gymkhana**
In view of CBDT's Circular No.21/2016 dated 27-5-2016, Registration of a trust can't be cancelled merely because receipts from commercial activities exceed Rs.25 Lakh unless there is change in the nature of its activities or its activities are not genuine
- 3. Visvesvaraya Technological University v. Assistant Commissioner of Income Tax [2016]68 taxmann.com 287 (SC).**
The Institution accumulating 500 crore in deposits and Infrastructure by charging to the students over past 10 years was held Charitable by the Supreme Court.
- 4. [2015] 61 taxmann.com 68 (P & H), HIGH COURT OF P & H Commissioner of Income-tax v. Christian Medical College***
Where assessee-society, established by Christian community, had been running medical colleges and its main aims were to train professionals in field of medical and health care and also to provide medical facilities in its hospitals to all persons of any caste, activities carried out by assessee were charitable in nature and it was entitled to exemption under section 80G.
- 5. India Trade Promotion organization v. DGIT (E) W.P (C) No. 1872/2013 –Delhi High Court.**
The Court held that the proviso to clause 15 of Section 2 of the Income Tax would violate Article 14 of the Indian Constitution, if it is interpreted to deny incidental business activities of Charitable Organizations. The proviso shall remain valid only if it is used to deny exemption to “purely” commercial and business entities which wear mask of a charity, the court opined.

6. **Dy CIT v. Society for Rural Improvement, ITA No. 329/Coch/2014 dated 1st June 2016, ITAT Cochin**
A trust registered u/s 12AA doing micro finance activity is eligible for deduction u/s 11. Microfinance activity is 'relief of the poor' and not 'general purpose utility'. So commercial receipts concept will not apply.
7. **CIT v. Tallygunge Club Ltd. [1977]107 ITR 776 & CIT v. Bijlee Cotton Mills (P) Ltd; [1979] 116 ITR 60**
The court held that grant with specific direction from the Donor is a legal obligation and cannot be treated as Income. However the explanation to sec. 2(24)(iia) states that a trust includes a legal obligation.
8. **[2016] 70 taxmann.com 48 (Hyderabad – Trib.) IN THE ITAT HYDERABAD BENCH 'A', Deputy Commissioner of Income-tax, Circle- 1(1), Hyderabad v. A.P. State Civil Supplies Corporation Ltd.**
*State Civil Supplies Corporation providing essential commodities to poor people at subsidized rates should be considered to be providing 'relief to poor' (and not object of general public utility) and, thus, eligible for exemption under section 11;
The amendment of proviso to section 2(15) was not applicable.*
9. **[CIT, Central v. Ramma Educational Society [2018]99 taxmann.com 282 (SC)**
The Court held that in absence of any cogent material or evidence to establish any violation of provision of Section 12AA(3), cancellation of registration of assessee-society retrospectively was not justified.
10. **[2015]55taxmann.com 516 (Karnataka), HIGH COURT OF KARNATAKA Commissioner of Income-tax, Exemptions, Bangalore v. CMR Jnanadhara Trust**
When there was substantial growth in trust on account of services rendered by trustees, payment made to trustees for such services was not in violation of section 13 and benefit under section 11 was available.
11. **2015] 55 taxmann.com 379 (Hyderabad – Trib.) Assistant Director of Income-tax, (Exemptions)-I, Hyderabad v. Hyderabad Study Circle***
A coaching institute giving coaching to students for various competitive examinations is eligible for exemption under section 10(23C)(iiiad).
12. **M/s Ananda Social And Educational Trust vs. CIT (Supreme Court), dated 7th March 2020**
*S. 12AA: Registration can be applied for by a newly registered trust. There is no stipulation that the trust should have already been in existence and should have undertaken any activities before making the application for registration. The term 'activities' in s. 12AA includes 'proposed activities'. The CIT must consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. However, he cannot refuse registration on the ground that no activities are carried out
Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust.*
13. **[2016] 70 taxmann.com 54 (Delhi – Trib.), IN THE ITAT DELHI BENCH 'D' Deputy Director of Income-tax (E), Trust Circle-IV, New Delhi v. Institute of Chartered Accountants of India.**

The assessee, Institute of Chartered Accountants of India (ICAI) was established by the Act of Parliament of ICAI Act of 1949 and was registered under section 12A. It claimed exemption under section 11.

The Assessing Officer denied exemption mainly on the ground that ICAI was involved in commercial activities as it received coaching fees from the students of CA while giving coaching to the CA students. He further held that assessee's case fell under the category of General Public Utility and proviso to section 2(15) was clearly applicable in this case. Accordingly, he computed income of the ICAI as any normal Association of Person (AOP). On appeal, the CIT(A) allowed the appeal of the assessee.

On revenue's appeal to Tribunal, it was held that, The issue in dispute is squarely covered by the various decisions of the ITAT, High Court and the Supreme Court of India in assessee's own cases in preceding assessment years wherein exemption to the assessee under section 11 has been allowed holding that the assessee is an educational institution. Thus, respectfully following the same it is to be held that ICAI is an educational institute and hence its income will be exempt under section 11 as education falls within meaning of charitable purpose under section 2(15).

14. [2015] 56 taxmann.com 118 (Mumbai – Trib.), Critical Art and Media Practices v. Director of Income-tax (Exemption), Mumbai

If activities of a trust are found to be charitable and property is held wholly and exclusively under trust for charitable and religious purposes, then such a trust cannot be denied registration merely because its activities are extended outside India. However, income which is applied towards charitable activities in India only will be eligible for exemption.

15. [2015] 60 taxmann.com 188 (Patna – Trib.), International School of Human Resources & Social Welfare Society v. Commissioner of Income-tax-1, Patna

Where merely because minority status was accorded to educational institutions run by assessee-society, it could not be regarded as being established for benefit of a particular religious community; registration could not be denied on this ground.

16. [2015] 55 taxmann.com 255 (SC), SUPREME COURT OF INDIA Queen's Educational Society v. Commissioner of Income-tax

Where a surplus was made by educational institution which was ploughed back for educational purposes, said institution was to be held to be existed solely for educational purpose and not for purpose of profit.

17. (2015) 55 taxmann.com 34 (Karnataka), HIGH COURT OF KARNATAKA Director of Income-tax (Exemption), Bangalore v. Karnataka Industrial Area Development Board.

A registration granted earlier under section 12A can be cancelled under two circumstances: (a) If the activities of such trust or institution are not genuine, (b) the activities of trust or institution not being carried out in accordance with the object of the trust or institution. Therefore, registration already granted under section 12A could not be revoked for the reason that the charitable trust or institution pursuing of advancement of objects of general public utility carried on commercial activities.

