

AUGUST, 2020

TAX Bulletin

★ ★ VOLUME - 70 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

www.icmai.in

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

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

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

Ph: 091-11-24666100

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

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

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CMA Rakesh Bhalla
Chairman, Direct Taxation Committee



CMA Niranjan Mishra
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

Our nation celebrated its 74th Independence Day last Saturday on the 15th of August, 2020. The founding fathers of this nation, along with the numerous freedom fighters who gave their lives to the country, wanted this nation to be independent and happy. Over last seven decades, India has emerged towards becoming a global power to fulfill it. However, in this competitive world to march further, a nation requires a power of transparency and accountability to be counted among the best. It is here that we can contribute to build a stronger nation.

The Globe at present is facing the Covid Crisis with so many unforeseen challenges being cropped up every single day. To scrutinize this crisis the department has organized this grand Seminar on 'Post Covid Challenges for Self-Reliant India – Role of Cost Management and Taxation' on the 18th of August and is having Shri Sujeet Kumar, Hon'ble Member of Parliament (Rajya Sabha) as the Chief Guest along with eminent speakers like CMA Milind Date, Strategist, Trainer, Management Expert and Independent Director and CMA G K Raju, Eminent Contributor in the field of Taxation.

Two very important courses, Advanced Course on Income Tax Assessment and Appeal and Advanced Course on GST Audit and Assessment Procedure has also been launched. Even two very intriguing publications, 'Taxation on Works Contract' and 'Handbook on SEZ & EOUs in India' has also been launched.

We are hopeful that this passion and dedication of Team – TRD would help us achieve new heights. Thank you to all the Resource Contributors and motivators also.

Jai Hind and Vande Mataram.



(Rakesh Bhalla)

CMA Rakesh Bhalla
18th August 2020



CMA Niranjan Mishra
18th August 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.adl@icmai.in



VALIDATIONS IN E-INVOICES

CMA Bhogavalli Mallikarjuna Gupta
Chief Taxologist
Logo Info Soft Business Technologies Pvt Ltd

The Government is always listening to the trade and industry, especially when it comes to the GST. Initially, e-invoicing is required to be rolled out by all taxpayers having a turnover above Rs 100 crores but due to the pandemic like situation, which has impacted everyone, and to give a breather to the Government has increased the threshold limit know to Rs 500 Crores wide Notification No 61 – Central Tax Dated 30th July 2020. Also, based on the feedback from various stakeholders, the Schema for e-invoice is amended wide Notification No 60 – Central Tax dated 31st July 2020.

A new API Version 1.03 has been released on 5th August 2020. As per the new release notes and communication from the GSTN, the new APIs will be made available in production by 15th August 2020. To Access the production APIs, the users can use their existing e-waybill credentials and not create new credentials for e-invoice separately. A new API for cancellation of e-waybill is released, known as “E-waybill cancel.”

The validation of the Generate IRN API has changed, and the new validations are listed below.

1. The data being shared with the ASP/GSP should be validated with the schema shared by the portal before sending the data to IRP.
2. The version of the schema is a mandatory attribute, and it should be of the latest version as per notification.
3. Values for IRN should not be passed in the request.
4. It is mandatory to pass the values for Document Type and Supply Type of Transaction
5. For B2C transactions, e-invoice not required to be generated, hence data related to B2C transactions should not be passed.
6. The document number for Tax Invoice, Debit Note, or Credit Note should not be passed if they are starting with “0”, “-“ or “/.”
7. The taxpayer should ensure that document numbers are unique for each financial year, and the document number should have the fiscal year embedded in the number as it will help in the generation on IRN as it is based on document number and Financial year.
8. Duplicate IRNs will not be generated. There should be a validation for the data being sent to prevent the flow of such data.
9. IRN cannot be generated for canceled invoice numbers.
10. The request for IRN can be made only by the supplier of goods or services or both.
11. In the case of e-commerce operators, the IRN can be generated by the e-commerce operator on behalf of the supplier.
12. The e-commerce operator can generate the IRN provided he passes the values for the eComm_GSTN.
13. Taxpayers registered as SEZ taxpayers are not required to issue e-invoice.
14. The document date should not be greater than the data on which data is being passed and can be yesterday's date.
15. The supplier has to generate IRN in case of Reverse Charge Transactions, and the flag of Reverse Charge has to be passed as “Y” in case of reverse charge transactions.
16. For the generation of IRN, the recipient's GSTIN should be active.
17. In the case of exports, the GSTIN has to be mentioned as “URP” and place of supply as “96”.
18. In case if the recipient is an SEZ Developer or Unit, the Bill To, Ship To, and Place of Supply State Code is to be mentioned as “96”.
19. The first two digits of the GSTIN of the Supplier and the Recipient should match with the Sate Codes passed for Supplier and Recipient details. The only exception is for SEZ Registered taxpayers.
20. The PIN codes are validated at the backend with the respective state codes.
21. The transaction will be treated as “Bill To – Ship To” if “Shipping Party” values are passed.

22. The transaction will be treated as “Dispatching Party” if “Bill From – Dispatch From” values are passed.
23. If both Shipping and Dispatching parties are provided, then the transaction is considered as ‘Combination of Both’ (Bill From – Dispatch From and Bill To- Ship To).
24. In the case of Export transactions for “Goods,” the “Ship To” address should be the ICD/Port in India from where the goods are being exported.
25. In the case of exports and SEZ transactions, they are always considered as Interstate Transactions.
26. In case IGST on intrastate supply, tax rates and tax values related to IGST should be passed, and Supplier state code and Recipient state code should be the same.
27. The State Code of the Supplier GSTIN and POS will determine the transaction as Interstate or Intrastate.
28. The serial number of the item is verified for duplicate items.
29. The HSN code should be a minimum of 4 digits.
30. The HSN code for Goods can be 4,6, or 8 digits, and in case of Services, it can be 4, 5, or 8.
31. If the invoice line is selected as Service, then the HSN code should start with 9.
32. The unit of measure should be as per the “Unit Quantity Code.”
33. In the case of services also, Quantity and Unit Quantity Code are mandatory.
34. The tax rates will be validated from the tax rate master.
35. In the case of Intrastate Transactions, the applicable taxes will be CGST and SGST/UTGST.
36. In the case of Interstate Transactions, the applicable tax will be IGST.
37. In the case of Exports and Supplies to SEZ or SEZ Developer, then the transaction will be validated for IGST.
38. The following summation validations are to be done for items
 - a. Gross Amount of Item = Quantity X Selling Unit Price
 - b. Taxable Value of Item = Gross Amount of Item – Discount
 - c. SGST Value of Item = Taxable Value of Item X GST Rate / 2, if intra-state
CGST Value of Item = Taxable Value of Item X GST Rate / 2, if intra-state
 - d. IGST Value of Item = Taxable Value of Item X GST Rate, if inter-state
 - e. Cess Value of Item = Taxable Value of Item X Cess Rate
 - f. State Cess Value of Item = Taxable Value of Item X State Cess Rate
 - g. Total Value of Item = Taxable Value of Item + SGST Value of Item + CGST Value of Item + IGST Value of Item + Cess Value of Item + State Cess Value of Item + Non-Advol Cess Value of Item + State Cess Non-advol value of Item + Other charges.
39. The following summation validations are to be done on Invoice total
 - a. Total Taxable Value = Taxable Value of all Items
 - b. Total SGST Value = SGST Value of all Items
 - c. Total CGST Value = CGST Value of all Items
 - d. Total IGST Value = IGST Value of all Items
 - e. Total Cess Value = Cess Value of all Items + Non-Advol Cess Value of all Items
 - f. Total State Cess Value = State Cess Value of all Items + State Cess Nonadvol Value of all Items
 - g. Total Invoice Value = Sum of All Total Value of Items – Invoice Discount + Invoice Other charges + Round-off amount
40. Calculated value/amount in the above points can be between actual calculated value/amount and calculated value/amount rounded up to the next rupee.
41. Rounding off Value can be up to 9.99
42. The maximum payload of JSON is 2MB.
43. The invoice should not have more than 1000 lines.
44. IRP will be generating the e-waybill provided the user passes all the required information related to e-waybill.
45. e-waybill will not be generated for Debit/Credit Note or Services.
46. e-waybill will be generated if the Invoice lines have at least one item with the HSN code of items.
47. If transporter ID is provided, then Part A of the e-waybill will be generated.
48. Part A of the e-waybill will be provided if the values for Transport Mode, Vehicle Type, Vehicle No., Transport Document Number are passed without null values.
49. If the mode of transportation is passed as “Road,” then vehicle type and number are required to be passed mandatorily.
50. If the mode of transportation is air or ship, the transport document number and date should be passed.

51. The vehicle number is validated with the Vahan database.
52. Pin code of the recipient is mandatory is Ship-To details are not passed.
53. Validation is done on PIN-PIN basis.
54. In case if all the values for the e-waybill are not passed, then the system will generate the IRN and return the data, and e-waybill can be generated separately.
55. IRN can be canceled if there are no active or valid e-waybill.
56. e-waybill can be canceled by the generator of e-waybill only.
57. e-waybill cannot be canceled within 24 hours of generation of e-waybill.
58. Even though state codes for 'Other country' are different in e-invoice and e-way bill, both (96 and 99) are valid. The system will take care of internally. Gradually, Code 99 will be removed.
59. IRN and e-waybill can be generated together, but when it comes to cancellation, the user has first to cancel the e-waybill and then only can cancel the IRN.

