4th ANNIVERSARY

EDITION

TAX Bulletin

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
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MISSION STATEMENT

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

VISION STATEMENT

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

Objectives of Taxation Committees:

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

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PRESIDENT'S MESSAGE

I am delighted to know that the Tax Research Department of the Institute is releasing the 4th anniversary edition of Tax Bulletin. To streamline the process of taxation and ensure transparency in the country, the Government of India has undertaken various policy reforms over the years. One such change was the implementation of Goods and Services Tax (GST) which eased the tax regime on goods and services in the country. The Institute of Cost Accountants of India is playing a very key role in helping the government by providing continuous input in the form of representations on the matters related to Direct Taxation, GST and Customs to the CBDT and CBIC, Ministry of Finance.

I would like to acknowledge the dedication and extraordinary efforts put in by the team TRD over the last 4 years in publishing various editions of this fortnightly bulletin to continuously enrich the readers about the various issues and recent developments taking place in Direct and Indirect Taxation related matters.

I congratulate CMA Chittaranjan Chattopadhyay, Chairman - Indirect Taxation Committee and CMA Rakesh Bhalla, Chairman – Direct Taxation Committee for bringing out the "Tax Bulletin". I acknowledge the commendable job by the entire Tax Research Team. I would also like to thank all the members of the Taxation Committee and resource persons for their contribution, guidance and support in bringing out this bulletin.

My best wishes to Taxation Committee for its all future endeavours.

Biswarup Basu

CMA Biswarup Basu
President
Date: 4th October, 2021

VICE-PRESIDENT'S MESSAGE

It is indeed a great pleasure to know that Tax Research Department of the Institute is bringing out the 4th anniversary edition of its fortnightly bulletin. It is surely a praise-worthy effort by Tax Research Department. I am elated to know that the bulletin has proved to be a comprehensive guide for all stakeholders to stay abreast of important updates, announcements and amendments taking place on taxation related matters. This Bulletin also includes interpretations on Notifications, Circulars, Judgements, Press Releases and calendar for tax compliance.

I would like to thank CMA Chittaranjan Chattopadhyay, Chairman- Indirect Taxation Committee and CMA Rakesh Bhalla, Chairman – Direct Taxation Committee, and other members of the Committee for their efforts and contribution in bringing out this 4th anniversary edition of tax bulletin. I acknowledge the hard work and persistence of the TRD Team. I am also grateful to all the resource persons, knowledge contributors and stakeholders for their insights and guidance in various issues of Tax Bulletin.

I wish the Tax Research Department grand success in all its initiatives.

CMA P Raju Iyer
Vice-President
Date: 4th October, 2021

FROM THE DESK OF CHAIRMAN – DIRECT TAXATION COMMITTEE

Congratulations to the Tax Research Department as they take this giant step towards the 5th Year of Publication of their Tax Bulletin. Today, we would celebrate a year of passionate dedication in promotion and nurturing of knowledge and talents within the tax genre. The bulletin is an invaluable resource for all stakeholders who consider it important to stay abreast of current events in taxation and to be in the know about all the major structural developments in the coming days. One of the greatest developments in taxation field in the last few years was implementation of GST and this topic has been thoroughly dealt with in the bulletin along with emphasis on other Indirect Taxes and Direct Tax as well.

I am happy to acknowledge the immense success achieved by Tax Research Department and all its resource contributors over the past four year and the efforts undertaken in publishing the Tax Bulletin. Great Job!! It was a work of true visionary to introduce this publication of the Tax Bulletin and bringing together a team of passionate enthusiasts who worked hard to promote knowledge and insights in the field of taxation.

I would also like to congratulate Team Tax Research as they both hold this baton of success high. The other members of the Taxation Committee and Resource pool are surely doing a great job for bringing out this publication. Imparting your experience selflessly has made everything go so much smoother. I am optimistic that the bulletin would serve the knowledge interest of the stakeholders in the glorious years to come.

Jai Hind.

CMA Rakesh Bhalla
Chairman, Direct Taxation Committee
Date: 4th October, 2021

FROM THE DESK OF CHAIRMAN – INDIRECT TAXATION COMMITTEE

"No man needs sympathy because he has to work, because he has a burden to carry. Far and away the best prize that life offers is the chance to work hard at work worth doing."

Theodore Roosevelt

Today, I am supremely happy and as I pen down my thoughts, this famous quote of Theodore Roosevelt flashes in my mind. It is so true in my case. One year back I was handed over this baton of being the Chairman of Indirect Taxation Committee and today I feel happy to be able to work with such an enthusiastic team in this department, where every assignment is taken up so seriously and delivered well within time.

One such commitment of the department is the publication of the fortnightly Tax Bulletin, an all-encompassing knowledge book on Taxation addressing all the areas and latest development in this field. It is an enriching journal to read, meticulously designed which provides us insight into the various changes that are happening in taxation in our country every fortnight. It is an important source of knowledge. It contains the latest tax rulings, issuances, circulars, opinions and decisions from Government agencies such as CBIC, CBDT, GST Council to name a few. Each item is summarized for easy reference. It has articles which are noteworthy and intriguing.

Bringing out the Tax Bulletin was surely a praise-worthy initiative by Tax Research Department. I am elated to know that the Bulletin would be a comprehensive guide and would include the principles and policies along with the latest developments, announcements and amendments. This will serve as a very good knowledge and information source, particularly when the stress is on the need of information on a day-to-day basis.

I am happy and would like to congratulate other members of the Taxation Committee and Tax Research Department of the Institute for their efforts to bring the Bulletin. My best wishes to my department for its all the future endeavors.

CMA Chittaranjan Chattopadhyay
Chairman, Indirect Taxation Committee
Date: 4th October, 2021

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CONTENTS

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

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

PETROLEUM PRODUCTS AND GST

CMA Dr. Sanjay R Bhargave

Practicing Cost Accountant

Why Petrol and Diesel should be brought under GST.