The Finance Bill 2020 proposed some regulating mechanism for Non-Government and Non profitable Organizations for transparent monitoring of the activities and to control the misuse of funds. As per some school of thought, there will be difficulties in compliance by small/medium organisations while going for revalidation of the registration in each 5 years. Unless the registration/revalidation process is streamlined, it will lead to harassment and most of the NGOs' will close down their activities. However, this is a welcome step by the Government to bring transparency and centralized control on the activities of the Non-Government and Non profitable Organizations.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GST Notifications & Circulars

Central Tax

Notification No. 30/2020 – Central Tax **Dated - 3rd April, 2020**

Seeks to amend CGST Rules (Fourth Amendment) in order to allow opting Composition Scheme for FY 2020-21 till 30.06.2020 and to allow cumulative application of condition in rule 36(4)

The Central Government, on the recommendations of the Council, made the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

These rules may be called the Central Goods and Services Tax (Fourth Amendment) Rules, 2020.

In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), with effect from the 31st March, 2020, in sub-rule (3) of rule 3, the following proviso shall be inserted, namely:

“Provided that any registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, on or before 30th day of June, 2020 and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 upto the 31st day of July, 2020”.

In the said rules, in sub-rule (4) of rule 36, the following proviso shall be inserted, namely:-

“Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above”.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-30-central-tax-english-2020.pdf>

Notification No. 31/2020 – Central Tax **Dated - 3rd April, 2020**

Seeks to provide relief by conditional lowering of interest rate for tax periods of February, 2020 to April, 2020

The Central Government, on the recommendations of the Council, has made the following amendment in notification No.13/2017 – Central Tax, dated the 28th June, 2017, namely:-

In the said notification, in the first paragraph, the following provisos are inserted, namely: –

“Provided that, the rate of interest per annum shall be as specified in column (3) of the Table given below, for the class of registered persons, mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in FORM GSTR-3B, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, but furnish the said return according to the condition mentioned in the corresponding entry in column (5) of the said Table, namely:-

Table

Sl. No.	Class of registered persons	Rate of interest	Tax period	Condition
(1)	(2)	(3)	(4)	(5)
1	Taxpayers having an	Nil for first 15	February, 2020,	If return in FORM GSTR-3B

	aggregate turnover of more than rupees 5 crores in the preceding financial year.	days from the due date, and 9% thereafter	March 2020 and April, 2020	is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding financial year	Nil	February, 2020 and March, 2020	If return in FORM GSTR-3B is furnished on or before the 29th day of June, 2020
			April, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
3	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	Nil	February, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
			March, 2020	If return in FORM GSTR-3B is furnished on or before the 3rd day of July, 2020
			April, 2020	If return in FORM GSTR-3B is furnished on or before the 6th day of July, 2020”.

This notification has forced with effect from the 20th of March, 2020

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-31-central-tax-english-2020.pdf>

Notification No. 32/2020 – Central Tax
Dated - 3rd April, 2020

Seeks to provide relief by conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to April, 2020.

The Government, on the recommendations of the Council, hereby made the following amendment in the notification No. 76/2018– Central Tax, dated the 31st December, 2018,namely:–

In the said notification, after the second proviso, the following proviso is inserted, namely: –

“Provided also that the amount of late fee payable under section 47 shall stand waived for the tax period as specified in column (3) of the Table given below, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in FORM GSTR-3B by the due date, but furnishes the said return according to the condition mentioned in the corresponding entry in column (4) of the said Table, namely:-

Sl. No.	Class of registered persons	Tax period	Condition
(1)	(2)	(4)	(5)
1	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year.	February, 2020, March 2020v and April, 2020	If return in FORM GSTR-3B is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding financial year	February, 2020 and March, 2020	If return in FORM GSTR-3B is furnished on or before the 29th day of June, 2020
		April, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
3	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	February, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
		March, 2020	If return in FORM GSTR-3B is furnished on or before the 3rd day of July, 2020
		April, 2020	If return in FORM GSTR-3B is furnished on or before the 6th day of July, 2020”.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-32-central-tax-english-2020.pdf>

Notification No. 33/2020 – Central Tax
Dated - 3rd April, 2020

Seeks to provide relief by conditional waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 for tax periods of February, 2020 to April, 2020

The Government, on the recommendations of the Council, has made the following further amendment in the notification No. 4/2018– Central Tax, dated the 23rd January, 2018, namely:– In the said notification, after the third proviso, the following proviso shall be inserted, namely: –

“Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the months of March, 2020, April, 2020 and May, 2020, and for the quarter ending 31st March, 2020, for the registered persons who fail to furnish the details of outward supplies for the said periods in FORM GSTR-1 by the due date, but furnishes the said details in FORM GSTR-1, on or before the 30th day of June, 2020”.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-33-central-tax-english-2020.pdf>

Notification No. 34/2020 – Central Tax
Dated - 3rd April, 2020

Seeks to extend due date of furnishing FORM GST CMP-08 for the quarter ending March, 2020 till 07.07.2020 and filing FORM GSTR-4 for FY 2020-21 till 15.07.2020

The Government has made the following further amendments in the notification No. 21/2019- Central Tax, dated the 23rd April, 2019, namely:–

In the said notification,-

(i) in the second paragraph, the following proviso is inserted, namely: –

“Provided that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in FORM GST CMP-08 of the Central Goods and Services Tax Rules, 2017, for the quarter ending 31st March, 2020, till the 7th day of July, 2020.”;

(ii) in the third paragraph, the following proviso is inserted, namely: –

“Provided that the said persons shall furnish the return in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017, for the financial year ending 31st March, 2020, till the 15th day of July, 2020”.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-34-central-tax-english-2020.pdf>

Notification No. 35/2020 – Central Tax
Dated - 3rd April, 2020

Seeks to extend due date of compliance which falls during the period from "20.03.2020 to 29.06.2020" till 30.06.2020 and to extend validity of e-way bills

Government, on the recommendations of the Council, hereby notifies, as under,-

- (i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of June, 2020.
- (ii) This notification has forced with effect from the 20th of March, 2020

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-35-central-tax-english-2020.pdf>

Notification No. 36/2020 – Central Tax
Dated - 3rd April, 2020

Seeks to extend due date for furnishing FORM GSTR-3B for supply made in the month of May, 2020

Commissioner, on the recommendations of the Council, made the following amendments in the notification No. 29/2020 – Central Tax, dated the 23rd March, 2020, namely:–

In the said notification,

In the first paragraph, after the second proviso, the following provisos shall be inserted, namely: -

“Provided also that, for taxpayers having an aggregate turnover of more than rupees 5 crore rupees in the previous financial year, the return in FORM GSTR-3B of the said rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 27th June, 2020

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in FORM GSTR-3B of the said rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 12th day of July, 2020

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in FORM GSTR-3B of the said rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 14th day of July, 2020”.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-36-central-tax-english-2020.pdf>

Integrated Tax

Notification 03/2020- (Integrated Tax)
Dated – 8th April, 2020

Seeks to provide relief by conditional lowering of interest rate for tax periods of February, 2020 to April, 2020

The Central Government, on the recommendations of the Council, has made the following amendment in notification No.13/2017 – Central Tax, dated the 28th June, 2017, namely:–

In the said notification, in the first paragraph, the following provisos are inserted, namely: –

“Provided that, the rate of interest per annum shall be as specified in column (3) of the Table given below, for the class of registered persons, mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in FORM GSTR-3B, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, but furnish the said return according to the condition mentioned in the corresponding entry in column (5) of the said Table, namely:-

Sl. No.	Class of registered persons	Rate of interest	Tax period	Condition
(1)	(2)	(3)	(4)	(5)
1	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year.	Nil for first 15 days from the due date, and 9 % thereafter	February, 2020, March 2020 and April, 2020	If return in FORM GSTR-3B is furnished on or before the 24 th day of June, 2020
2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding	Nil	February, 2020 and March, 2020	If return in FORM GSTR-3B is furnished on or before the 29 th day of June, 2020

	financial year		April, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
3	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	Nil	February, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
			March, 2020	If return in FORM GSTR-3B is furnished on or before the 3rd day of July, 2020
			April, 2020	If return in FORM GSTR-3B is furnished on or before the 6th day of July, 2020”.