The above mentioned are some of the key validations which are available for e-invoice. The users and taxpayers are requested to do a detailed impact analysis of the same and implement the same in the organization. Here the CMAs can play a key role as they are aware of the technology, business process as well as the requirements of e-invoice. As time is running short, it is recommended to act on it as the due date for the rollout is 1st Oct 2020, and hardly 43 working days are left. During this period, only the training, change of business process, changes in software, if required has to be carried out and implemented to ensure that the business is not again impacted for the second time in the year.

The author can be reached for any queries on e-invoice implementation or rollout @ mallikarjunagupta@india-gst.in.

Disclaimer

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E - INVOICE: EVERYTHING YOU NEED TO KNOW

CMA Sanjeev Motiyani
Executive Director - Finance & Logistics, India
Knauf Ceiling Solutions
Knauf Armstrong & Knauf AMF

Business with turnover of more than Rs 500 crore will issue 'E-invoicing' with a Quick Response (QR) code from 1 October 2020.

The Goods Services Tax ("GST") Council, in their 37th meeting on 20th September 2019, has decided to implement a system of e-invoicing, which will be applicable to specified categories of persons. E-invoicing is not the generation of invoice on GST portal. It is the submission of an already generated standard invoice on a common portal. Thus, it automates multi-purpose reporting with a one-time input of invoice details.

Announced on 14 March 2020 at the 39th GST Council meeting, the implementation of e-invoicing and QR codes on invoices has been delayed from 1 April 2020 to 1 October 2020. The GST Council also postponed the e-wallet scheme to 31 March 2021.

The major decisions made by the GST Council include the following:

- Mandatory e-invoicing and implementation of QR code are deferred from 1 April 2020 to 1 October 2020;
- The deadline for the e-wallet scheme is postponed to 31 March 2021;
- Certain categories of taxpayers (including insurance companies, banks, financial institutions and non-banking financial institutions, passenger transportation services) are exempt from issuing e-invoices and generating QR code;
- The introduction of GST returns is deferred to 1 October 2020.

What is E-Invoicing?

E-Invoice means **electronic invoice** to be generated by the taxpayer. It is a system in which B2B invoices are authenticated electronically by Goods and Services Tax Network ("GSTN") for further use on the common GST portal. It doesn't mean generation of invoice by a Government portal.

Its applicable to;

- Taxpayers whose aggregate turnover (based on PAN) in a financial year >500 Crores.
- Few Sectors/persons exempted: SEZ units, Insurance, Banking (including NBFCs), Goods Transport Agency (transporting goods by road in goods carriage), Passenger transport services, Multiplex Cinema Admissions.

Benefits of E-invoicing?

Its benefits include;

- Reporting and authentication of B2B invoices from the common portal will ensure that GST ANX-1 and ANX-2 are auto-prepared in the new format. It also auto prepares GSTR 1 for B2B supplies.
- E-invoicing can be further used for creating e-way bills by providing only vehicle details.
- Invoices uploaded by suppliers for authentication will be automatically shared with buyers for reconciliation.
- The system will auto-match input credit liability with output tax.
- E-invoice can be created for Debit/Credit Notes, Invoices, and other eligible documents.

Invoice Registration Portal

A taxpayer will have to generate his invoice on his own accounting system and then upload the same into the government's Invoice Registration Portal (“**IRP**”).

The IRP will then generate a unique Invoice Reference Number (“**IRN**”) after which invoice details are transferred from the IRP to GST portal and e-way bill portal. Therefore, it eliminates the need for manual data entry each time.

Invoice Reference Number

The **IRN** is a unique number, also known as hash, generated by the IRP using a hash generation algorithm, under the e-invoicing system. For every document such as an invoice or debit or credit note to be submitted on the Invoice Registration Portal, a 64-character invoice reference number shall be generated.

This number shall be unique for every invoice raised in a financial year by a Goods and Services Tax Identification Number (“**GSTIN**”) in the entire GST system. Further, every invoice being issued by supplier to his recipient must contain the IRN.

How to create E-invoice?

An e-invoice will be created using an enterprise's current accounting and billing software. The procedure to create an e-invoice will be almost identical to the current process of raising an invoice electronically. However, a business enterprise will now need to re-align their software system in order to ensure that the invoice raised follows the standardized format laid down by the GSTN. While the physical copy of the invoice will not look any different from what it did before, the seller's software system will have an inbuilt feature to generate each invoice in JavaScript Object Notation (“**JSON**”) format, which can then be uploaded onto a central system.

The seller can create a JSON file following the e-invoice scheme and mandatory parameters by using the following modes:

- i. accounting and billing system that offers this service,
- ii. a utility to interact with the accounting/billing system, such as an excel/word document or a mobile app and
- iii. an offline Tool to generate e-invoices by keying-in invoice data.

What happens once an e-invoice has been generated?

After an invoice has been generated on a business' accounting software with its own IRN, the JSON file will need to be uploaded onto a central system. The central system, known as the IRP of GST, will validate the hash (i.e. the IRN) and do a deduplication check with the GST system. After which, the system will generate a unique reference number and digitally sign the invoice. In addition, a Quick Response Code (“**QR code**”) containing vital parameters of the invoice will be generated and sent back to the taxpayer who raised the invoice. The signed e-invoice will also be sent by the IRP to the recipient of the document i.e. the buyer, on the email ID provided in the invoice.

Why a QR Code on e-invoice?

It is a two-dimensional barcode applied to items for presenting information in its machine-readable format. The QR Code contains important details of the invoice so that one can check those details even without internet access. The QR code will consist of the following e-invoice parameters:

- GSTIN of the supplier
- GSTIN of the recipient
- Invoice number given by the supplier
- Date of the generation of invoice
- Invoice value

- Number of line items
- HSN Code of the main item
- Unique Invoice Reference Number/Hash

Conclusion

The introduction of e-invoice system shall result in more streamlining of GST process. It is not an invoice that you can download or generate through the GST Portal, but a process of validating all the B2B invoices electronically by the GSTN. A standard format (Schema), which requires all the accounting software to follow a common format which can then be uploaded to the GST portal for authentication and validation.

To sum up, E-invoice is a standard mechanism or schema for data exchange between different GST billing software of different manufacturers. For more details you can visit <https://einvoice1.gst.gov.in/>. National Informatics Centre (NIC) has built the e-invoice system as per the latest e-invoice (IRN) schema published on the GSTN portal.

Disclaimer:

The views expressed by the author in this article is personal views. The content of this article is intended to provide a general guide to the subject matter.



APPEAL AND REVISION MECHANISM UNDER GST

CMA Khagendranath Mahato
Practicing Cost Accountant

This article summarizes the various provisions of statutory right of appeal and revision available to an aggrieved person against any decision or order passed by the adjudicating authority under the provisions of Central Goods and Services Tax Act, 2017 and CGST Rules, 2017 (herein after referred as the “Act” or “Rule”).

1st level Appeal/Application before Appellate Authority U/s 107:

(1) any person aggrieved by any decision or order passed by an adjudicating authority under this Act or SGST/UTGST, may appeal to the prescribed Appellate Authority within three months from the date on which the said decision or order is communicated to such person.

Under Rule 109A, Appellate Authorities may be Commissioner of Central Tax (Appeal) or Additional Commissioner of Central Tax (Appeal) or Joint Commissioner of Central Tax (Appeal) depending upon the Authorities who have passed the impugned order or decision as follows:

- (a) Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;
 - (b) Any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent.
- (2) the Commissioner may, on his own motion, or upon request from the Commissioner of SGST/UTGST, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or SGST/UTGST, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of relevant points arising out of the said decision or order.

The authorised officer making an application to the Appellate Authority shall be treated as an appellant and the provisions of this Act relating to appeals shall apply to such application.

Procedure to file Appeal/Application under Rule 108:

(3) Appeal/Application under section 107(1)/(2) shall be filed before Appellate Authority in Form APL-01/03 respectively with grounds of appeal and other relevant documents (provisional acknowledgement is issued immediately). Certified copy of the order or decision, appealed against, shall be submitted within seven days of filing appeal and in that case, date of filing appeal shall be considered the date of provisional acknowledgement. However, if the certified copy of the order or decision appealed against is not submitted within seven days, its actual date of submission shall be the date of filing appeal. Final acknowledgement shall be issued in Form APL-02.

(4) The Appellate Authority may condone delay in filing appeal with sufficient cause to its satisfaction for a further period of one month beyond specified period of three months or six months, as the case may be.

(5) Appeal and other documents shall be submitted electronically and digital signature certificate shall be verified as per provisions of IT Act, 2000 (Rule 26).

Concept of Pre-deposit under section 107:

(6) -before filing appeal, tax payer is required to deposit an amount (pre-deposit) - (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) a

sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, (fifty crore rupees in IGST).

(7) Once the pre-deposit amount is paid, the recovery proceedings for the balance amount shall be deemed to be stayed.

Proceedings before Appellate Authority U/s 107:

(8) The Appellate Authority shall have to give an opportunity to the appellant/respondent of being heard.

(9) The Appellate Authority on sufficient cause and reasons to be recorded in writing may grant adjournment for not more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may allow submission of additional ground of appeal at the time of hearing, if it is satisfied that the omission of that ground from the original grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against, but shall not refer the case back to the adjudicating authority that passed the said decision or order.

An order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

Further, where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority shall be a speaking order stating in writing the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority is advised to hear and decide every appeal within a period of one year from the date on which it is filed.