Recently, while answering to a question in Loksabha, Hon. Petroleum Minister provided details of the taxes charged by the Central Government on Petrol and Diesel. During the period when explanation was given by Hon. Minister, the price of petrol had crossed the milestone of Rs.100/- per litre. After perusal of the composition of central taxes on petrol and diesel, a study of the taxes levied by the State Governments was also done. For the study purpose the State Taxes leviable in Maharashtra is considered. However, the others states also have similar provisions.

Following are the details of various components of the petrol and diesel prices.

Particulars	Petrol	Diesel
Basic price of petrol (including freight, dealers commission)	40.92	43.23
Excise duty	1.40	1.80
Special Additional Duty	11.00	8.00
Road & Infrastructure Development Cess	18.00	18.00
Agriculture Infrastructure Cess	2.50	4.00
Total Taxes (Central)	32.90	31.80
VAT	19.98	16.97
Cess levied by State Government	10.20	3.00
Total Taxes levied by State	30.18	20.97
Total Taxes	63.08	52.77
Selling price	105.00	96.00

VAT of Petrol and diesel in Mumbai is charged at higher rate by 3%.

The above composition of the various factors in prices shows that approximately 60% and 55% of the total price of petrol and diesel respectively is collected by the Central and State Governments.

The Central Government collected Rs 1,01,598 crore through excise duty on petrol and Rs 2,33,296 crore through excise duty levy on diesel during 2020-21. Excise duty on petrol and diesel went up by 43 per cent and 68.8 per cent respectively between March 2020 and February 2021,

Even after the introduction of Goods and Services Taxes w.e.f. 1st July 2017, the petroleum products are kept out of the purview of GST. These products are still under Entry No.84 of the List I (Union List) of Seventh Schedule to Constitution of India as amended w.e.f.16.09. 2016. Therefore Central Government is empowered to levy excise duty and cesses on petroleum products and gases. Sates will have powers to impose Sales Tax within the state on Petroleum Products as per Entry No.54 of List II (State List) of Seventh Schedule to Constitution of India.

As per Section Sec 9 (2) of the CGST Act 2017 and Section 5(2) of IGST Act 2017, GST on the supply of petroleum crude, high speed diesel, motor spirit (Commonly known as Petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the GST Council. Therefore,Central Government and State Government are still authorised to levy taxes on these products. Central Government levies duties on the manufacture and State Governments Levy Taxes on selling and distribution activities as per the powers given to them by Constitution of India.

The Objectives of introduction of GST are.

1. One Nation One Tax.
2. Avoid Cascading Effect of Taxes.

However, by keeping the petroleum products outside the purview of GST, both the objectives got defeated.Therefore, it is a time to go for Tax Reforms once again. By bringing Petroleum products under GST following benefits can be achieved.

One Nation One Tax.

It is expected that the concept of One Nation One Tax should truly come in reality. At present,the maximum rate of GST is 14% Central Tax and 14% State Tax. Bringing petroleum products in the ambit of GST will reduce the burden of taxes to a great extent. For this purpose, no constitutional amendment is required. In is pertinent to note that both the governments i.e Central and State can levy Cesss in addition to GST, if at all needed.

Avoiding Cascading Effect of Taxes

There is another important reason for the need to bring petroleum products under GST and that is Input Tax Credit. Since Petroleum products are subject to excise dutyto avoid cascading effect of taxes, Cenvat Credit Rules are prescribed. Some states also have made provisions for set off of VAT. For the goods and services Input Tax Credit provisions are made under Central Goods and Services Tax Rules 2017. Due to present structure of taxes and different provisions for tax credit, Input Tax Credit under GST cannot be utilised for payment of Excise Duty. Similarly,Cenvat Credit cannot be utilised for payment of GST. There is no interchangeability.

Except petroleum and few other products, all other goods and services are covered under GST provisions. The petroleum companies and gas companies do require various plant and machineries, equipment and services for their activities. Many machineries and services are imported by these companies. Similarly, the goods and services procured domestically also attract GST. These companies also pay GST under reverse charge on manpower, security services, director sitting fees and services received from Governments and local authorities under reverse charge. Just to quote an example for transportation of petrol, diesel and gases pipelines are laid down. These pipes are essential capital goods for these companies. Similarly laying pipeline is essential service. Eventhough these companies pay GST on these pipes and laying pipeslines, they are not entitled to avail and utilize Input Tax Credit of the same for payment of Excise Duty and VAT. Similarly,refineries also need huge capital investment in plant and machineries, The Input Tax Credit on the plant and machinery also cannot be utilised for payment of excise duty and VAT. This results in cascading effect of taxes. In fact, it is an unjust enrichment. By bringing petroleum products in the ambit of GST, thousands of crores of rupees ITC can be utilised for payment of taxes on petroleum products which will help in reducing the cost substantially and ultimately prices of Petrol, Diesel and CNG.

The other manufacturing tax payers under GST also can avail and utilise input tax credit of Diesel used in generating electricity for captive consumption. This will also reduce their cost of production.

Ease of doing business

Presently petroleum and gas companies have to comply provisions under Central Excise, VAT and GST also. The compliance includes filing returns, audits by government departments and professionals and litigations. Bringing petroleum products under GST will result in reduction in compliances. This will also achieve the purpose of the government in true sense i.e ease of doing business.

In view of the above, it can be said that it is a time for tax reforms once again. It is also expected that by bringing petroleum products GST, the prices can be reduced by at least 15%.

EASE OF DOING ... COURTESY LUCKNOW (LUKHNAU)

CMA Anil Sharma

Practicing Cost Accountant

Adaab.... 45th GST council meeting.

A45th GST council meeting held at Lucknow, a city of culture, art, music, dance, Urdu literature and poetry. All this is part of "Lukhnawi Tehzeeb". City of Lucknow is also known for it'sNawaabs and their rich and carefree life style.