This notification has forced with effect from the 20th of March, 2020.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-3-2020-igst-english.pdf>

Union Territory Tax

Notification 01/2020- (Integrated Tax)

Dated – 8th April, 2020

Seeks to provide relief by conditional lowering of interest rate for tax periods of February, 2020 to April, 2020

The Central Government, on the recommendations of the Council, has made the following amendment in notification No.13/2017 – Central Tax, dated the 28th June, 2017, namely:–

In the said notification, in the first paragraph, the following provisos are inserted, namely: –

“Provided that, the rate of interest per annum shall be as specified in column (3) of the Table given below, for the class of registered persons, mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in FORM GSTR-3B, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, but furnish the said return according to the condition mentioned in the corresponding entry in column (5) of the said Table, namely: -

Sl. No.	Class of registered persons	Rate of interest	Tax period	Condition
(1)	(2)	(3)	(4)	(5)
1	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year.	Nil for first 15 days from the due date, and 9 % thereafter	February, 2020, March 2020 and April, 2020	If return in FORM GSTR-3B is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding financial year	Nil	February, 2020 and March, 2020	If return in FORM GSTR-3B is furnished on or before the 29th day of June, 2020
			April, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
3	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	Nil	February, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
			March, 2020	If return in FORM GSTR-3B is furnished on or before the 3rd day

			of July, 2020
		April, 2020	If return in FORM GSTR-3B is furnished on or before the 6th day of July, 2020”.

This notification has already into forced with effect from the 20th of March, 2020.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/gst/Notification-01-2020-Union-Territory-Tax-English.pdf>

GST Circulars

Circular No. 136/06/2020 – GST **Dated – 3rd April, 2020**

Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus (COVID-19)

The spread of Novel Corona Virus (COVID-19) across many countries of the world, including India, has caused immense loss to the lives of people and resultantly impacted the trade and industry. In view of the emergent situation and challenges faced by taxpayers in meeting the compliance requirements under various provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”), Government has announced various relief measures relating to statutory and regulatory compliance matters across sectors.

For more details, please follow: http://cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_136_6_2020.pdf

Circular No. 137/07/2020 – GST **Dated – 13th April, 2020**

Circular clarifying issues in respect of challenges faced by registered persons in implementation of provisions of GST issued

Circular No.136/06/2020-GST, dated 03.04.2020 had been issued to clarify doubts regarding relief measures taken by the Government for facilitating taxpayers in meeting the compliance requirements under various provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) on account of the measures taken to prevent the spread of Novel Corona Virus (COVID-19). It has been brought to the notice of the Board that certain challenges are being faced by taxpayers in adhering to the compliance requirements under various other provisions of the CGST Act which also need to be clarified.

For more details, please follow: http://cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_137_7_2020.pdf

Customs Notifications & Circulars

Tariff Notifications

Notification 19/2020-Customs **Dated – 9th April, 2020**

Seeks to amend notification No. 8/2020-Customs dated 02.02.2020 to make changes consequential to enactment of Finance Act, 2020.

The Central Government made the following amendments in the notifications No. 08/2020-Customs, dated the 2nd February, 2020, namely: -

In the notification, -

- (i) for the words, figures and brackets “clause 139 of the Finance Bill, 2020, which, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), has the force of law”, the words, figures and brackets, “section 141 of Finance Act, 2020 (12 of 2020)” shall be substituted;

- (ii) for the words “under the said clause of the Finance Bill”, the words “under the said section of the said Finance Act” shall be substituted.

Notification 20/2020-Customs
Dated – 9th April, 2020

Seeks to exempt customs duty on ventilators, personal protection equipments, covid-19 testing kits and inputs for these goods

The Central Government exempted the goods of the description specified in column (3) of the Table below falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act specified in column (2) of the Table below, from whole of the duty of customs leviable thereon under the First Schedule to the said Customs Tariff Act and the whole of health cess leviable thereon under section 141 the said of Finance Act, 2020.

Table

Sl. No.	Chapter or Heading or sub-heading or tariff item	Description of goods
(1)	(2)	(3)
1	9018 or 9019	Artificial respiration or other therapeutic respiration apparatus (Ventilators)
2	63 or any chapter	Face masks and surgical Masks
3	62 or any chapter	Personal protection equipment (PPE)
4	30, 38 or any chapter	Covid-19 testing kits
5	Any Chapter	Inputs for manufacture of items at S. Nos. 1 to 4 above, subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

For more details, please follow: <http://cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs20-2020.pdf>

Non-Tariff Notifications

Notification No.36/2020-Customs (NT)
Dated 31st March 2020

Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seed, Areca nut, Gold & Silver

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

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

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	588
2	1511 90 10	RBD Palm Oil	603
3	1511 90 90	Others – Palm Oil	596
4	1511 10 00	Crude Palmolein	618

For more details, please follow: <http://cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt36-2020.pdf>

Notification No.37/2020-Customs (NT)
Dated – 1st April, 2020

Exchange Rates Notification No.37/2020-Custom (NT) dated 01.04.2020

CBDT determined 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 2nd April, 2020, 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.

(1)	(2)	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(3)	
		(a)	(b)
		For Imported Goods	For Exported Goods
1	Australian Dollar	47.80	45.65
2	EURO	84.75	81.75
3	US Dollar	76.35	74.65
4	Chinese Yuan	10.80	10.50

For more details, please follow: <http://cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt37-2020.pdf>

Notification No.38/2020-Customs (NT)
Dated – 15th April, 2020

Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver

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

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	614
2	1511 90 10	RBD Palm Oil	630
3	1511 90 90	Others – Palm Oil	622
4	1511 10 00	Crude Palmolein	635

For more details, please follow: <http://cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt38-2020.pdf>

Anti-Dumping Duty

Notification No. 07/2020 -Customs (ADD)
Dated - 15th April, 2020

Seeks to extend anti-dumping duty on import of Acetone originating in or exported from Korea RP, Saudi Arabia and Chinese Taipei till 14th October, 2020.