Where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) The Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order shall also be sent to the jurisdictional CGST/SGST/UTGST Commissioner.

(16) Subject to the provisions of section 108 (Revision) or section 112 (appeal to Appellate Tribunal) or section 117 (appeal to High Court) or section 118(appeal to Supreme Court), every order shall be final and binding on the parties.

Revisional Authority:

By-passing the Appellate Authority, tax payer aggrieved to a decision or order passed by adjudicating authority may approach to the Revisional Authority for remedy where there is no condition of pre-deposit. Notification no. 05/2020- Central Tax, dated 13th January 2020, authorizes following officers as Revisional Authorities:

(a) Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and

(b) Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax.

Concept of Revision U/s 108:

(1) The Revisional Authority, on his own motion, or upon information received by him or on request from the Commissioner of SGST/UTGST, or on observation by the C&G of India, may stay operation of any decision or order passed by his subordinates, if he considers it as erroneous, prejudicial to the interest of revenue, illegal or improper and after giving the adversely affected person a notice in Form RVN-01 and an opportunity of being heard, pass such order in Form APL-04, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) The Revisional Authority shall not exercise any power if the order is under appeal; or, within a period of six months and beyond a limitation period of three years; or, if the order has already been taken for revision at an earlier stage; or, a revisional order.

The Revisional Authority may pass an order on any point which has not been raised and decided in an appeal, before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years of the impugned order whichever is later.

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 112(appellate to Tribunal) or section 117(appeal to High Court) or section 118(appeal to Supreme Court), be final and binding on the parties.

(4) If the impugned order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court/Supreme Court shall be excluded in computing the period of limitation of three years under sub-section (2).

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation of three years under sub-section (2).

Second level Appeal before Appellate Tribunal U/s 112:

(1) Any person aggrieved by an order passed by Appellate Authority or Revisional Authority of CGST/SGST/UTGST may appeal to the Appellate Tribunal against such order within three months from the date on which the impugned order is communicated to the person preferring the appeal.

(2) The Appellate Tribunal, in its discretion, may refuse to admit any such appeal where the disputed amount comprising of tax, input tax credit, fine, fee or penalty does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of SGST/UTGST, may examine the legality or propriety of any order passed by Appellate Authority or Revisional Authority for his satisfaction and by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the impugned order has been passed.

(4) The application under sub-section (3) shall be dealt with by the Appellate Tribunal as an appeal and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) The respondent party may file, within forty-five days of the receipt of notice from Tribunal, a memorandum of cross-objections, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may condone delay in filing appeal u/ss (1)/(5) upto three months/forty-five days respectively, if it is satisfied that there was sufficient cause for delay.

(7) An appeal under sub-section(1), memorandum of cross-objection under sub-section(5) and Department's application under sub-section(3) shall be filed to the Appellate Tribunal in Form APL-05, APL-06 and APL-07 respectively(provisional acknowledgements issued immediately) along with grounds of appeal and other relevant documents. If certified copy of the decision or order appealed against is submitted within seven days of filing the appeal/application, date of final acknowledgement(Form APL-02) shall be the date of filing

appeal/application, otherwise, actual date of submission of such certified copy shall be considered the date of filing appeal/application (Rule 110).

Verification of digital signature certificate in appeal form shall be as per provisions of IT Act, 2000.

(8) **Pre-deposit** to be made by the appellant under sub-section (1) shall be (a) full amount of admitted tax, interest, fine, fee and penalty and (b) a sum equal to twenty per cent of the remaining amount of tax in dispute, arising from the impugned order, subject to a maximum of fifty crore rupees, (one hundred crore in IGST), in addition to the amount paid before filing appeal to the Appellate Authority under section 107(6).

(9) Where the appellant has paid the pre-deposit amount, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of disputed amount of tax or input tax credit or the amount of fine, fee or penalty, subject to a maximum of twenty-five thousand rupees.

There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

Proceedings in Appellate Tribunal U/s 113:

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders there on, (summary statement in Form APL-04), as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) The Appellate Tribunal may adjourn the hearing of the appeal for reasons to be recorded in writing for not more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may on its own or brought to its notice by concerned parties, amend any order passed by it, so as to rectify any error apparent on the face of the record, within a period of three months from the date of the order, giving an opportunity of being heard to the party adversely affected, if any.

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner of CGST/SGST/UTGST.

(6) Save as provided in section 117(appeal to High Court) or section 118(appeal to Supreme Court), orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

Whether the order of Tribunal is appealed to High Court/Supreme Court or not, amount payable to Govt., if any, as a result of Tribunal order, tax payer has to make the payment. Same provision is applicable in case of High Court judgement.(section 119).

Refund of pre-deposit amount:

U/s 115 of the Act, if pre-deposit amounts made before admission of appeal are required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount (**not the date of order**) till the date of refund of such amount.

Judicial status of Appellate Tribunal U/s 111:

(1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder.

(2) The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of matters, namely, summoning and examining any person on oath, production of documents, evidence on affidavits, requisitioning any public record or documents as per the provisions of the Indian Evidence Act, 1872, other matters specified in this sub-section.

(3) The Appellate Tribunal is empowered to enforce its order like a decree made by a court, sending for execution to the jurisdictional court specified in this sub-section.

(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Constitution of Appellate Tribunal U/s 109:

(1) The Government shall, on the recommendations of the Council, by notification, constitute GST Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) There shall be two-tier Appellate Tribunal - National Bench/Regional Benches and State Bench/Area Benches.

(3) The National Bench shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

(4) Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches shall have jurisdiction to hear appeals against the orders where one of the disputed issues involved relates to the place of supply.

(6) State Bench and Area Benches shall be constituted with jurisdiction of each State or Union territory or for more than one state or Union territory, if required.

(7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders involving matters other than place of supply.

(8) The President/ the State President shall distribute the business or transfer cases among Regional Benches / Area Benches, as the case may be.

(9) Each State Bench and Area Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.

(10) Any appeal may be heard by a Bench of at least two Members: Provided that any appeal where the disputed amount does not exceed five lakh rupees and which does not involve any question of law may be heard by a bench consisting of a single member.

(11) In case of difference in opinion amongst the members on any point or points, it shall be heard by other member of same Bench or other Benches and decided according to the opinion of the majority of members who have heard the case.

Qualifications of President and Members U/s 110:

1 (a) the President-- has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years; (b) a Judicial Member— (i) has been a Judge of the High Court; or (ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or (iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years; (c) a Technical Member (Centre) - is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A; (d) a Technical Member (State)- is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three

years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

Other terms and conditions of appointment, tenure of service, remuneration, process of suspension and removal from service etc. of the president and members are governed by section 110(2) to 110(17) of the Act. Financial and administrative power of the president is mandated in section 114 of the Act.

Authorized Representative:

Under section 116(2) of the Act, authorized persons to represent the Assesse before adjudicating authority, Appellate Authority, Revisional Authority or Appellate Tribunal in any proceeding under the Act shall be

— (a) his relative or regular employee; or (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or (c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years, after a cooling period of one year ; or (e) authorised GST practitioner of the concerned registered person.

Present status of constitution of Appellate Tribunal:

The Appellate Tribunal and its Benches are yet to be constituted in many States and Union territories under section 109 of the Act, as a result, either Appellate/Revisional Authorities are not passing orders or the appellants are unable to file appeal or application before the Tribunal within the time limit specified.

For the reasons for non-constitution of Tribunal, judgement of Hon'ble Madras High Court dated 29th September, 2019, in the case "Revenue Bar Association Vs Union of India" stated below may be referred to:

“(i) Section 110(1)(b)(iii) of the CGST Act which states that a Member of the Indian Legal Services, who has held a post not less than Additional Secretary for three years, can be appointed as a Judicial Member in GSTAT, is **struck down**

(ii) Section 109(3) and 109(9) of the CGST Act, 2017, which prescribes that the tribunal shall consist of one Judicial Member, one Technical Member (Centre) and one Technical Member (State), is **struckdown**.

(iii) We recommend that the Parliament must consider to amend sections 109 & 110 of the CGST Act, 2017 for including lawyers to be eligible to be appointed as Judicial Members to the Appellate Tribunal in view of the issues which are likely to arise for adjudication under the CGST Act and in order to maintain uniformity in various statutes.”

Removal of difficulties:

In order to remove difficulties in filing appeal/application to Appellate Tribunal in specified time limit, Central Govt. vide CGST (Ninth Removal of Difficulties), Order No. 09/2019, 03rd December, 2019, has clarified that:

Three months/six months from the date on which the order sought to be appealed against is communicated, in section 112 (1)/112(3) shall be considered to be the later of the following dates:-

(i) The date of communication of order; or

(ii) The date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

CBIC vide circular No. 132/2/2020, dated 18th March, 2020, has further clarified the above position and advised the appellate authorities to dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

Writ petition to High Court by-passing the Appellate Tribunal:

Question arises whether in a situation of Appellate Tribunal not being constituted, order passed by appellate authority or revisional authority can be challenged in High Court. In the judgement dated 8th June, 2020 of such a recent case, Hon'ble Allahabad High Court in "M/s A. B. Enterprises vs State of UP", has disposed of the petition by providing that the petitioner can invoke the remedy of filing appeal before the Tribunal in terms of the provisions of CGST (Ninth Removal of Difficulties), Order No. 09/2019, 3rd December, 2019.

Third level appeal to the High Court U/s 117:

(1) Order passed by the State Bench or Area Benches of the Appellate Tribunal may be appealed to the High Court, if the case involves a substantial question of law.