Following "Lukhnawi Tehzeeb" and Nawaabi style, GST council on 17th Sept, 2021 took many decisions to give relief to the tax payers under GST laws and procedures. Major reliefs that industry and other stake holders were expecting and announced are as under:

1. Correction in Inverted Duty structure in Footwear and Textiles sector:

A long pending issue of inverted duty tax structure in Footwear and Textiles sector has been resolved and will be effective from 01.01.2022.

As per Textile Value Chain, "Inputs into the MMF fabric segment (fibre and yarn) attract a GST rate of 18 per cent and 12 per cent whereas the GST rate on the MMF fabric is 5 per cent and that for the finished goods apparel is 5 per cent and 12 per cent.It creates a tax structure where the rate on inputs is higher than that on the outputs. This increases the effective rate of taxation of MMF fabrics and garments and violates the principle of fibre neutrality.

The inverted duty structure has been an issue with the apparel industry and that the Council had made recommendations to the Government for the elimination of this anomaly that has been resulting in input tax credit accumulation blocking crucial working capital for businesses."

Similarly, as per the statement of Shoes and Accessories (S&A), The footwear sector uses a variety of components with different rates. The raw materials used in the footwear industry are taxed at 12% or 18%. The final product is taxed at 5% in cases where the price of footwear is up to Rs.1,000/-. This leads to unrecovered credits for the manufacturer. The consumers do not gain anything rather this may result in a higher price for consumers.

2. Interest is payable on ITC utilized:

It's one of the major relief to Industry that interest is payable on ineligible ITC availed and utilized: GST council has once again clarified that interest u/s 50(3) of CGST Act, 2017 is payable on net cash liability paid and not on gross liability of outward GST. It is further clarified that Interest on "Ineligible ITC availed and utilised" is subject to Interest @18%. "Ineligible ITC availed but not utilised" is not subject to any interest. This clarification and change is applicable w.e.f 01.07.2017.

3. IGST and CGST of one state can be utilized in another state:

It's a big relief for the industry, especially having cash crunch that balance in electronic cash ledgers of CGST and IGST in one state can be utilized for the payment of CGST and IGST of other states without going for refund mechanism. So, registered persons having same PAN no but registered in another state as distinct entity, can avail this facility by transferring such cash balance to another state for payment of these taxes.

4. Date of Debit Note is considered to avail ITC:

WEF 01.01.2021, date of Debit note raised by supplier shall be considered to avail the ITC of GST paid on said Debit note amount. In a major move, it is again clarified that date on invoice is delinked to date of Debit note to avail ITC u/s Section 16(4).

For example: If any invoice is raised for supply of goods on 01.05.2018 for Rs. 1,00,000/- plus GST @ 18% i.s Rs. 18000/- than buyer is eligible and can claim ITC of GST paid on such goods up to the month of Sept., 2019 GST-3B returni.e 20.10.2019.

If later on, a debit note is raised by supplier for any reasons for Rs. 10,000/- plus GST @18% i.s Rs. 1800/- against above said invoice, on 01.11.2020. In that case buyer was not allowed to avail ITC for said debit note.

But now with w.e.f 01.01.2021, date of debit note is delinked from invoice date and date of debit note shall be

counted for to avail the ITC. In above example buyer can now avail the ITC up to 20.10.21 i.e Sept 2021 GSTR-3B filing. (Circular No. 160/16/2021-GST dt 20.09.2021)

5. No need to carry Invoice Copy:

Cases where e-invoice is mandatory under law, transporters need not to carry copy of e-invoice along. The same can be verified online. However, copy of e-way bill and/or other documents are to be carried. (Circular No. 160/16/2021-GST dt 20.09.2021)

6. Relaxation in the requirement of filing FORM GST ITC-04:

GST council has relaxed norms regarding filing of ITC -04 by the dealers having Job work transactions and said that Taxpayers whose annual aggregate turnover in preceding financial year is:

a. > Rs. 5 crores shall furnish ITC-04 once in six months;

b. < Rs. 5 crores shall furnish ITC-04 annually.

As per rule 45 (3), of CGST Act, 2017 FORM GST ITC-04 needs to be filed on the quarterly basis on or before the 25th day of the month succeeding the said quarter.

Through Notification no 35/2021 dt 24.09.2021the amendment has been made effective from 01.10.2021.

7. Refund of GST wrongly paid in wrong heads:

There are cases where assesses have paid CGST and SGST in place of IGST on transactions considered to be interstate. In other cases, paid IGST on intra-state transactions. Now council has decided to incorporate the provisions in Section 77(1) of CGST Act, 2017 and Section 19(1) of IGST Act, 2017 to remove ambiguity to get the refund for the same.

So, through notification no 35/2021 dt 24.09.2021 and circular no 162/18/2021-GST dt 25.08.2021, council has announced simplified and amended procedure to claim refunds u/s 71(1) with in a period of two years from the date of payment of tax or date of notification dt 24.09.2021 as the case may be.

A Circular No. 162/18/2021-GST dt 25.09.2021 clarifying the various related issues has been issued for the convenience of the stake holders.

8. Reduction in GST rates on Goods and Services:

For the benefit of Industry and trade, council has proposed reduction in rate of GST on many goods and serviceswhich will definitely help the stake holders to grow further. Especially in post COVID-19 ear. Also, council has clarified various issues pertaining to GST rates as applicable on Goods and services and were having confusions among the stake holders.

9. Clarifications on some legal issues:

To stream line, the procedures and to reduce the litigation, council has also clarified the definition of "intermediary services" and "merely establishment of distinct person" under IGST Actfor considering a supply of service as export of services.

Detailed Circulars No.159/15/2021-GSTand161/17/2021-GST dt 20.09.2021 clarifying the issues emerged in above two cases have been issued for the convenience of the stake holders.