The Central Government has made the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue) specified in column (2) of the Table below, in the manner specified in the corresponding entry in column (3) of the said Table, namely:-

Sl. No.	Notification number and Date	Amendments
(1)	(2)	(3)
1	Notification No. 05/2015- Customs (ADD) dated the 18th February, 2015 [G.S.R. 110(E), dated the 18th February, 2015]	In the said notification, in paragraph 3, for the figures and words “15th April, 2020”, the figures and words “14th October, 2020” shall be substituted
	Notification No. 13/2015- Customs (ADD) dated the 16th April, 2015 [G.S.R. 293 (E),	In the said notification, after paragraph 2 and before the Explanation, the following paragraph shall be inserted,

2	dated the 16th April, 2015]	namely: - “3. Notwithstanding anything contained in paragraph 2, the anti-dumping duty imposed under this notification shall remain in force up to and inclusive of the 14th October, 2020, unless revoked, superseded or amended earlier”.
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For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd07-2020.pdf>

Circulars - Customs

Circular No. 17/2020-Customs **Dated - 03rd April, 2020**

Measure to facilitate trade during the lockdown period- section 143AA of the Customs Act, 1962.

Board has received representations from the field formations about difficulty being faced by importers/ exporters and their authorized Customs Brokers, during the ongoing lockdown period announced by the Government to prevent the spread of COVID-19 pandemic in the country, in obtaining notarized stamp papers for furnishing bonds required by Customs in certain situations during the assessment and clearance of goods. The measures taken by the Government to prevent the said pandemic are at present in force for a period of 21 days w.e.f 25.03.2020 i.e. till 14.04.2020.

In light of the unprecedented situation caused due to COVID-19 pandemic, Board has decided to take certain measures for a temporary period in terms of section 143AA of the Customs Act, 1962 with a view to expedite Customs clearance of goods and for maintaining balance between Customs control and facilitation of legitimate trade.

In this regard, Board has approved relaxation of the requirement to submit bonds prescribed under section 18, section 59 and section 143, and under notifications issued in terms of section 25 of the Customs Act, 1962, subject to compliance of conditions as listed below in this Circular.

While the above-referred lockdown is presently in force till 14.04.2020, considering that the importer/ exporter may find it difficult to comply with requirement of furnishing bond for some more time thereafter till the situation normalizes, the said relaxation shall be available up to 30.04.2020. This relaxation shall however be subject to review by the Board at the end of the lockdown period i.e. 14.04.2020.

In the period up to 30.04.2020, Customs field formations may accept request for submission of an undertaking from the importer/exporter in lieu of a bond prescribed under the above-mentioned provisions. This relaxation will apply to the following categories of the importers/exporters

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-17-2020.pdf>

Circular No. 18/2020-Customs **Dated – 18th April, 2020**

Clearance of goods under India’s Trade Agreements without original Certificate of Origin

The undersigned has been directed to refer to the Trade Notice no. 62/2019-2020 issued by DGFT on 6th April 2020. The said Trade Notice has been issued in consultation with CBIC and it seeks to mitigate the difficulties being faced by importers in producing the original Certificates of Origin (CoO) on account of disruptions caused by the Covid-19 pandemic.

It is accordingly directed that in accordance with the said Trade Notice, the import consignments, where a preferential treatment of goods under a Free Trade Agreement has been claimed but the original hard copy of CoO has not been submitted or only digitally signed copy or unsigned copy of CoO is submitted, may be assessed and cleared provisionally in terms of section 18 of the Customs Act, 1962. The final assessment may be done subsequently on submission of the original COO certificate by the importer. The revenue may be secured through undertaking and appropriate security.

Customs field formations shall maintain a record of all cases of relaxation allowed by them and will ensure that such provisional assessments are finalized at the earliest and in accordance with the prescribed regulations.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-18-2020.pdf>

Circular No. 19/2020-Customs
Dated – 18th April, 2020

Paperless Customs – Electronic Communication of PDF based Gate pass and OOC Copy of Bill of Entry to Custom Brokers/Importers

In order to mitigate the unprecedented situation due to Covid-19 pandemic, CBIC has taken a number of measures to facilitate & expedite Customs clearance process making it more and more contact-less i.e. automated and online as well as paper-less. These measures include the facility to clear goods on the basis of a undertaking (not bond), acceptance of electronic Country of Origin certificate etc. These steps complement the earlier reforms unrolled as a part of Turant Customs such as online query module, eSanchit, web based goods registration, electronic processing of DGFT issued licenses, machine release of imported goods based on Customs Compliance Verification and electronic transmission of PDF based First copy of Bill of Entry (BoE) to Customs Brokers and registered importers

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-19-2020.pdf>

DIRECT TAX

Circular No. 8/2020
Dated – 13th April, 2020

Clarification regarding short deduction of TDS / TCS due to increase in rates of surcharge by Finance (No.2) Act, 2019

The Finance (No.2) Bill, 2019 was tabled in Lok Sabha on 5th July, 2019 which was passed by both the houses of Parliament and became Finance (No.2) Act, 2019 (the Act) which received assent of the President on 1st August, 2019. The Act provided for increase in the rate of surcharge as under:

Sl. No.	Income Slab	Surcharge before the Act	Enhanced surcharge as provided by the Act
1	Less than 50 lakh rupees	Nil	Nil
2	50 lakh rupees but less than 1 crore rupees	10%	10%
3	1 crore rupees but less than 2 crore rupees	15%	15%
4	2 crore rupees but less than 5 crore rupees	15%	25%
5	5 crore rupees and above	15%	37%

The enhanced rates of surcharge were applicable from the 1st day of April, 2019 for previous year 2019-20 relevant to assessment year 2020-21. Thus, every person as referred to above was required to compute his tax liability after taking into account the enhanced rates of surcharge.

Further, TDS/TCS under various provisions of the Income-tax Act is required to be deducted/ collected after taking into account the enhanced rate of surcharge.

Several cases have come to the notice of the Central Government wherein deductors/collectors were held to be an assessee in default for short deduction of TDS/short collection of TCS in cases where final transaction was done before laying of the Finance (No.2) Bill, 2019 in the Parliament, i.e. 5th July, 2019. Since the transaction was completed before the rates of enhanced surcharge were announced and the concerned deductee/payee is required to furnish their Income-tax return for the relevant assessment year, it has been requested that in such cases, deductor or collector should not be held to be an assessee in default under section 201 of the Income tax Act.

The above issue has been examined by the Board and in this regard, it is clarified a person responsible for deduction/collection of tax under any provision of the Income tax Act will not be considered to be an assessee in default in respect of transactions where:-

- a. such transaction has been completed and entire payment has been made to the deductee/payee on or before 5th July, 2019 and there is no subsequent transaction between the deductor/collector and the

- deductee/payee in the financial year 2019-20 from which the shortfall of tax could have been deducted/collected by the deductor/collector;
- b. TDS has been deducted or TCS has been collected by such deductor/collector on such sum as per the rates in force as per the provisions prior to the enactment of the Act;
 - c. Such tax deducted or collected has been deposited in the account of Central Government by the deductor/collector on or before the due date of depositing the same;
 - d. TDS/TCS statement has been furnished by such person on before the due date of filing of the said statement.