(2) The appeal shall be filed in Form APL- 08, within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person. However, the High Court may condone delay with sufficient cause to its satisfaction.

(3) Only the question formulated on substantial question of law in appeal and substantial question of law aroused during hearing, if any, shall be heard in the High court.

(4) The High Court shall decide and deliver judgment containing the grounds on decision and may award such cost as it deems fit.

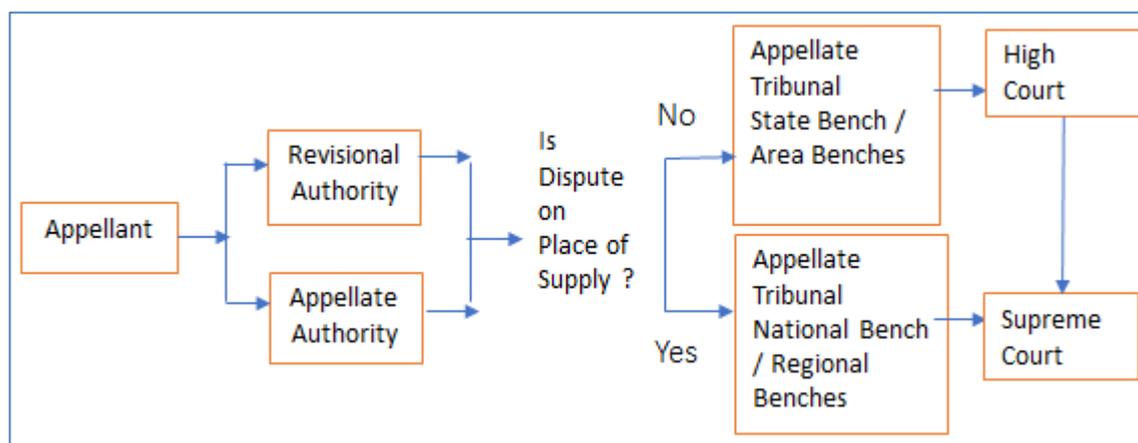
(5) The High Court may determine any issue which either is not determined or wrongly determined by the State Bench or Area Benches.

(6) The appeal shall be heard by a Bench of not less than two Judges of the High Court and decided by the opinion of majority.

Fourth level appeal to the Supreme Court U/s 118:

An appeal shall lie to the Supreme Court— (a) directly from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or (b) from any judgment or order passed by the High Court, provided the High Court certifies it to be a fit case for appeal to the Supreme Court.

4 Tier Appeal / Revision Framework:



Demand confirmed by the Court under Rule 115:

The jurisdictional officer shall issue a statement in FORM APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.

Non-appealable matters U/s 121 of the Act:

A decision or order on the following matters is non-appealable:—

- (a) An order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer, or
- (b) An order pertaining to the seizure or retention of books of account, register and other documents, or
- (c) An order sanctioning prosecution under this Act, or
- (d) An order passed under section 80 for Payment of tax and other amount in instalments.

Cross empowerment between CGST and SGST/UTGST officers:

In our dual nature of GST, every transaction of supply attracts CGST and SGST/UTGST, as such, section 6 of the Act provides for cross-empowerment of powers between central and state tax officers. Accordingly, if a proper officer of CGST passes an order with respect to a transaction, he will also act as the proper officer of SGST/UTGST for the same transaction and issue the order with respect to both CGST and SGST/UTGST component of the same transaction. Similar is the case for orders passed by proper officer of SGST/UTGST and they can issue order with respect to CGST and IGST (section 4 of IGST). Most of the provisions of CGST are applicable in IGST (section 20).

The Act also provides that where a proper officer under one Act has passed an order, any appeal/review/revision/rectification against the said order will lie only with the proper officers of that Act only. It implies that if a tax payer is aggrieved by the order for any transaction he need not approach both the authorities of central and state tax.

Conclusion (personal opinion of author):

- (1) Limitation period for filing appeal of 3/6 months for tax payer/Department to Appellate Authority/ Appellate Tribunal respectively defeats the principle of **Equity**.
- (2) Condonation of delay is restricted to one month and 3 months/45 days by Appellate authority and Appellate Tribunal respectively; instead, it would have been left on their discretion.
- (3) Point of “communication” and “receipt” of order for reckoning of limitation in filing appeal to Appellate Authority/ Appellate Tribunal and High court needs specific clarification, may be the date of uploading of order in common GST portal.
- (4) It is to be noted that pre-deposit of 10%/20% before filing appeal is on disputed amount of tax only, excluding any other payment.
- (5) Once pre-deposit of 10%/20% is made, recovery of balance amount is automatically stayed. Neither any petition/application for stay, nor, any stay order from Appellate Authority/Appellate Tribunal is required.
- (6) Appellate Tribunal would have been empowered to wave 20% of pre-deposit amount in full or part with necessary conditions of financial constraints of appellant and interest of revenue.
- (7) Allowing 3 adjournments only during hearing in appeal by Appellate Authority and Appellate Tribunal attempt to faster delivery of judgement, but one year’s mere advisory period of completing judgement is likely to defeat the purpose.
- (8) Revision within three years (appears to be very long period), on the basis of, amongst others, **upon information received by him**, and if Revisional Authority considers the order to be **erroneous, illegal and improper**, besides being Prejudicial to the interest of revenue, should be applicable to tax payers also. Accordingly, tax payer should have right to apply for revision of any order. This needs specific clarification.
- (9) Tribunal’s discretionary power to refuse admission of appeal of disputed amount up to fifty thousand rupees without considering merit is limiting the right to appeal. Alternatively, frivolous appeal may be checked by empowering the Tribunal to award cost.
- (10) Tribunal’s status is quasi-judicial, drawing power from the Act only and guided by the principle of natural justice, though however, for the facts of the case, its decision is final. Appellate Tribunal, exclusively by a separate comprehensive Act, would have perhaps served better the interest of justice.
- (11) The Act should be amended immediately and the Appellate Tribunal constituted in line with the spirit of the judgement of Hon’ble Madras HC, so that appellants need not wait for long to exercise their right to appeal.
- (12) The Act does not provide any period of limitation for appeal to the Supreme Court.

RECENT UPDATES IN DIRECT AND INDIRECT TAX

Team TRD

Direct Tax

Inline with the circular number 13/2020, e-Verification of Return data of AY 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 has been re-enabled upto 30-September-2020 for taxpayers who could not verify the Return data within the stipulated timelines

For more details, please follow-

https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/circular_13_2020.pdf

Prime Minister Narendra Modi launches platform for “Transparent Taxation - Honouring the Honest”

For more details, please follow-https://icmai.in/upload/Taxation/Transparent_Taxation_Modi_13082020.pdf

Indirect Tax

An EXCEL based offline tool has been provided on GST portal for composition taxpayers to prepare their GSTR-4 Annual Return.

For more details, please follow- <https://www.gst.gov.in/newsandupdates/read/392>

Functionality to file Revocation Application under Removal of Difficulty

For more details, please follow - <https://www.gst.gov.in/newsandupdates/read/390>

Facility to view , file and Download returns of period July 2017 has been restored on GST Portal

For more details, please follow - <https://www.gst.gov.in/>

KEY HIGHLIGHTS OF TRANSPARENT TAXATION – HONORING THE HONEST

Team TRD

Prime Minister Shri Narendra Modi launched a platform for “Transparent Taxation - Honouring the Honest” through video conferencing on 13th August 2020 to meet the requirements of the 21st century taxation system and to bring major reforms in Faceless Assessment, Faceless Appeal, Taxpayers Charter with an aim to **maintain transparency in Income Tax systems and empowering taxpayers.**

Key Points

- **Faceless Assessment** – has been effected from 13th August 2020. From now onwards Income tax assessment will be completely faceless. In the new system there will be no need for the taxpayer to visit the Income Tax office or the officer. Even the selection of a taxpayer is possible through systems using analytics and **Artificial Intelligence**. No local officer shall be involved in the process and this process shall be secretive to tax payer as well as tax officers.
- **Taxpayers Charter** – has been effected from 13th August 2020. This outlines the rights and responsibilities of both tax officers and taxpayers and taxpayer is assured of fair, courteous and rational behavior
- **Faceless Appeal**- will be effective from 25th September i.e. Deen Dayal Upadhyay's birth anniversary. Under the system, appeals will be randomly allotted to any officer in the country. The identity of the officer deciding the appeal will remain unknown.

The new platform apart from being faceless is also aimed at boosting the confidence of the taxpayer and making him/her fearless.

- Only 1.5 Crores Indian pays Income Tax out of 130 Crores people. Prime Minister urges people to introspect and come forward to pay Income taxes due on them to build an Atma Nirbhar Bharat
- P.M in his speech has highlighted on making every law and policy People Centric and Public Friendly rather than Power Centric

The focus of the Government in the last six years has been “Banking the Unbanked, Securing the Unsecured and Funding the Unfunded” and that the platform of “Honouring the Honest” is in the similar direction to provide maximum governance with minimum government and there will be more use of Technology as well as Artificial Intelligence.

Source - <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1645472>

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

Customs Notifications & Circulars

Tariff Notification

Notification No. 32/2020-Customs

Dated – 7th August, 2020

Seeks to amend notification No. 50/2017-Customs dated 30th June, 2017 so as to exempt goods for KKNP 5 and 6

Central Government has made the amendment, in the No. 50/2017-Customs, in List 32, after item number 12 and the entries relating thereto, the following shall be inserted.