10. State compensation Cess:

As per the provisions of The GST (Compensation to States) Act, 2017, states shall be compensated for any revenue loss from GST laws for five years i.e till June, 2022 from the collection of cess amount. But due to less collection in GST to states for various reasons, centre government has borrowed money to compensate states. Now, Cess shall be collected upto March 2026 and the amount so collected shall be used to clear debt and interest there on and states will not get anything out of it.

Council also tightened the screw:

During 45th council meeting, to stream line the procedures under GST

Laws, Council has also taken some steps and are narrated as under:

- Late fee shall be charged on delayed GSTR-1 return and shall be paid through next GSTR-3B,
- W.e.f 01.01.2022, registered person shall not be allowed to file GSTR-1, if previous month's GSTR-3B not filed (Rule 59(6) shall be amended accordingly)
- ITC shall be allowed strictly as per GSTR-2B, once Section 16(2)(aa) will be notified -Rule 36(4) of CGST Act, 2017.
- Adhaar authentication is mandatory for refunds and for application for revocation of cancellation of registration,
- Bank account must be linked to the PAN on which registration is obtained by registered dealer to get refund amount,

Conclusion: During 45th GST Council meeting at Lucknow, a city of Nawabs, the Council has tried to address many issues in Lukhnavy style. Though, in some of the cases notifications have been issued but in some of the cases notifications are still awaited. Further, apart from what council has clarified or relaxation has been given in GST Laws, still a lot have to be done to make GST user friendly. So, more such meetings are required at Lucknow.

GST APPLICABILITY OF TRANSACTIONS BETWEEN DISTINCT PERSONS

CMA Debasis Ghosh
Vice President - Group Indirect Tax
Peerless General Finance & Investment Company

The indirect taxation of services has always posed a greater challenge as compared to that of taxation of goods for the basic reason of services being intangible in nature and therefore difficult to measure. Amongst several critical issues faced by trade and industry, the taxation of the supply of services between Distinct Persons ranks as one of the foremost.

The concept of Distinct Person embodied in the GST law is laid down in sub=section (4) of Section 25 of the Central Goods and Service Tax Act, 2017(CGST) in terms of which, a person who has obtained or is required to obtain more than one registration in a State or Union Territory in respect of an establishment, has an establishment in another State or Union Territory, then such establishment shall be treated as establishments of distinct persons. Consequently, any supply of goods and/or services between such Distinct Persons is liable to GST. Clause 2 of Schedule I appended to the CGST Act clarifies that supply of goods or services or both between Distinct Persons as specified in sub-section (4) of Section 25 of the CGST Act, when made in the course or furtherance of business even if made without consideration will be treated as supply liable to GST.

As to what would constitute supply made in the course or furtherance of business has not been clarified.This has resulted in much ambiguity that has led assessees to approach the forum for Advance Ruling. In the case of Columbia Asia Hospitals Pvt Ltd reported in [2018(15) GSTL 722 (A.A.R.- GST)], it was ruled that services of accounting, IT etc provided from the corporate office to units located in other states would amount to supply as per Clause 2 of Schedule I appended to the CGST Act. This ruling was subsequently upheld by the Appellate Authority for Advance Ruling reported in [2019920) GSTL 763]. The aspect as to whether or not such accounting and IT services would get covered within the scope of being in the course or furtherance of business was not brought to the attention ofthe Authority.

It is a matter of settled principle that taxation is always on an economic activity. By providing accounting and other services to the establishments located in other states, the corporate office does not undertake any economic activity. Further, from the facts, it becomes clear that the applicant is not engaged in the business of providing accounting, IT and other services. Therefore, the provision of these services cannot be said to have been made in the course or furtherance of business.This principle has been upheld in the case of Jotun India Pvt Ltd [2019(29) GSTL 778 (A.A.R.-GST)] , wherein it was ruled by the Authority for Advance Ruling that recovery of portion of parental medical insurance premium from employees cannot be treated as an activity done in the course of business or furtherance of business in as much as no service of health insurance was provided by the applicant to the employees. It follows therefrom that supply of services between establishments of Distinct Persons will be subject to GST only when made in the course or furtherance of business. The accounting, IT, HR and other functions provided by a corporate office to a branch office are essentially for the purpose of recording business activities, through an IT enabled infrastructure , dealing with matters relating to employees and to comply with certain legal and regulatory requirements, which , in no way makes these activities fall within the ambit of activity carried out in the course or furtherance of business.

The GST Council may therefore take up the matter so as to carve out an exception to services of accounting, IT and the like between Distinct Persons to the effect that these will not constitute supply in the course or furtherance of business and consequently not liable to GST.

SEC 16(4) OF CGST ACT, 2017 – TIME TO FIGHT IT TOOTH AND NAIL

CMA Sankar Majumdar

Practicing Cost Accountant

Section 16(4) of the Central Goods and Services Tax Act, 2017 (similar provision in SGST and UTGST Acts) is arguably one of the most dreaded provisions of GST laws which substantially curb the right of a taxpayer so far as his entitlement to ITC is concerned. It seriously hits the basic premise of GST which is based on an uninterrupted flow of credit and abolition of double taxation. It completely goes against the spirit of the statement of objects and reasons appended to The Constitution (One Hundred and Twenty-Second) Amendment Bill, 2014 which clearly states that GST is intended to remove cascading effect of taxes and such intention is fructified or materialises only when there is a seamless flow of credit.

This section restricts entitlement to input tax credit in respect of any invoice or debit note of a particular financial year if the same is not taken on or before the due date of filing of the return for the month of September of the subsequent year or the furnishing of the annual return of the financial year to which the invoice/debit note pertains to, whichever is earlier.

Similar provision in Vat laws

Most of the state Vat Acts did not have this provision. In fact, apart from Tamilnadu State Vat Act no other Vat Acts had this dreaded provision. Accordingly, this provision is a serious jolt to the registered persons who have been migrated from the erstwhile Vat Acts where they never faced such restriction and find it hard to get in terms with it.