For more details, please follow: https://www.incometaxindia.gov.in/communications/circular/circular_8_2020.pdf

Circular C 1 of 2020
Dated – 13th April, 2020

Clarification in respect of option under section 115BAC of the Income-tax Act, 1961

Section 115BAC of the Income tax Act, 1961 (the Act), inserted by the Finance Act, 2020 w.e.f. the assessment year 2021-22, *inter alia*, provides that a person, being an individual or a Hindu undivided family (HUF) having income other than income from business or profession", may exercise option in respect of a previous year to be taxed under the said section 115BAC along with his return of income to be furnished under sub-section (I) of section 139 of the Act for each year. The concessional rate provided under section 115BAC of the Act is subject to the condition that the total income shall be computed without specified exemption or deduction, setoff of loss and additional depreciation.

Representations expressing concern regarding tax to be deducted at source (TDS) has been received stating that as the option is required to be exercised at the time of filing of return, the deductor, being an employer, would not know if the person, being an employee, would opt for taxation under section 115BAC of the Act or not. Hence, there is lack of clarity regarding whether the provisions of section 115BAC of the Act are to be considered at the time of deducting tax.

In order to avoid the genuine hardship in such cases, the Board clarified that an employee, having income other than the income under the head "profit and gains of business or profession" and intending to opt for the concessional rate under section 115BAC of the Act, may intimate the deductor, being his employer, of such intention for each previous year and upon such intimation, the deductor shall compute his total income, and make TDS thereon in accordance with the provisions of section 115BAC of the Act. If such intimation is not made by the employee, the employer shall make TDS without considering the provision of section 115BAC of the Act. It is also clarified that the intimation so made to the deductor shall be only for the purposes of TDS during the previous year and cannot be modified during that year. However, the intimation would not amount to exercising option in terms of sub-section (S) of section 115BAC of the Act and the person shall be required to do so along with the return to be furnished under sub-section (J) of section 139 of the Act for that previous year. Thus, option at the time of filing of return of income under sub-section (1) of section 139 of the Act could be different from the intimation made by such employee to the employer for that previous year.

Further, in case of a person who has income under the head "profit and gains of business or profession" also, the option for taxation under section 115BAC of the Act once exercised for previous year at the time of filing of return of income under sub-section (1) of section 139 of the Act cannot be changed for subsequent previous years except in certain circumstances. Accordingly, the above clarification would apply to such person with a modification that the intimation to the employer in his case for subsequent previous years must not deviate from the option under section 115BAC of the Act once exercised in a previous year.

For more details, please follow: https://www.incometaxindia.gov.in/communications/circular/circular_c1_2020.pdf

PRESS RELEASE

DIRECT TAX

Date - 4th April, 2020

CBDT issues orders u/s 119 of IT Act, 1961 to mitigate hardships to taxpayers arising out of compliance of TDS/TCS provisions

Due to outbreak of the Covid-19 pandemic, there is severe disruption in the normal working of almost all sectors. To mitigate the hardships of taxpayers, the CBDT has issued the following directions/clarifications by exercise of its power u/s 119 of the Income-tax Act, 1961 (the Act):

All the assesseees who have filed application for lower or nil deduction of TDS/TCS for F.Y. 2020-21 and whose applications are pending for disposal as on date and they have been issued such certificates for F.Y. 2019-20, then such certificates would be applicable till 30.06.2020 of F.Y. 2020-21 or disposal of their applications by the Assessing Officers, whichever is earlier, in respect of the transaction and the deductor or collector if any, for whom the certificate was issued for F.Y. 2019-20. In cases where the assesseees could not apply for issue of lower or nil deduction of TDS/TCS in the Traces Portal for the F.Y. 2020-21, but were having the certificates for F.Y. 2019-20, such certificates will be applicable till 30.06.2020 of F.Y. 2020-21. However, they need to apply at the earliest giving details of the transactions and the Deductor/Collector to the TDS/TCS Assessing Officer as per procedure prescribed. Further, on payments to Non-residents (including foreign companies) having Permanent Establishment in India, where the above applications are pending, tax on payments made will be deducted at the subsidised rate of 10% including surcharge and cess, on such payments till 30.06.2020 of F.Y. 2020-21, or disposal of their applications, whichever is earlier (Order passed on 31.03.2020).

In case of pending applications for lower/nil rate of TDS/TCS for F.Y. 2019-20, the Assessing Officers have been directed to dispose of the applications through a liberal procedure by 27.04.2020, so that the taxpayers may not have to pay extra tax which may cause liquidity issues to them (Order passed on 03.04.2020).

To mitigate the hardships of small taxpayers, it has been decided that if a person had submitted valid Forms 15G and 15H to the Banks or other institutions for F.Y. 2019-20, then these Forms would be valid up to 30.06.2020. This will safeguard the small tax payers against TDS where there is no tax liability (Order passed on 03.04.2020).

All the above orders passed u/s 119 of the Act are available on www.incometaxindia.gov.in under the head Miscellaneous Communications.

Date - 8th April, 2020

Government to issue pending Income Tax/GST/Customs Refunds

In the context of the COVID-19 situation and with a view to provide immediate relief to the business entities and individuals, it has been decided to issue all the pending income-tax refunds up to Rs. 5 lakh, immediately. This would benefit around 14 lakh taxpayers. It has also been decided to issue all pending GST and Custom refunds which would provide benefit to around 1 lakh business entities, including MSME. Thus, the total refund granted will be approximately Rs. 18,000 crore.

JUDGEMENTS

INDIRECT TAX

BENEFIT OF VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME CAN'T BE DENIED DUE TO CLERICAL ERRORS: CESTAT

M/s. Shivani Textiles Limited vs. Commissioner of Central Tax

**Case No. – 50648/2020
Date – 13.03.2020**

Fact of the Case

- The service tax department denied the benefit of the VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME (VCES)- Voluntary Compliance encouragement Scheme to the appellant by citing a case of a clerical error in filing the declaration by the appellant/assesse
- As per the gross taxable receipts, the gross tax payable including cess, was calculated at Rs. 27,05,933/-. However, erroneously the appellant failed to adjust or reduce the gross amount of tax payable with the amount of tax already paid, Rs. 5,68,859/- and declared Rs. 27,05,933/- as actual tax dues.
- Before the Tribunal, the appellants contended that they cannot be denied the benefit of VCES, for simple clerical error on its part, which is evident on the face of the record, while declaring the correct tax dues.