“13) Kudankulam Nuclear Power Project (KKNPP) Units- 5 and 6 (1000 MW x 2)”

Non-Tariff Notifications

Notification No. 67/2020-Customs (NT)

Dated – 4th August, 2020

Notification 67/2020-Cus. (N.T.) dated 04.08.2020 on the subject Amendment to Notification No. 12/97-Customs (N.T.) dated 02.04.1997

CBDT has made the following further amendment in column (3), after the entry at item (ii) and corresponding entry in column (4), the following item and entries has inserted.

(3)	(4)
(iii) Village Dabgram, Tehsil Bhakti Nagar, District Jalpaiguri	Unloading of imported goods and loading of export goods

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt67-2020.pdf;jsessionid=1FAF597F1FD44DBFDD8EFF239F569B26>

Notification No. 68/2020-Customs (NT)

Dated – 6th August, 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 amendments in the notification No. 36/2001-Customs (N.T.) which was issued on 3rd August, 2001. In the said notification, the following Table has substituted.

TABLE - 2

Sl No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50	868 per kilogram
		(i) Silver, in any form, other than medallions	

3	71	and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	868 per kilogram
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For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt68-2020.pdf;jsessionid=90C0D23B7CD5767F5D7E0705600C42EF>

Notification No. 69/2020-Customs (NT)

Dated – 6th August, 2020

Exchange Rates Notification

CBIC has determined the rate of exchange of conversion of each of the foreign currencies specified into Indian currency or vice versa and has been effected from 7th August, 2020

SCHEDULE-I

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	For Imported Goods	For Exported Goods
Australian Dollar	55.15	52.75
Bahraini Dinar	205.00	192.45
Canadian Dollar	57.45	55.45
Chinese Yuan	10.95	10.60
Danish Kroner	12.15	11.70
EURO	90.50	87.30
US Dollar	75.75	74.00

SCHEDULE-II

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	For Imported Goods	For Exported Goods
Japanese Yen	72.30	69.65
Korean Won	6.50	6.10

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt69-2020.pdf;jsessionid=9D85E79A97DE50FB1024CDB984D46814>

Notification No. 70/2020-Customs (NT)

Dated – 7th August, 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 amendments in the notification No. 36/2001-Customs (N.T.) which was issued on 3rd August, 2001. In the said notification, the following Table has substituted.

TABLE - 2

SI No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	666 per 10 grams
4	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	666 per 10 grams

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt70-2020.pdf>

Notification No. 71/2020-Customs (NT)
Dated – 13th August, 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 amendments in the notification No. 36/2001-Customs (N.T.) which was issued on 3rd August, 2001. In the said notification, the following Table has substituted.

TABLE - 2

SI No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	622 per 10 grams
4	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	622 per 10 grams

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt71-2020.pdf>

Notification No. 72/2020-Customs (NT)

Dated – 14th August, 2020

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

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	722
2	1511 90 10	RBD Palm Oil	746
3	1511 90 90	Others – Palm Oil	734
4	1511 10 00	Crude Palmolein	752
5	1511 90 20	RBD Palmolein	755
6	1511 90 90	Others – Palmolein	754
7	1507 10 00	Crude Soya bean Oil	846
8	7404 00 22	Brass Scrap (all grades)	3751
9	1207 91 00	Poppy seeds	3623

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt72-2020.pdf>

Anti-Dumping Duty Notifications

Notification No. 22/2020-Customs (ADD)

Dated – 10th August, 2020

Seeks to impose provisional anti-dumping duty on imports of Black Toner in powder form originating in or exported from China PR, Malaysia and Chinese Taipei for a period of six months.

Central Government, on finding of the designated authority, has imposed a provisional anti-dumping duty on imports of Black Toner in powder form originating in or exported from China PR, Malaysia and Chinese Taipei at the rate equal to the amount as specified on the subject goods.

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd22-2020.pdf>

Notification No. 23/2020-Customs (ADD)

Dated – 11th August, 2020

seeks to amend notification No. 39/2015-Customs (ADD), extend the levy of ADD on flax fabrics imported from China and Hong Kong for a period of 3 months.

Central Government, by amendments in the notification No. 39/2015-customs (ADD), has extended the time period up to 11th November, 2020, unless revoked earlier.

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd23n-2020.pdf>

Notification No. 24/2020-Customs (ADD)

Dated – 14th August, 2020

Seeks to amend notification No. 41/2015-Customs(ADD), extend the levy of anti-dumping duty on imports of Diketopyrrolo Pyrrole Pigment Red 254 (DPP Red 254) originating in or exported from China PR for a period of three months

Central Government by amendments in the No. 41/2015-Customs (ADD) has extended the levy of anti-dumping duty on imports of Diketopyrrolo Pyrrole Pigment which is originating in or exported from China PR it shall remain in force up to and inclusive of the 16th November, 2020, unless revoked, superseded or amended earlier.

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd24-2020.pdf>

Circular - Customs

Circular No. 35/2020-Customs Dated – 10th August, 2020

Revised procedure for Import of Pets / Live Animals

Revised procedure for import of Live Animals in general and also for import of pets (only Dogs and Cats) as baggage/Personal imports by Passengers has been prescribed by circular.

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-35-2020.pdf>

DIRECT TAX

Notifications

Notification No. 58/2020 Dated – 10th August, 2020

Amendment in Income Tax Rules [F. No. 370133/08/2020-TPL] / GSR 499(E)

CBDT has amended the rules of Income-tax Rules, 1962, in rule 37BC, after sub-rule (2), the following sub-rule shall be inserted:

“(3) The provisions of section 206AA shall not apply in respect of payments made to a person being a non-resident, not being a company, or a foreign company if the provisions of section 139A do not apply to such person on account of rule 114AAB.”

In the principal rules, after rule 114AAA, the following rule shall be inserted,

“Class or classes of person to whom provisions of section 139A shall not apply.

114AAB. (1) The provisions of section 139A shall not apply to a non-resident, not being a company, or a foreign company, (hereinafter referred to as the non-resident) who has, during a previous year, made investment in a specified fund if the following conditions are fulfilled, namely:

- (i) the non-resident does not earn any income in India, other than the income from investment in the specified fund during the previous year;
- (ii) any income-tax due on income of non-resident has been deducted at source and remitted to the Central Government by the specified fund at the rates specified in section 194LBB of the Act.

For more details, please follow:

https://www.incometaxindia.gov.in/communications/notification/notification_58_2020.pdf

Notification No. 59/2020
Dated – 10th August, 2020

F. No 285/30/2019-IT (Inv.V) CBDT] / SO 2682(E)

Central Government, in consultation with the Chief Justice of the High Court of Bombay, has designated the following courts of Magistrates of First Class as Special Courts under sub-section (1) of section 280A of the Income-tax Act, 1961 and section 84 of the Black Money and Imposition of Tax Act, 2015 in the State of Maharashtra, for trial of offences punishable under the Income tax Act, 1961

- (i) the 38th Court, Ballard Pier for Mumbai region and 31st Court of Additional Chief Metropolitan Magistrate, Vikhroli for Mumbai including cases at Thane;
- (ii) the Court of the Chief Judicial Magistrate, Nagpur for entire Vidarbha region, and
- (iii) the Court of 10th Joint Civil Judge Junior Division and Judicial Magistrate First Class for Pune region.

For more details, please follow:

https://www.incometaxindia.gov.in/communications/notification/notification_59_2020.pdf

Notification No. 60/2020
Dated – 13th August, 2020

Amendments in the E-Assessment Scheme

Central Government has made the amendments in the E-assessment Scheme, 2019

In the said Scheme, —

- 1) in sub-paragraph (1) of paragraph 1, for the word “E-assessment”, the words “Faceless Assessment” shall be substituted;
- 2) in sub-paragraph (1) of paragraph 2, —
 - (i) in clause (iii), after the words, brackets, and figures “under sub-section (3) of section 143”, the words and figures “or section 144” shall be inserted;
 - (ii) after clause (xxiii), the following clause shall be inserted, namely: —
“(xxiiiia) “Rules” means the Income-tax Rules, 1962;”
- 3) in paragraph 4, —
 - (i) in clause (v) of sub-paragraph (1), after the words “forensic, information technology, valuation,”, the word “audit,” shall be inserted; and
 - (ii) in sub-paragraph (3), the word “sub-paragraphs” shall be substituted by the word “clauses” and the word “paragraph” shall be substituted by the word “sub-paragraph”.

For more details, please follow:

https://www.incometaxindia.gov.in/communications/notification/notification_60_2020.pdf

Notification No. 61/2020
Dated – 13th August, 2020

F. No. 370149/154/2019-TPL] / SO 2746(E)

Central Government has made the amendments in the number S.O 3265 (E) dated the 12th September, 2019,

1. In the opening portion, for the word “E-assessment”, the words “Faceless Assessment” shall be substituted.
2. for clause 1, the following clause shall be substituted, namely:—
“ The provisions of clause (7A) of section 2, section 92CA, section 120, section 124, section 127, section 129, section 131, section 133, section 133A, section 133C, section 134, Chapter XIV, and Chapter XXI of the Act shall apply to the assessment made in accordance with the said Scheme subject to the exceptions, modifications and adaptations.

For more details, please follow:

https://www.incometaxindia.gov.in/communications/notification/notification_61_2020.pdf

Notification No. 63/2020
Dated – 13th August, 2020

F. No. 187/3/2020-ITA-II / SO 2755(E)

CBDT has made the amendments in the notification number 50 of 2014, S.O. 2752(E) dated the 22nd October, 2014.