Similar provision in Excise laws

This provision appears to be an offshoot of the excise laws particularly the Central Excise Rules and subsequently the Cenvat credit rules. Time limitation to avail input credit was first introduced through erstwhile Central Excise Rules 1944 on 29th June 1995 by insertion of second proviso to Rule 57G. Rule 57G of the Central Excise Rules provides that the manufacturer can take credit in respect of the inputs received under the duty paying documents. Prior to 29-6-1995 the manufacturer who receives the inputs under the cover of valid duty paying documents had the freedom to take the credit without any limitation of time under Rule 57G. Rule 57G was amended by Notification No. 8/95 – Central Excise (N.T.) dated 25-6-1995 and a proviso was introduced in the rule to the effect that no credit is to be taken after six months from the date of issue of any duty paying documents. Central Excise Rules 1944 was subsequently rescinded.

The Cenvat Credit Rules, 2002 also did not have any such restrictions. Such a restriction was brought w.e.f. 1st September 2014 by an amendment to the Cenvat Credit Rules 2004 through notification no. 21/2014 – Central Excise (NT) dated 11.07.2014.

Similar provision in Service Tax laws

In 2004-05, service tax was also made a part of Cenvat and accordingly the restrictions put in w.e.f. 1st September 2014 by an amendment to the Cenvat Credit Rules 2004 through notification no. 21/2014 – Central Excise (NT) dated 11.07.2014 was also applicable and with effect from 1st March, 2015 the time limit of 6 months was enhanced to 1 year vide notification no. 6/2015 – Central Excise (NT) dated 01.03.2015.

Similar provision in other countries

- **Australia**

The GST Act is Australia is termed as A New Tax System (Goods and Services Tax) Act 1999. Sec 93-5 of the Act deals with input tax credit. As per compilation no. 76 dated 1 April 2018 which included amendments up to Act No. 23, 2018 and was registered on 9 April, 2018, Sec 93-5 provides for the following -

93-5 Time limit on entitlements to input tax credits

(1) You cease to be entitled to an input tax credit for a creditable acquisition to the extent that the input tax credit has not been taken into account, in an assessment of a net amount of yours, during the period of 4 years after the day on which you were required to give to the Commissioner a GST return for the tax period to which the input tax credit would be attributable under subsection 29-10(1) or (2).

- **Canada**

The Federal GST (Goods and Services Tax) was introduced on 1st January 1991. However, all provinces did not agree to merge their provincial sales tax regime with GST. Provinces which did not combine their sales taxes with the GST charges what is known as Harmonized Sales Tax (HST).

Most GST/HST registrants have four years to claim their ITCs. This includes all registrants (other than financial institutions) with sales under $6 million. A two year limit applies to certain financial institutions and some businesses with more than $6 million in sales.

One understands that before GST was implemented in India, various high level teams visited countries where GST was more or less successful in its purpose and implementation. Canada and Australia were countries which were visited by the high level teams and their system was studied. Sadly, the teams do not seem to be inspired by the time limit provided by these countries to claim ITC.

Is 16(4) violative of Article 14 ?

Article 14 of the Constitution guarantee every citizen of India the right to equality before law and proscribes unreasonable discrimination between persons. It declares that the State shall not deny any person equality before the law or the equal protection of the laws within the territory of India.

In the case of Ajay Hasia and others vs. Khalid Mujib Sehravardi & others [AIR 1981 SC 487], the Hon'ble Apex Court held that Article 14 strikes at the arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. Wherever there is arbitrariness in the State action, whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

There are enough reasons to argue that section 16(4) violates Article 14 on the ground of arbitrariness.

Article 300A – is ITC a vested right ?

Article 300A states that no person shall be deprived of his property save by authority of law. Chapter IV (containing article 300A) was inserted by the Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-06-1979 and the right to property has been shifted there. It, therefore, no longer remains a fundamental right which is given to us by article 19 of the Constitution of India. By the same amendment sub-clause (f) of clause (1) to article 19 was omitted which before omission read as – (f) to acquire, hold and dispose of property. Thus, w.e.f. 20-06-1979, right to acquire, hold and dispose of property no longer remains a fundamental right. However, the constitutional protection continues in as much as without the authority of law, a person cannot be deprived of his property. It still continues to be a legal or constitutional right. So long as article 300A of the Constitution exists, State cannot interfere and dispossess a person except in accordance with the procedure of law.

Vested right

As per 10th edition of Black's Law Dictionary, 'vested right' means a right that is so completely and definitely belongs to a person that is cannot be impaired or taken away without the person's consent.

The obvious question that arises here – does ITC become a vested right for the taxpayer as soon as the supply is made to him or the same becomes vested only when he is entitled to it after fulfilment of certain conditions? Or does it remain a concession only and never becomes a vested right? Is section 16(4) a condition to claim ITC or is it simply a procedural provision? There is a convergence of opinion that one ITC is claimed as per section 16(2), it becomes a vested right.

Judicial pronouncement

In the case of Eicher Motors Limited and another vs. Union of India and others the Court observed that Modvat credit is in the nature of a facility of credit which is as good as tax paid till tax is adjusted on future goods. It was further observed that the right to the credit has become absolute at any rate when the input is used in the manufacture of the final product. The Court said that a credit under the MODVAT scheme was "as good as tax paid".

In the case of Siddharth Enterprise vs. the Nodal Officer [Special Civil Application No. 5758 of 2019], Hon'ble Gujarat High Court in the matter of transitional credit held that the liability to pay GST on sale of stock carried forward from the previous tax regime without corresponding input tax credit would lead to double taxation on the same subject matter and, therefore, it is arbitrary and irrational. CENVAT credit earned under the erstwhile Central Excise Law is the property of the writ-applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect. The Hon'ble Court is very clear here in two aspects – a) Cenvat credit earned under the erstwhile Central Excise Law is a 'property' and right to it is a Constitutional right and b) double taxation on same subject matter is arbitrary and irrational.