Decision of the Case

- The Tribunal said, “The appellant has admittedly deposited the declared amount of tax dues, and they cannot be asked to deposit more tax, which will be against the provisions of service tax law, as well as Article 265 of the Constitution of India. Accordingly, I set aside the impugned order and hold that the appellant is entitled to the benefit of Voluntary Compliance encouragement Scheme – VCES 2013”.
 - The Delhi bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has held that the benefit of the Voluntary Compliance encouragement Scheme, 2013 cannot be denied to the taxpayer merely on the ground of clerical errors.
-

TRANSFER OF UNDER CONSTRUCTION PROJECT DO NOT ATTRACT GST: AAR

M/s Rajeev Bansal and Sudershan Mittal vs. The Authority of Advance Ruling (AAR)

**Case No. – 09/State Tax-UKD/GST/Sec
97/DDM/2019-20/6742
Date – 09.01.2020**

Fact of the Case

- The applicants, M/s Rajeev Bansal and Sudershan Mittal are engaged in the business of constructing and selling residential and commercial complexes.
- On perusal of the sale deed, the applicant has sold the under-construction building, with its all assets and transfers the rights of the same to the buyer including the approved map from the competent authority.
- The buyer has purchased the under-construction building to carry on the same kind of business as the purchaser themselves engaged in constructing residential/commercial complexes and selling.
- The applicant sought for an advance ruling on the issue whether business transfer agreement as a going concern which consists of transferring under construction building project is covered under S. No. 12 of the Notification No. 12/2017 Central Tax (Rate) and is thus exempt from the applicability of Goods and Service Tax (GST) or not?

Decision of the Case

- The Authority of Advance Ruling (AAR) while relying on the definition of ‘business’ under Section 2(17) of the Act noted, “From the definition of the “business” we find that the acquisition of goods/ services for commencement of business is covered under the said definition.
- A transfer of a business as a going concern is the sale of a business including assets. In terms of financial transaction ‘growing concern’ has the meaning that at the point in time to which the description applies, the business is live or operating and has all parts and features necessary to keep it in operation.
- Thus ‘Transfer of a going concern’ in a simple way can be described as the transfer of a running business which is capable of being

carried on by the purchaser as an independent business

- The Authority of Advance Ruling (AAR), Uttarakhand ruled that the transfer of under-construction projects under the 'Business Transfer Project' is exempted under Goods Service Tax (GST).

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**NO GST ON COMPOSITE SUPPLY OF
CRUSHING FOOD GRAINS AND
DELIVERY OF CRUSHED GRAINS
BELONGS TO STATE GOVERNMENT:
AAR**

**M/s Sakshi Jhaharia vs. The Authority of
Advance Ruling (AAR)**

**Order No. – 41/WBAAR/2019-20
Date – 10.02.2020**

Fact of the Case

- The Applicant intends to supply to the State Government the service of crushing food grains. The Government will send to the Applicant the whole, unpolished food grain for processing.
- The Applicant will return the grain after crushing. The processed food grain will be used for distribution through the Public Distribution System (hereinafter PDS). The Applicant seeks a ruling whether the above activity is exempt under Sl No. 3 or 3A of Notification No 1212017 CT (Rate) dated 2810612017 (corresponding State Notification No.1136 – FT dated 2810G12017), as amended (hereinafter collectively called the Exemption Notification).
- The Applicant is unregistered under the GST Act. Being unregistered, neither the Central nor the State tax administrations exercise ascertained administrative jurisdiction on the Applicant.
- As per section 98T (1) of the GST Act elaborates as these functions are in the nature of public welfare service that the governments on their own, and sometimes through governmental authorities/entities, do provide to the citizens. When the activity is in relation to any such function, the supply to the governments or governmental authorities/entities or local authorities is exempt from paying GST under Sl No. 3 or 34 of the Exemption Notification, provided it is either a pure service or a composite supply,

where supply of goods does not constitute more than 25% of the value.

Decision of the Case

- The Authority observed that the Service Tax exempts "services provided to the Government, a local authority or a governmental authority by way of water supply, public health, sanitation, conservancy, solid waste management or slum improvement and up-gradation."
- The bench further observed that the Applicant's supply can be related to distribution through PDS, which is covered under Entry No. 28 of the Eleventh Schedule of the Constitution. It will be an activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution, and its supply to the State Government should be exempt under Sl No. 3A of the Exemption Notification.
- The West Bengal Authority for Advance Ruling (AAR) held that the composite supply of crushing the food grains belonging to the State Government and delivery of the crushed grains will be exempted as provided the proportion of the packing materials in the composite supply in value terms does not exceed 25%.

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**'MEDICAL OXYGEN IP' & 'NITROUS
OXIDE IP' TAXABLE AS 'DRUG': SC**

**The State Of Andhra Pradesh vs. M/s Linde
India Ltd.**

**Civil Appeal No 2230 of 2020
Special Leave Petition No (C) 19208 of 2016
Date: 13.04.2020**

Fact of the Case

- The respondent, Linde India Limited, is a registered company under the 2005 Act and is engaged in the manufacturing and trading of industrial gases as well as Medical Oxygen IP and Nitrous Oxide IP. On 12 December 2005, the Commercial Tax Officer communicated to the respondent that an outstanding tax liability was due and payable.
- Consequently, the respondent filed an appeal before the Appellate Deputy Commissioner, wherein assessment by the Commercial Tax Officer was affirmed. Aggrieved by the order, the appellant filed the petition in Andhra Pradesh high court which was dismissed.

“Both “nitrous oxide” and “medical oxygen” are clearly identifiable and are used as surgical aids (Indian Oxygen Ltd. State of Karnataka; Southern Gas Ltd). Going by the user test and the functional test, it is evident that “medical oxygen” and “nitrous oxide” serve as medicines.

- As „medical oxygen IP” and „Nitrous Oxide IP” are used in the treatment and mitigation of disorders in human beings, and as they are generally understood in the trade to be surgical aids, both these substances would fall under the definition of drug “ under Section 3(b)(i) of the Drugs Act, and consequently, fall under Entry 88 of Schedule IV of the Act liable to tax only at 4%/5%,” the Andhra Pradesh High Court observed.

Decision of the Case

- The division bench while upholding the decision of the High Court said, “There is no doubt that Medical Oxygen IP and Nitrous Oxide IP are medicines used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings falling within the ambit of Section 3(b)(i) of the 1940 Act. We hold that Medical Oxygen IP and Nitrous Oxide IP fall within the ambit of Section 3(b)(i) of the 1940 Act and are consequently covered in Entry 88 of the 2005 Act.”
- The Supreme Court, while upholding the decision of the Andhra Pradesh High Court, has held that ‘Medical Oxygen IP’ and ‘Nitrous Oxide IP’ ought to be taxed as ‘drug’ under Entry 88 of Andhra Pradesh Value Added Tax (VAT) Act, 2005 and not as ‘unclassified goods’.

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GST DEPARTMENT CANNOT DETAIN GOODS FOR BONAFIDE MISCLASSIFICATION: KERALA HC

**M/s. Hindustan Coca Cola Pvt. Ltd. vs.
Commissioner of Commercial Taxes**

**WP (C). No. 5384 of 2020 (W)
Date: 19.03.2020**

Fact of the Case

- The petitioner, Hindustan Coca Cola Private Limited is engaged in the manufacture and supply of fruit-based beverages or drinks registered in the State of Kerala. According to the petitioner, the carbonated fruit drinks

manufactured by them were classified under HSN 2202 9920 under GST and discharging GST @ 12% on all Intra-State and Inter-State supplies.

- During the course of Business of supplying the goods interstate, the drinks were brought within the jurisdiction of Kerala from Karnataka Manufacturing Plant and the vehicles carrying the goods were intercepted on the basis that the goods were wrongly classified, in fact, they would be falling under the head 2202 10, for which the GST rate is 28%. Consequently, the goods were detained by the authority and the notices were issued.