In the principal notification,

- (i) the Schedule-I, serial number 67a is inserted after serial No. 67.
- (ii) after clause (da), the following clause shall be inserted,
 - (db) authorises the Principal Commissioners of Income-tax or Commissioners of Income-tax specified in column (2) of the Schedule – IV annexed hereto, having their headquarters at the places specified in the corresponding entries in column (3) of the said Schedule-IV, shall exercise the powers and perform the functions in respect of any cases or classes of cases, of any persons or classes of persons in respect of all incomes or classes of income, in such jurisdiction specified in the corresponding entries in column (4) of the said Schedule –IV in addition to their existing jurisdiction.
- (iii) after SCHEDULE – III, more SCHEDULE has inserted.

For more details, please follow:

https://www.incometaxindia.gov.in/communications/notification/notification_63_2020.pdf

Notification No. 64/2020
Dated – 13th August, 2020

National E-Assessment Centre

CBDT has directed that the Income-tax Authorities of the National E-Assessment Centre specified in Column (2) of the Schedule, having its headquarters at the place mentioned in column (3), shall exercise the powers and functions of Assessing Officer concurrently, to facilitate the conduct of Faceless Assessment proceedings in respect of territorial areas mentioned in the column (4), persons or classes of persons mentioned in the column (5) and cases or classes of cases mentioned in the column (6) of the Schedule-1 of the notification No. 50 of 2014 in S.O. 2752 (E) dated the 22nd October, 2014.

For more details, please follow:

https://www.incometaxindia.gov.in/communications/notification/notification_64_2020.pdf

Notification No. 65/2020
Dated – 13th August, 2020

Regional E-Assessment Centers

CBDT has directed that the Income-tax Authorities of Regional E-Assessment Centers specified in Column (2) of the Schedule, having their headquarters at the places mentioned in column (3) of the said Schedule, shall exercise the powers and functions of Assessing Officers concurrently, to facilitate the conduct of Faceless Assessment proceedings in respect of territorial areas mentioned in the column (4), persons or classes of persons mentioned in the column (5) and cases or classes of cases mentioned in the column (6) of the Schedule-1 of the notification No. 50 of 2014 in S.O. 2752 (E), dated the 22nd October, 2014.

For more details, please follow:

https://www.incometaxindia.gov.in/communications/notification/notification_65_2020.pdf

Notification No. 66/2020
Dated – 13th August, 2020

F. No. 187/3/2020-ITA-I / SO 2758(E)

Central Board of Direct Taxes has

- (a) authorised that the Principal Commissioners of Income-tax, exercise the concurrent powers along with any other authority under the said Act and to hold additional charge and act as Prescribed Authority, in respect of such territorial areas or such cases or class of cases or such persons or class of persons specified in Schedule and in respect of all income or class of income thereof;
- (b) authorized the Principal Commissioners of Income-tax of the Schedule to issue orders in writing for the exercise of powers and performance of functions by the Additional Commissioners of Income-tax or Joint Commissioners of Income-tax, who are subordinate to him, in respect of such territorial areas or such persons or classes of persons or of such income or class of income or of such cases or class of cases specified in the corresponding entry of the Schedule;
- (c) authorised the Additional Commissioners of Income-tax or the Joint Commissioners of Income-tax referred to in clause (b), to issue orders in writing for the exercise of powers and performance of functions by the Deputy Commissioners of Income-tax / Assistant Commissioners of Income-tax / Income-tax Officers, who are subordinate to them, in respect of such territorial areas or such persons or classes of persons or of such income or class of income or of such cases or class of cases specified in the corresponding entry of the said Schedule in respect of which the Additional Commissioners or Joint Commissioners of Income-tax are authorised by the Principal Commissioners of Income-tax under the clause (b)

For more details, please follow:

https://www.incometaxindia.gov.in/communications/notification/notification_66_2020.pdf

JUDGEMENTS

INDIRECT TAX

ITC can't be availed on payment of Lease Premium Charges towards Land lease for business purpose: Telengana AAR

Applicant- M/s. Daicel chiral technologies (India) private limited

**Case No.-A.R.Com/26/2018
Date-24.06.2020**

Fact of the Case

- In the present case M/s. Daicel chiral technologies (India) private limited is the applicant.
- The Applicant, M/s. Daicel Chiral Technologies (India) Private Limited is engaged in providing Pharmaceutical Research and Development services. These services involve preparative separation and analysis of pharmaceutical compounds which are commonly referred to as 'chromatography services'
- In order to render such services, the applicant requires a lab where such separation and analysis services can be performed. Currently, the applicant is rendering such chromatography services from their premises. The applicant had to acquire a new premise on lease to cater to the growing demand for services.
- The applicant has sought advance ruling on the 3 main issues.
- (a). Firstly, whether the applicant is eligible to avail input tax credit of GST paid on payment of "lease premium charges (one-time charges)" towards land lease for business purpose.
- (b). Secondly, whether the applicant is eligible to avail input tax credit of GST paid on "annual lease rentals" (recurring) towards supply of land on lease for business purpose.
- (c). Lastly, whether the applicant is eligible to avail input tax credit of GST paid on "maintenance charges" collected by the lessor.

Decision of the Case

- The Authority consists of the Additional Commissioner of State Tax, J. Laxminarayana, and the Joint Commissioner of Central Tax, B. Raghukiran ruled that the applicant is not eligible to avail input tax

credit of GST paid on payment of Lease Premium Charges (one-time charges) towards land lease.

- The Authority further ruled that the applicant is neither eligible to avail input tax credit of GST paid on annual Lease rentals (recurring) towards the supply of land on lease nor on maintenance charges collected by the lessor.

12% GST applicable to Manufacturing and Supplying of Railway parts: Karnataka AAR

Applicant- M/s Pragati steel casting private limited

**Case No.- KAR/ADRG/40/2020
Date-30.07.2020**

Fact of the Case

- In the instant case M/s Pragati steel casting private limited is the applicant
- The applicant M/s Pragati Steel Casting Pvt. Ltd. is involved in the manufacture and supply of various steel castings, automobile parts, valves, etc.
- The applicant is supplying the parts to M/s Sanrok Enterprises, Faridabad, as per the specifications and drawings, who in turn supply the same to the Indian Railways, on classifying the said goods under HSN 8607 & on discharging the GST @5%.
- The applicant stated that the impugned goods are liable to be classified under HSN 7325 and the applicable rate of GST is 18%. Hence the applicant filed the application, seeking advance ruling on the question that whether railway parts such as Couplers, Knuckle, Locks, Toggle, Yoke, etc., manufactured and supplied to the buyer Sanrok Enterprises, who will further supply to the Indian Railways after assembly be classified under HSN 8607 or to be classified under HSN 7325 as other cast articles of Iron or Steel.

Decision of the Case

- The Authority consists of members Dr. Ravi Prasad M.P. and Mashoodur Rehman Farooqui while considering the application held that the applicable rate of GST on the impugned goods is 5% in terms of entry number 241 of Schedule I to the Notification

No.1/2017-Central Tax (Rate) dated June 28, 2017, till October 29, 2019

- Now it is replaced by entry number 205 G of Schedule II and now the rate of GST is 12%, with no refund of unutilized input tax credit.

.....

5% GST applicable on Food supplied to Hospital on outsourcing basis: Telengana AAR

Applicant- M/s. Navaneeth Kumar Talla

**Case No.-A.R.Com/22/2018
Date-29.06.2020**

Fact of the Case

- In the present situation M/s. Navaneeth Kumar Talla is the applicant.
- The Applicant, M/s. Navaneeth Kumar Talla deals with supply of food to MNG Cancer Hospital Hyderabad (Autonomous Body) on an outsourcing basis to patients of MNG Cancer Hospital.
- The applicant has sought the advance ruling on the issue whether Food supplied to Hospitals i.e. Government Hospital, Private Hospitals and Autonomous Bodies on outsourcing basis, GST is chargeable.
- The Applicant further asked that if GST is chargeable what is the tax rate and if no GST is chargeable on the Supply of food, the GST already paid by the Hospitals and remitted to Government is recoverable from their future bills.

Decision of the Case

- The Authority consists of the Additional Commissioner of State Tax, J. Laxminarayana, and the Joint Commissioner of Central Tax, B. Raghukiran ruled that 5% GST is chargeable on food supplied to the hospital i.e. Government Hospitals, Private Hospitals, and Autonomous Bodies on outsourcing basis the GST is chargeable.
 - The Authority further ruled that for the period from July 01, 2017, to July 26, 2018, 18% of GST must be paid and for the period from July 27, 2018, onwards 5% of GST must be paid, provided that credit of input tax charged on goods and services used in supplying the service has not been taken.
-

Supply of Poultry Meal and Poultry Fat attracts 5% and 12% GST respectively: Telengana AAR

Applicant- M/s Sushi Pet Nutriscience

**Case No.-A.R.Com/28/2018
Date-24.06.2020**

Fact of the Case

- In the present case a partnership firm M/s Sushi Pet Nutriscience is the applicant
- The applicant is engaged in manufacturing or rendering of 'Poultry Meal' and 'Poultry Fat'. Both these products are used as one of the protein raw materials for the manufacturing of animal feed industries, aqua feed industries.
- After processing waste materials such as chicken heads, legs, intestines, etc. lost essential characteristics of original material and a new product emerged in powder form.
- The applicant sought for ruling with regard to the HSN codes and the rate of tax in respect of "poultry meal" and "poultry fat" supplied by their unit.