In the case of Kirloskar Electric Co. Ltd. vs. State of

Karnataka and another [W.P. Nos. 58917-58928/2016], the Hon'ble Karnataka High Court held that claim of credit of input tax is indefeasible as was the case of CENVAT under Excise law and such credit of ITC under VAT law which is equivalent to tax paid in the chain of sales of the same goods, cannot be denied on the anvil of machinery provisions or even provisions relating to time frame. The machinery provisions cannot defeat the substantive claims of input tax credit allowable under the Act. The Revenue is entitled only to verify that the Sale Invoices are genuine and valid and such ITC claim is not duplicate, fictitious or bogus.

Doctrine of 'legitimate expectation'

While pronouncing the judgement in the case of Adfert Technologies (P) Ltd. vs. Union of India and others, the Hon'ble Court had mentioned about the doctrine of 'legitimate expectation' which states that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some consistent practice in the past or an express promise made by the authority. It is not a legal right. It is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice.

When Vat was introduced, removal of cascading effect, facilitating interrupted flow of credit and abolition of double taxation were not the decisive factors. Stakeholders were aware that with parallel functioning of Cenvat, State Vat, CST and many other taxing statutes with no cross adjustment of taxes, these imperfections will remain and some of the taxes would form part of the cost. However, it is an established fact that GST in India was introduced mainly to achieve a continuous flow of ITC. Domain experts and Governments emphasized time and again that introduction of GST would bring an end to existing imperfections in ITC. Eminent Economists, indirect taxation experts, NCAER, Task force on GST, empowered group of State Finance Ministers and finally the Statement of Objects and Reasons accompanying The Constitution (One Hundred and Twenty-Second) Amendment Bill, 2014 had a unanimous convergence of opinion that GST is being introduced to remove the cascading effect of taxes.

With this background, nobody had any doubts why GST was being brought. Had seamless flow of ITC not been visualised as the backbone of GST, the purpose of GST would have been lost and there was no necessity to bring in GST. Accordingly, ITC being a 'legitimate expectation' under the circumstances was more of a 'deemed entitlement' even before the statute was created because necessity of a free flow of the same on a pan India basis covering both goods and services resulted in the birth of GST.

Legislations right to put a time limit vis-a-vis disregard to core provision of GST and resultant taxpayers' distress

Often it is argued that the legislature has a right to put a time limit on the availment of the input tax credit. There is no denying the fact that legislation have unlimited powers so far as fiscal laws are concerned. They can even put 50% tax on motor cars saying that in a developed country like India which is affected by pollution and emission, fossil fuels should be judiciously used therefore motor car purchases should be discouraged putting a higher tax rate on the same. Prima facie does it hurt any of our fundamental rights provided under Article 19? Seemingly no. Does it mean the legislation should go ahead with this idea giving a damn to economic principles?

Similarly the legislation does have a right to put a time cap on the availment of ITC. Does it necessarily mean that it would have to be implemented at the cost of the little comfort that the small taxpayers have? There could be 50 genuine reasons for which an otherwise compliant taxpayer would not be able to avail the credit of input tax within the time limit. A medical emergency could be one of the main reasons. There could be unforeseen personal tragedy. The financial position of the business may not be healthy. In such trying circumstances, the taxpayers, particularly the small and medium ones need handholding. This provision could be therefore, made flexible for those taxpayers whose bona fides are not doubtful and who are otherwise compliant.

Insertion of time limit in section 16(4) appears to be an after thought

Another pertinent point that comes to mind is whether the same is applicable even if the original return is filed belatedly. As the GST laws do not have any provision and scope for filing a revised return, taxpayers are extremely cautious to file the monthly return for March and may like to wait for a longer time to reconcile the entries and ensure that there is no unnecessary mismatch between the GST returns and the financial records. This exercise is generally taken when the financial audit goes on. They even pay huge late fees to delay the filing of such return and such late fees are paid on subsequent returns also as GST laws does not permit filing of month return in Form 3B if the return for earlier month has not been filed. Allowing a taxpayer to file returns with payment of late fees and then disallow him the ITC because the return was filed belatedly is punishing them twice for a single fault. Moreover, with the payment of late fees u/s 47 as well as payment of interest u/s 50, the treasury has been suitably compensated for the postponement of the tax. Payment of late fees and interest are already there as deterrent for the taxpayers forcing them to be disciplined, punishing them with double payment of tax through section 16(4) is

nothing but arbitrary and capricious.

However, it appears that the Model GST laws (MGL) were aware of this. Section 16(15) of the Model GST Laws appeared as under –

A taxable person shall not be entitled to take input tax credit in respect of any invoice for supply of goods and/or services, after the filing of the return under section 27 for the month of September following the end of financial year to which such invoice pertains or filing of the relevant annual return, whichever is earlier.

As would be evident from above, MGL fixed the time limit as the actual date of filing of the return of September of the following year and not the due date filing of September return. The lawmakers might have thought that late fees should act a deterrent for filing of belated return and once a return is filed by payment of late fees it becomes a regularised return and there is no point in penalising a taxpayer twice by putting a time cap on the availment of ITC.

Practical problems in claiming ITC within the time limit

As per section 31, a registered person can issue a tax invoice before removal of goods if that involves movement of goods. First proviso to Section 16(2) states that if goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of last lot or instalment.

Let us assume a case where the invoice was raised on 28th March 2020 and the first instalment of goods was sent. Because of unforeseen reasons and let us say, because of Covid-19 the last instalment was received by the buyer on 26th October 2020. Other conditions being fulfilled, the buyer is entitled to the credit on 26th October 2020. Does the law contradicts itself and say that this input credit is not eligible since the credit has not been taken within the time limit prescribed by section 16(4)?