Decision of the Case

- Aggrieved by the order, the petitioner approached the High Court contending that it was not a case of tax evasion but a bonafide dispute concerning the eligibility of tax i.e. the rate of tax.
- The single-judge bench relying on the decision in J.K Synthetics Limited V. Commercial Taxes Officer held that the charging provisions must be construed strictly but not the machinery provisions which would be construed like any other statute.
- The High Court observed that the process of detention of the goods cannot be resorted to when the dispute is bonafide, especially concerning the eligibility of tax and, more particularly, the rate of tax.
- The Kerala High Court quashed the notices issued by the Goods and Service Tax (GST) department and directed to release the seized goods which were detained on the ground of bonafide misclassification of goods.

DIRECT TAX

ADDITION CAN'T BE SUSTAINED ON THE BASIS OF STATEMENTS: ITAT

M/s. Morden Malleables Ltd vs. Deputy Commissioner of Income Tax

**ITA No. 2548/Kol/2019
Date: 20.03.2020**

Fact of the Case

- The appellant, M/s. Modern Malleables Limited is engaged in the manufacturing and selling of overhead transmission and distribution line equipment, conductors and hardware accessories, etc.
- According to Assessing Officer (AO), an operation of search and seizure under Section 132 of the Income-tax Act, 1961 was conducted at the business and residential premises of one Shri Anand Sharma and Shri Janardan Chokhani at Kolkata in which the said Mr. Anand Sharma and Mr. Janardan Chokhani confessed that they were entry operators and that they have registered a large number of paper companies with bogus share capital/premium which have subsequently been sold for a commission or used for giving one-time entry of bogus share capital or expenses or unsecured loans/advances.
- Relying on the statements AO contended that the AO notes that the assessee company kept the money with it without carrying out any business activity as stated in the Joint Venture.

Decision of the Case

- “The documents were filed before the authorities and the documents could not be controverted or its veracity was assailed before us as not genuine documents, therefore, the addition made u/s. 68 of the Act only on the basis of two statements which could not stand the scrutiny of law, was warranted and therefore, the addition cannot be sustained as per law.”
- The ITAT while relying on various precedents noted, “AO to draw an adverse inference against the assessee because he did not give an opportunity to the assessee to cross-examine the statements. So we note that both the statements of Mr. Anand Sharma & Mr. Sushil Bhattar cannot be relied upon to support the addition made by AO.”
- The Income Tax Appellate Tribunal – ITAT, Kolkata has held that an addition under

section 68 of the Income Tax Act, 1961 cannot be sustained on the basis of the statements.

BEST JUDGMENT ASSESSMENT AND PENALTY U/S 12(3) OF TNGST ACT CAN'T BE PASSED ON GROUND OF DEBATABLE ISSUES: MADRAS HC

Audco India Ltd. vs. C.T.O & Ors

**W.P. No 4554 of 2008
Date: 10.03.2020**

Fact of the Case

- The assessee, Mr. K.A.Parthasarathi was engaged in the export and received the cash incentives from the export. The assessing officer has made a demand and penalty invoking Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 on the grounds that cash incentives received from the export are attracted additional tax and the same was not paid by the assessee.
- Aggrieved by the order, the assessee moved to the Income Tax Appellate Tribunal (ITAT), wherein the Tribunal upheld the order and said, “the Assessing Officer imposes a penalty on the dealer under Section 12(3)(b) in relation to the modified balance of tax payable, that will be arrived in the order by giving effect to the Appellate Assistant Commissioner’s findings in regard to the turnovers in dispute. He will undertake the exercise of re-fixing the exact quantum of penalty payable by the Assessee and pass orders accordingly.”
- Consequently, the assessee filed the writ petition and contended that the assessing authority imposed an additional tax on the sales made by the Assessee, which were not supported by the declaration in ‘C’ Forms and secondly on the Cash Incentives received by the Assessee on the Exports made by it was held to be part of taxable turnover, which was not so. According to the assessee, the imposition of additional tax, however, has not been done as a result of ‘Best Judgment Assessment’ under Section 12(2) of the TNGST Act, upon which only the penalty under Section 12(3)(b) of the Act is attracted.

Decision of the Case

- The division bench allowed the appeal by the assessee and held that the additional tax

cannot be imposed on case incentives on exports and no penalty is applicable under Section 12(2) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959. "Section 12(3)(b) provides for the imposition of penalty in case of submission of incorrect or incomplete return by the Assessee. Both the grounds given above for the imposition of additional tax on the Assessee did not, in our opinion, result in Best Judgment Assessment against the Assessee and it cannot amount to filing of incorrect or incomplete return by the Assessee.

- Therefore, the learned Tribunal has erred in relying upon the insertion of the Explanation in Section 12(3) of the Act at a later date with effect from 01.04.1996 to uphold such penalty in the year 1993-94. In our opinion, the Explanation to Section 12(3) does not get attracted to the facts of the present case at all."
- The High Court of Madras held that the Assessing Officer cannot pass the best judgment assessment on the ground of best judgment assessment and the penalty under Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959

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**AMOUNT TRANSFERABLE FOR
CONSUMER'S BENEFIT CAN'T BE
INCLUDED IN REAL PROFIT, NOT
TAXABLE: DELHI HC**

DCIT vs. Tata Power Delhi Distributor Ltd.

**ITA 186/2020
Date: 11.03.2020**

Fact of the Case

- The respondent, Tata Power Delhi Distribution Limited is a joint venture between the Tata group and the Delhi Government and is in the business of distribution of electricity in north and north-west areas of Delhi.
- An assessment order was passed against the respondent under Section 143(3) of the Income Tax Act, 1961. The total income of the Respondent was computed and additions were made on the ground of de-recognition of revenue and disallowance under Section 80 IA.
- The Apex court ruled that the amount transferred for the benefit of the customers does not constitute the part of assessee's real

profit and for the purpose of calculating the taxable income, such amount has to be deducted from its total income. The appellant authority was unsatisfied with the order, so knocked the doors of the High Court of Delhi.

Decision of the Case

- The division bench relied on the decision of Apex Court in the case of Poona Electric Supply Company Limited vs. CIT wherein the Apex Court has deliberated upon the concept of commercial profits viz-a-viz clear profits. On the basis of this principle, the Court has held that the amount transferable for the benefit of the consumers does not form part of the assessee's real profit and for the purpose of calculating the taxable income, such amount has to be deducted from its total income.
- Considering the fact that the Tribunal decision was based on this order, the division bench upheld the same and said, "the approach adopted by the Tribunal in applying the ratio of the decision of the Supreme Court in Poona Electric Supply Company Limited vs. CIT is wholly justified and does not call for any interference. Accordingly, the ground of challenge urged by the revenue on this aspect is rejected."