Decision of the Case

- The Authority ruled that the product "poultry meal" is classifiable under Chapter Sub-Heading No. 2301 10 90 of the first schedule to the Customs Tariff Act, 1975 and the supply of the same attracts GST rate of 5% under Sl. No. 103 of the Schedule-1 of the Notification No. 01/2017-CT (R), dated June 28, 2017.
 - The Authority further ruled that the product "poultry fat" is classifiable under Chapter Sub-Heading No. 1501 90 00 of the first schedule to the Customs Tariff Act, 1975 and the supply of the same attracts 12% GST (6% CGST and 6% SGST/UTGST) vide entry No. 19 of the Schedule-II of Notification No. 01/2017-CT(R) dated July 28, 2017
-

18% GST applicable on EPC Contract in respect of Power distribution and Transmission to Govt. Entity: Telengana AAR

Applicant- M/s. Viswanath projects limited

**Case No.-A.R.Com/24/2018
Date-29.06.2020**

Fact of the Case

- At present situation M/s. Viswanath projects limited is the applicant.
- The Applicant, M/s. Vishwanath Projects Limited is providing services viz., Supply, Erection, Testing & Commissioning of 51 Nos. 33/11kV Substations with Associated Lines to M/s Odisha Power Transmission Corporation Limited, Janapath, Bhubaneswar (OPTCL).
- According to the applicant, the power distribution and transmission companies are treated as Government Entity and the applicable GST rate is 12%.
- The applicant sought the advance ruling on the issue of whether EPC Contract in respect of power distribution and Transmission company falls under the category of “Government Entity” as per GST notification number 1/2018 Central Tax(Rate) if so the rate of GST applicable.

Decision of the Case

- The Authority consist of the Additional Commissioner of State Tax, J. Laxminarayana, and the Joint Commissioner of Central Tax, B. Raghukiran ruled that Services Rendered to M/s OPTCL falls under services provided to a government entity
- The Authority found out that the contractee is not rendering any non-commercial services as the structure arising out of works contract services will be used by M/s OPTCL for the purpose of commerce, and even in situations where it “appears” that the structure is predominantly meant for non-commercial purposes
- Since the works are used for commercial / business purpose the benefit of Concessional Rate of 12% (6% under Central tax and 6% State tax) or any other concessional rate is NOT available to the applicant

DIRECT TAX

Transfer of Land to Holding Company exempted from Capital Gain Tax: Madras HC

M/s. Shardlow India Ltd vs. The Commissioner of Income Tax

**Case No.-TCA No. 485 of 2018
Date-16.07.2020**

Fact of the Case

- At present situation a public limited company M/s. Shardlow India Ltd. is the assessee
- The assessee filed the return of income for the assessment year under consideration returning an income of ‘NIL’. The return was processed under Section 143(1) of the Act and later, the Assessing Officer proceeded with the regular assessment
- The assessment was reopened by issuing a notice under Section 148 of the Act on the ground that the assessee transferred some portion of its land at Sembium to its holding company namely M/s.Simpson & Co. Ltd., for a consideration of Rs.375 lakhs resulting in a profit on the sale of the asset and the same, was not offered to tax under the head ‘capital gains’ against the assessee on the ground that the assessee company is a 100% subsidiary of M/s.Simpson & Co. Ltd. by referring to Section 47(v) of the Act
- The Assessing Officer held that the assessee was not eligible for exemption of capital gains as per the provisions of Section 47(v) of the Act.
- The assessee filed an appeal before the CIT(A), who, by order dismissed the same. Aggrieved by that, the assessee filed an appeal before the Tribunal, wherein it was held that assessee is entitled for exemption under Section 47(v) with respect to the transfer of land to M/s.Simpson & Co. Ltd.

Decision of the Case

- Section 47(v) of the Act states that nothing contained in Section 45 of the Act shall apply to any transfer of a capital asset by a subsidiary company to the holding company if the whole of the share capital of the subsidiary company is held by the holding company, and the holding company is an Indian company. The fact that the company is an Indian company is not disputed.
- The revenue contended that the distinction has been clearly brought out if one reads Section 47(iv) and Section 47(v) of the Act and it is clear that the word ‘nominees’ is not present in Clause (v) to Section 47 of the Act and therefore, the contention advanced by the assessee does not merit acceptance.
- The two-judge bench while upholding the decision of the tribunal held that the assessee, M/s.Shardlow India Ltd. is entitled to exemption under Section 47(v) of Income Tax Act with respect to the transfer of land to its

holding company namely M/s. Simpson & Co. Ltd.

Depreciation allowable on Goodwill from Acquisition of Business Unit: ITAT grants relief to DHL Logistics

M/s. DHL Logistics Pvt. Ltd vs. DCIT, Mumbai

**Case No.-IT(TP) A No. 1385/mum/2016
Date-10.08.2020**

Fact of the Case

- In the present problem M/s. DHL Logistics Pvt. Ltd. is the assessee.
- The assessee, M/s. DHL Logistics Pvt. Ltd. is a logistics services provider and offers a comprehensive portfolio of international, domestic, and specialized freight handling services.
- The Assessing Officer while passing the Draft Assessment Order also disallowed claim for depreciation of Rs. 16.77 Crore, in respect of intangible assets i.e. goodwill, on the basis of earlier year's orders.
- The assessee exercised its option for filing objection before the Dispute Resolution Panel (DRP). The DRP granted partial relief to the assessee with regard to the extent of excluding "recovery of back to back third party charges" from cost base.

Decision of the Case

- The Tribunal passed the order in the light of the decision of the Supreme Court in the case of Smifs Securities Ltd. wherein it was held that goodwill is in the nature of any other business or commercial rights
- In view of the same Assessee is eligible for Depreciation On Goodwill Resulting From Acquisition Of Business Unit Of Lee & Muirhead Pvt. Ltd. In A.Y. 2008-09," the tribunal said.
- The tribunal consists of Accountant Member R.C. Sharma and Judicial Member, Pawan Singh deleted the disallowance of depreciation on intangibles i.e goodwill of Rs.22,36,07,813/- made by the AO.

Expenses for Renovation and Redecoration of Hotel Rooms constitute Revenue Expenditure

Pandian Hotels Ltd vs. The Deputy Commissioner of Income Tax, Madurai

**Case No.- TCA No. 226 of 2018
Date-16.07.2020**

Fact of the Case

- Pandian Hotels Ltd. is the assessee in the present problem
- The assessee is engaged in the business of running a three-star hotel and for the assessment year in question, the assessee filed their return of income admitting a total income of Rs.19,06,620/- and an intimation under Section 143(1) of the Act was issued.
- Subsequently, the assessment was selected for scrutiny and the assessment was completed under Section 143(3) of the Act by order, by which, there was a disallowance of the expenditure to the tune of Rs.1,43,37,050/- incurred towards repairs and renovation expenses
- The assessee contended before the Assessing Officer that the expenses were incurred for repairs and renovation of 18 rooms out of 57 rooms in the hotel and that there was no capital expenditure incurred by the assessee and there was no increase in the room capacity nor the creation of any new asset.
- However, the AO did not accept the explanation given by the assessee and treated the sum of Rs.1,51,20,800/- as capital expenditure and after allowing depreciation at the rate of 10%, the Assessing Officer added the balance amount of Rs.1,36,08,720/-.

Decision of the Case

The two-judge bench of Justice T.S.Sivagnanam, and V.Bhavani Subbaroyan while answering in the favour of the assessee held that the expenditure incurred by the assessee is a revenue expenditure and not a capital expenditure and there is no justification in remanding the matter to the Tribunal or to any other Lower Authority.

Striking off the Name of Company from RoC can't impact Assessment if no documents submitted to strike off the name from Income Tax Department

M/s.Tarachanthini Services Pvt. Ltd vs. The Commissioner of Income Tax, Chennai

**Case No.- TCA No. 839 & 840 of 2019
Date-09.07.2020**

Fact of the Case

- In the present problem M/s.Tarachanthini Services Pvt. Ltd. is the assessee
- The assessee is engaged in investment business and dealing in shares. For the Assessment Year under consideration, they filed their Return of Income declaring a loss of Rs.78,42,605/-
- When the assessment was reopened under Section 147 of the Act by issuing notice under Section 148 of the Act, the assessee Company was carrying on business. At no point of time, the assessee informed the Assessing Officer that the Company has been struck off from the Register of Companies in 2007.
- The assessee being aggrieved by such order filed an appeal before the CIT(A). The appeal was dismissed and aggrieved by such order, the assessee preferred to appeal to the Tribunal as well as the Revenue.

Decision of the Case

- The Tribunal remanded the matter to the Assessing Officer to investigate as to whether the Assessee Company was in existence at the relevant time. As the Tribunal was of the view that if the Company was not in existence, the Assessing Officer cannot stand, the correctness of the order passed by the Tribunal was called in question by the Revenue.
- The two-judge bench observed that the assessee took no steps to inform the Department about the striking off the name of the Company from the Register of Companies. The assessee did not file any documents before the Assessing Officer stating that their PAN number has to be revoked and their Income Tax account has to be closed.
- The Madras High Court while allowing the appeal in the favour of the revenue department held that the striking of the name of Company from the Register of Companies can not impact assessment if no documents submitted to strike off the name from Income Tax Department.