The economic angle

The impact of taxation laws is farfetched. Taxation laws are not merely a set of sections, sub-sections, clauses, rules and sub-rules. It is not about some conditions, restrictions and impractical procedures. It probably would not be an overstatement if it is said that taxation laws are one of the vision documents of economic prosperity of a country and are one of the pillars of the economy. Taxation laws should be equitable and of course, it should not be violative of constitutional rights of the citizens. A taxation law is not a good law if it proves to be burdensome on the common citizen, if it stifles economic activity, if it creates roadblocks in ease of doing business. A law, particularly one which guides the economy of a country to some extent and which claims to be a big reform, should not be measured only on the criteria whether some provisions of it would stand the legal scrutiny but on equally important criteria whether it is contributing to the ease of doing business, to the growth of the country and whether it is causing undue hardship on small taxpayers. Nobody denies the fact that a law needs to be complied but the same should necessarily be questioned at appropriate forums if it is unnecessarily harsh, burdensome, against common sense, difficult to comply and curtails rights provided under the constitution.

Section 16(4) may or may not pass the legal scrutiny but as of now one thing can definitely be pronounced in the court of common people of this country that its negative impact on small and medium businesses is far reaching. It has all the potential to destroy a lot of them with huge unpalatable effect on the economy. GST was visualised, planned, drafted and implemented with a promise of continuous chain of set-off and free flow of credit. Legal merits or demerits of Sec 16(4) notwithstanding, the very existence of section 16(4) are a betrayal of that promise.

System glitches

The extent of system glitches that have made the taxpayer suffer is unprecedented. Most of the times, before every due date of furnishing of return, the portal had behaved erratically. Precious times were lost by the taxpayers in their never ending effort to furnish returns.

In a report by Business Today published on 7th July, 2018, it was stated that FICCI conducted a survey of enterprises on completion of one year of GST and their experience post-GST implementation. According to the survey, 59 per cent of the respondents mentioned that they were not satisfied with the capability of the GSTN portal. In fact, 96 per cent respondents felt that improvements were required in the working of the portal. Respondents of the survey pointed out issues with the robustness and volume handling capacity of the GST Portal. Problems like delayed reflection of updated data as well as payments, absence of effective mechanism to resolve issues, inability to make corrections after submission of returns in case of errors were highlighted.

In addition, there are instances which are proof enough to conclusively say that GSTN did not live up to the expectations at all. One of them is the then Finance Secretary Mr. Hashmukh Adhia speaking at a session on 'One Year Journey of GST' organised by FICCI where he admitted that the technology failed to have a smooth transition from the earlier indirect tax regime to the present GST regime.

In the case of Tvl. Mehar Tex vs. The Commissioner of CGST and Central Excise [W.P. (MD) No. 22996 of 2019], the Madurai Bench of the Hon'ble Madras High Court

while hearing a case about denial of refund because of technical glitches held that if due to error on the part of any software in GSTN, this had occurred obviously, the petitioner cannot be expected to produce proof for the same. In any event, the petitioner had submitted the refund applications manually also. If the petitioner was otherwise eligible to refund, on the ground of technical glitches and error having occurred due to auto-population, the petitioner ought not to be denied relief. Nothing can be more unfair.

The above judgement proves that there were indeed technical glitches in the GSTN and taxpayer had to even approach the High Court for justice.

It is no rocket science to understand that when the IT backbone of the GST system does not work to the optimum, there will be delay and consequent pendency. It is not possible for taxpayer to keep on engaging perennially with an unresponsive portal just to furnish a return. Business is more important for them. As a result, it is no wonder that there would be missed deadlines not because of the fault of the taxpayers but because of an inadequate IT infrastructure. Such system glitches forced the government to extend the due date of section 16(4) by a removal of difficulty order for the year 2017-18. However, despite no substantial improvement in the functioning of the GST portal in subsequent years, due date under section 16(4) for the financial year was not extended for 2018-19. In fact, the portal did not function properly near to the period of due date of section 16(4) for 2018-19 i.e. due date of filing of GSTR-3B of September 2019.

All the above goes to prove that on several counts, section 16(4) of the CGST Act, 2017 is one of the most unwanted provisions in the GST laws because it is arbitrary, it kills the essence of GST and is a betrayal of the legitimate expectations. The sooner all the stakeholders adversely affected by it fight it tooth and nail and ensure it is struck down, the better.

EASE OF DOING BUSINESS & CUSTOM AUDIT

CMA Ashok Nawal

Founder

Bizsolindia Services Pvt. Ltd.

Hon. Prime Minister of India has the reason to take India on the top rank of "Ease of Doing Business", which will promote "Make in India" moment to ensure achievement of dream of making India USD 5 Trillion economy and India to be super power by 2024. One of the major hurdle of doing the business in India and attracting investment in India for creating the manufacturing base was the substantial delay in custom clearances and transaction cost and time attached thereto.

Following actions have been initiated to ensure hurdle free custom clearances and turn around time of import consignments an export consignment should be reduced substantially at par with advance countries.

1. Introduction of self-assessment in terms of Section 17 of Customs Act 1962 as amended in the year 2011 making corresponding amendment in Section 17, 18, 46 & 50 of the Customs Act, 1962.

2. Introduction of Risk Management System in Customs, thereby conducting scrutiny of bill of entry and such scrutiny is called as Post Clearance Compliance Verification (PCCV) or Post Clearance Audit (PCA). Thereby achieving the target of 80% of Air Cargo complexes 70% of Sea Ports and 60% of ICD post clearance of bill of entry.

3. Introduction of On-Site Post Clearance Audit at the Premises of Importers and Exporters Regulation 2011 has been notified. In accordance with the said regulation and amendment in Customs Act, 1962, officers of customs / central excise will conduct the audit at the premises of importer / exporter vide Notification No. 72/2011 Custom NT dtd 4th Oct.-2011.