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**INCOME TAX ASSESSMENT CAN'T BE
RE-OPENED AFTER FOUR YEARS:
GUJARAT HC**

**Jayesh T Kotak vs. Deputy Commissioner of
Income Tax**

**C/SCA/15592/2015
Date: 26.03.2020**

Fact of the Case

- The petitioner challenged the notice issued by the Deputy Commissioner of Income Tax under section 148 of the Income Tax Act, 1961 seeking to reopen the assessment.
- The Deputy Commissioner of Income Tax had the objections raised by the petitioner to the reopening of assessment for want of certain details. Though the petitioner furnished all the details, no action was taken on it.
- After a gap of more than four years, the petitioner received a notice under section 148, in which the respondent wants to reopen the

assessment for the assessment year 2008-2009.

- The petitioner contended that the issue having already been gone into at the time of scrutiny assessment, it is not permissible for the Assessing Officer to reopen the assessment in respect of the same issue.

Decision of the Case

- The division bench allowed the petition and quashed the notice issued by the officer under section 148 of the Income Tax Act, 1961. The bench held that the issue having already been gone into at the time of scrutiny assessment, it is not permissible for the Assessing Officer to reopen the assessment in respect of the same issue.
- The Gujarat High Court has held that “The reopening of assessment beyond a period of four years from the relevant assessment is without the authority of law,” the bench said.

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LEVY OF LATE FEE ON DELAY IN FILING TDS STATEMENT NOT UNCONSTITUTIONAL: MADRAS HC

**Qatalys Software Technologies Private Limited
vs. Union of India.**

**W.P.No 13331 of 2019
Date: 11.03.2020**

Fact of the Case

- The petitioners challenged the validity of Section 234E of the Income Tax Act, 1961. The demand notice raised by the Income Tax officer under Section 234E along with Section 220 (2) and 201 (1) (A) of the Income Tax Act, 1961 contending that Section 234 E is ultra vires the Constitution of India.

Decision of the Case

- The bench observed that the petitioner failed to show that Section 234E is manifestly arbitrary for it to be struck down.
- The division bench of the High Court of Madras held that the Indian Parliament is competent to pass legislation on Taxes in Income under Entry 82 of the List I to the Seventh Schedule. Section 234 E of the Income Tax Act, 1961 is not violated of any of the other provisions of the Income Tax Act or the Constitution of India.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

GSTR – 3B

Return	Turnover	Month	Regular Due Date	Revised Due Date	Interest	Late Fees & Penalty
GSTR-3B	Less than Rs. 1.5 Crore	February	20/03/2020	30/06/2020	X	X
		March	20/04/2020	03/07/2020		
		April	20/05/2020	06/07/2020		
	More than Rs. 1.5 but upto Rs. 5 Crores	February	20/03/2020	29/06/2020	X	X
		March	20/04/2020	29/06/2020		
		April	30/05/2020	30/06/2020		
	More than Rs. 5 Crores	February	20/03/2020	24/06/2020	√ At Reduced Rate @9% p.a. (No interest for delay of 15 th days from due date)	X (If filed on or before 30 th June, 2020)
		March	20/04/2020	24/06/2020		
		April	20/05/2020	24/06/2020		

GSTR – 1

Return	Turnover	Month	Regular Due Date	Revised Due Date	Interest	Late Fees & Penalty
GSTR- 1 (Monthly)	More than Rs. 5 Crore	March	11/03/2020	30 th June, 2020	Not Applicable	X
		April	11/04/2020			
		May	11/05/2020			
GSTR- 1 (Quarterly)	Less than Rs. 1.5 Crore	Jan – Mar 2020	30/04/2020	30 th June, 2020	Not Applicable	X

CMP – 08 & GSTR - 4

Return	Turnover	Month	Regular Due Date	Revised Due Date	Interest	Late Fees & Penalty
CMP – 08 (Quarterly)	Composition Scheme	Jan – Mar 2020	18/04/2020	7 th July, 2020	X	X
GSTR – 4 (Annual Return)		2019-20	30/04/2020	15 th July, 2020	X	X

GST Audit & GST Annual Return



Return	Turnover	Month	Regular Due Date	Revised Due Date	Interest	Late Fees & Penalty
GST Audit	More than Rs. 1.5 Crore	2018-19	31/03/2020	30 th June, 2020	No Change	No Change
GST Annual Return	More than Rs. 2 Crore	2018-19	31/03/2020	30 th June, 2020	No Change	No Change

DIRECT TAX CALENDAR - APRIL, 2020

30.04.2020

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of March, 2020 has been paid without the production of a challan.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB & 194M in the month of March, 2020.
- Due date for deposit of Tax deducted by an assessee other than an office of the Government for the month of March, 2020.
- Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period October 1, 2019 to March 31, 2020.
- Due date for uploading declarations received from recipients in Form. 15G/15H during the quarter ending March, 2020.
- Due date for deposit of TDS for the period January 2020 to March 2020 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A,

DIRECT TAX CALENDAR - MAY, 2020

07.05.2020

- Due date for deposit of Tax Deducted/Collected for the month of April, 2020. 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.

15.05.2020

- Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of March, 2020.
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of April, 2020 has been paid without the production of a challan.
- Quarterly statement of TCS deposited for the quarter ending March 31, 2020.
- 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 April, 2020.

30.05.2020

- Submission of a statement (in Form No. 49C) by non-resident having a liaison office in India for the financial year 2019-20.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of April, 2020.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of April, 2020.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of April, 2020.

31.05.2020

- Quarterly statement of TDS deposited for the quarter ending March 31, 2020.
- Return of tax deduction from contributions paid by the trustees of an approved superannuation fund.
- Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect of a financial year 2019-20.
- Due date for e-filing of annual statement of reportable accounts as required to be furnished under section 285BA(1)(k) (in Form No. 61B) for calendar year 2019 by reporting financial institutions.
- Application for allotment of PAN in case of non-individual resident person, which enters into a financial transaction of Rs. 2,50,000 or more during FY 2019-20 and hasn't been allotted any PAN.
- Application for allotment of PAN in case of person being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in Rule 114(3)(v) or any person competent to act on behalf of the person referred to in Rule 114(3)(v) and who hasn't allotted any PAN.

PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Book	Amount (Rs.)
<i>Impact of GST on Real Estate</i>	100
<i>Handbook on GST on Service Sector</i>	250
<i>Insight into Customs - Procedure & Practice</i>	250
<i>Handbook on Works Contract</i>	100
<i>Input Tax Credit & In depth Discussion</i>	250
<i>Handbook on Impact of GST on MSME Sector</i>	100
<i>Exemptions under the Income Tax Act, 1961</i>	500
<i>Insight into Assessment including E-Assessment</i>	500
<i>Taxation on Co-operative Sector</i>	100
<i>Guidance Note on GST Annual Return & Audit</i>	500
<i>Impact on GST on Education Sector</i>	100
TOTAL	2750

Combo offer will be given for purchase of all books at a time which is
Rs. 2000

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TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

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

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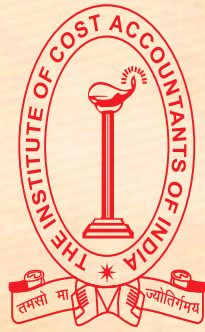
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