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**CIT(A) justified in deleting addition of Rs.10 lacs incurred on account of Undisclosed Expenses, not reflected in Books of Account:
ITAT**

M/s. Mani Square Ltd vs. The Assistant Commissioner of Income Tax, Kolkata

**Case No.- TCA No. 839 & 840 of 2019
Date-06.08.2020**

Fact of the Case

- In the present situation Mani Group is the assessee.
- The Search under Section 132 of the Income Tax Act, 1961 was conducted against the assessee, Mani Group, thereby triggering section 153A of the Act. Prior to the date of search, the income-tax scrutiny assessment under section 143(3) of the Act stood already completed i.e two months before the search.
- The original return of income for Assessment Year 2014-15 was filed and the time limit for issuance of notice under Section 143(2) of the Act had not expired as on the date of search.
- Except Assessment Year 2013-14, all the other Assessment Year 2014-15, 2015-16, 2016-17 and 2017-18 were abated assessments
- The revenue is aggrieved by the action of the Ld. CIT(A) in deleting the addition of Rs.10 lacs which was incurred on account of undisclosed expenses and which facts was not reflected in the books of account on the grounds that Rs.10 lacs emanating from is on account of undisclosed expenses.

Decision of the Case

- The tribunal headed by the Vice President P.M. Jagtap noted that CIT(A) after perusal has taken into account that it is a hand-written loose paper which does not reveal that the assessee had received Rs. 10 lacs as sale consideration or the sale consideration was to the tune of Rs. 10 lacs and so he deleted it.
- In the absence of any enquiry whatsoever, the hand written 'parchi/loose sheet' cannot be the basis for the assumption of adverse facts against the assessee and, therefore, the Ld. CIT(A) rightly deleted the addition and, therefore, we confirm the action of the Ld. CIT(A)," the tribunal said.
- The Income Tax Appellate Tribunal (ITAT), Kolkata Bench held that CIT(A) was justified in deleting the addition of Rs.10 lacs incurred on account of undisclosed expenses, not reflected in the books of account.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Revised Due Date for GSTR - 3B					
State	Turnover in Preceding F.Y.	Month (Revised Due Date)	Without Interest	9% Interest	18% Interest
For All State	Turnover is more than Rs. 5 crore	February to April, 2020	15 th day from the due date	If filed by 24 th June, 2020	If filed after 24 th June, 2020
Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep	Turnover is upto 5 Cr	February 2020	30 th June 2020	30 th September, 2020 (For all months)	After 30 th September, 2020 (For all months)
		March 2020	3 rd July 2020		
		April 2020	6 th July 2020		
		May 2020	12 th Sept 2020		
		June 2020	23 rd Sept2020		
		July,2020	27 th Sept 2020		
Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam,	Turnover is upto 5 Cr	February 2020	30 th June 2020	30 th September, 2020 (For all months)	After 30 th September, 2020 (For all months)
		March 2020	5 th July 2020		
		April 2020	9 th July 2020		
		May 2020	15 th Sept 2020		

West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi	June 2020	25th Sept 2020		
	July,2020	29 th Sept 2020		

Revised Due Date for GSTR - 1		
Sl. No.	Month/Quarter	Date
1	March, 2020	10 th day of July, 2020
2	April, 2020	24 th day of July, 2020
3	May, 2020	28 th day of July, 2020
4	June, 2020	05 th day of August, 2020
5	January to March, 2020	17 th day of July, 2020
6	April to June, 2020	03 rd day of August, 2020

Composition Scheme Due Dates		
From	Description	Extended Due Date
GSTR-4	Return for Composite Supplier for F.Y. ending 31 st March, 2020	31 st August, 2020
GST CMP-02	Form for option for Composite Scheme for F.Y. 2020-21	31 st August, 2020
GST ITC – 03	Furnishing of Statement	31 st August, 2020
GST CMP – 08	Return for Composite Supplies for QE ending 31 st March, 2020	7 th July, 2020

Annual Return				
From	Description	Original Due Date for F.Y. 2018-19	Extended Due Date for F.Y. 2018-19	Late Fee
GSRT 9	Annual Return	31 st December, 2019	30 th September, 2020	Liability is Rs. 200 per day of default (CGST+SGST). This is subject to a maximum of 0.25% of the taxpayer's turnover in the relevant state or union territory
GSTR 9C	Reconciliation Statement & Certificate	31 st December, 2019	30 th September, 2020	
GSTR 9A	Annual Return for Composition Dealer	31 st December, 2019	30 th September, 2020	

DIRECT TAX CALENDAR – August & September, 2020

30.08.2020

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of July, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in the month of July, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194M in the month of July, 2020

07.09.2020

- Due date for deposit of Tax deducted/collected for the month of August, 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

14.09.2020

- Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB and 194M in the month of July, 2020*

15.09.2020

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of August, 2020 has been paid without the production of a challan
- Second instalment of advance tax for the assessment year 2021-22
- 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 August, 2020

30.09.2020

- Due date for filing of audit report under section 44AB for the assessment year 2020-21 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on October 31, 2020).
The due date for filing of audit report has been extended from September 30, 2020 to October 31, 2020 vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 read with Notification No.35/2020, dated 24-06-2020.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB and 194M in the month of August, 2020
- Return of income for the assessment year 2019-20 for all assessee.
The due date for filing of return of income under section 139 for the assessment year 2019-20 has been extended to September 30, 2020 vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 read with Notification No. 35 /2020, dated 24-06-2020 and Notification No. 56/2020, dated 29-07-2020

ADMISSION OPEN IN COURSES OFFERED BY TAX RESEARCH DEPARTMENT

Eligibility criterion for admission in TRD Courses

- ✓ The members of the Institute of Cost Accountants of India
- ✓ Other Professionals (CS, CA, MBA, M.Com, Lawyers)
- ✓ Executives from Industries and Tax Practitioners
- ✓ Students who are either CMA qualified or CMA pursuing

CERTIFICATE COURSE ON TDS

Course Fee - Rs. 10,000 + 18% GST
*20% Discount for Members, CMA
Final Passed Candidates and
CMA Final pursuing Students*

Exam Fees - Rs. 1,000 + 18% GST

Duration – 30 Hours

Mode of Class – Online

CERTIFICATE COURSE ON INCOME TAX RETURN FILLING

Course Fee - Rs. 10,000 + 18% GST
*20% Discount for Members, CMA
Final Passed Candidates and
CMA Final pursuing Students*

Exam Fees - Rs. 1,000 + 18% GST

Duration – 30 Hours

Mode of Class – Online

CERTIFICATE COURSE ON GST

Course Fee - Rs. 10,000 + 18% GST
*20% Discount for Members, CMA
Final Passed Candidates and CMA
Final pursuing Students*

Exam Fees - Rs. 1,000 + 18% GST

Duration – 72 Hours

Mode of Class – Online

** Special Discount for Corporate*

ADVANCED CERTIFICATE COURSE ON GST

Course Fee - Rs. 14,000 + 18% GST
*20% Discount for Members, CMA
Final Passed Candidates and
CMA Final pursuing Students*

Exam Fees - Rs. 1,000 + 18% GST

Duration – 40 Hours

Mode of Class – Online

CRASH COURSE ON GST FOR COLLEGE AND UNIVERSITY

Batch Size – 50 (Minimum)

Eligibility criterion - B.COM/B.B.A pursuing or completed
M.COM/M.B.A pursuing or completed

Course Fee - Rs. 1,000 + 18% GST

Exam Fees - Rs. 200 + 18% GST

Course Duration - 32 Hours

Link of Admission- <https://icmai.in/advsc/DelegatesApplicationForm.aspx>

For enquiry about courses, mail at – trd@icmai.in

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

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

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



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

www.icmai.in

Statutory Body under an Act of Parliament

COST ACCOUNTING STANDARDS BOARD (CASB) in association with TAX RESEARCH DEPARTMENT (TRD)

WEBINT

SESSION ON

POST COVID CHALLENGES FOR SELF RELIANT INDIA – ROLE OF COST MANAGEMENT AND TAXATION

Tuesday, 18th August 2020
10:30 AM to 12:30 PM

The Link: <https://icmai.in/icmai/Webint-Taxation.php>



CMA Balwinder Singh
President, ICAI



Chief Guest
Shri Sujeet Kumar
Hon'ble Member of Parliament (Rajya Sabha)



CMA Biswarup Basu
Vice President, ICAI



Speaker on Role of Cost Management
CMA Milind Date
Strategist, Trainer,
Management Expert and
Independent Director



Speaker on Role of Taxation
CMA (Dr.) Gopal Krishna Raju
Practicing Cost Accountant



CMA Neeraj D. Joshi
Chairman
CASB, ICAI



CMA Niranjan Mishra
Chairman
Indirect Taxation Committee, ICAI



CMA Rakesh Bhalla
Chairman
Direct Taxation Committee, ICAI



CMA H Padmanabhan
Chairman
Regional Council & Chapters Co-ordination Committee,
CAT and AAT Board, ICAI

Behind every successful business decision, there is always a CMA

CEP Credit as per the rules

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.

Disclaimer:

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

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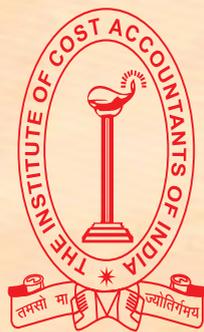


Contact Details:

Tax Research Department
12, Sudder Street, Kolkata - 700016

Phone: +91 33 40364747/ +91 33 40364798/ +91 33 40364711

E-mail: trd@icmai.in



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

www.icmai.in

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

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

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

Ph: 091-11-24666100

Behind every successful business decision, there is always a CMA