4. Introduction of Authorised Economic Operator (AEO) Certificationin the category of AEO Tier 1, Tier 2, Tier 3 & AEO LO for benefiting importer. The details of the scheme was provided vide Circular No. Circular No. 33/2016-Customs dtd 22nd July, 2016 and the prominent featuresof the same are given below:

   a) Inclusion of Direct Port Delivery of imports to ensure just-in-time inventory management bymanufacturers – clearance from wharf to warehouse

   b) Inclusion of Direct Port Entry for factory stuffed containers meant for export by AEOs

   c) Special focus on small and medium scale entities – any entity handling 25 import or exportdocuments annually can become part of this programme

   d) Provision of Deferred Payment of duties – delinking duty payment and Customs clearance

   e) Mutual Recognition Agreements with other Customs Administrations

   f) Faster disbursal of drawback amount

   g) Fast tracking of refunds and adjudications

   h) Extension of facilitation to exports in addition to imports

   i) Self-certified copies of FTA / PTA origin related or any other certificates required forclearance would be accepted

   j) Request based on-site inspection /examination

   k) Paperless declarations with no supporting documents

   l) Recognition by Partner Government Agencies and other Stakeholders as part of this programme

   Different benefits were granted to different categories of AEO Certification and AEO Certification is granted after thoroughly scrutinizing systems and control of the importer and exporter.

5. Introduction of Faceless Assessment of import and

export consignment to avoid interface, which will reduce transactions cost and time.

6. Introduction of Section 99A in the Customs Act 1962 by way of amending Customs Act 1962 through the Finance Act 2018 inserting the following provision:

SECTION 99A. Audit.- The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed.

Explanation.— For the purposes of this section, "auditee" means a person who is subject to an audit under this section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.

7. Implementation of Customs Audit Regulations, 2018 :

All above steps have been introduced to ensure speedy clearance of import and export consignments on self-assessment basis and audit will be conducted of such import and export consignment on a periodical basis at the premises of the importer / exporter. As a matter of fact, On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011 was notified vide Notification No.72/2011-Customs (N.T.) dtd 4th October, 2011 but hardly any audit might have been carried out under such rules, since government might have noticed there is no backing of section in the Customs Act 1962 and rules cannot override the provisions of sections.

In view of the above, after insertion of Section 99A in the Customs Act 1962, government notified Customs Audit Regulations, 2018 vide Notification No. 45/2018 Cus (NT) dtd 24.05.2018 superseding "On-Site Post Clearance Audit at the Premises of Importers and Exporters Regulation, 2011" and empowering Chief Commissioner of Customs, Chennai, Delhi & Mumbai -1 to conduct audit for whole of the India as their Jurisdiction vide Notification No. 85/2017 Cus dt 14th November, 2017. Object of the government is definitely applauded but, until it is inculcated down the line, exporters and importers will not be benefited and objective of turnaround time for clearance of imports and exports consignments has not achieved even after decade. But, CBIC has already started taking the agenda forward of carrying out Customs Audit under Customs Audit Regulations 2018.

Number of importers and exporters have received the notices for submission of number of documents w.r.t. imports and exports consignments and thereafter, there will be a visit at the premises of importer and exporter for auditing their records and declarations filed by them at the time of imports and exports clearances under self-assessment scheme.

Types of Post Clearance Audit : There mainly three types Audits:

1) Transaction based audit (TBA) : TBA is different from Onsite Post and conducted on the basis of The Risk Management System (RMS)

2) Premises based Audit (PBA) : The legal compliance and correct assessment of Customs duties will be verified by the Customs at the premises of importers, exporters and other related entities wherever necessary

3) Theme based audit (ThBA) : Review of data relating to the entire business activity for a particular commodity, industry or issue. It provides a systematic approach to data collection and an analysis of data to determine the likelihood of non-compliance.

Frequency of Post Clearance Audit:

- Onsite PCA will be conducted once in two years / three years / five years for AEOs T-1, T-2 & T-3 respectively.
- 50% of AEO T-1, 33.33% of T-2 and 20% of T-3 assessees to be audited every year.
- For other than AEO, PCA will be conducted under mainly TBA and ThBA method and onsite audit will be conducted basis observations of TBA &ThBA and as per risk parameters.

Steps of Post Clearance Audit: The following broad steps will be involved in PCA

- Selection of Assessee for audit
- Conduct of Desk Review and preparatory interview to gather information
- Prepare audit plan
- Undertake verification of auditee including tour of premises
- Evaluation of internal controls
- Preparation of Audit Report
- Consultative Letter for demand if any
- Monthly Monitoring of Audit Reports
- Issuance show cause notice if Assessee is not agreed with view of Customs

Following information is called for :

1. Organizational Chart of the Auditee
2. Cost Audit / Tax Audit report past three years
3. Customs Audit Reports for previous three years
4. Copies of Annual reports
5. Copies of Trial Balance
6. Import Export Code (IEC) No. & GSTIN
7. Audit points by Central Revenue Audit
8. Details of cases under investigation including SCN issued
9. Details of pending arrears of Revenue
10. List of notices, Court cases, pending investigations under other law related to taxes or duties (e.g. Income Tax, SEBI, GST, Enforcement Directorate etc.)
11. Any other document considered relevant by the Audit Circle
12. Please indicate your business with details of main goods manufactured, traded and services provided
13. Address of other offices including overseas offices
14. Total Import and export from various customs houses/ports (based on previous financial year)
15. Top 10 Imported Items in last one year and current year
16. Top 10 Exported Items in last one year and current year
17. Imports of Goods at Concessional Rate of Duty
18. Export Promotion Schemes
19. Details of EPCG Licence
20. Duty free import authorisations
21. Details of Advance Licence
22. Major Top 10 Importers and Exporters
23. Are you registered with Special Valuation Branch (SVB)
24. Show Cause Notices received during last five years and current year w.r.t. import and export of Goods
25. Details of litigations (Appeals, Court cases etc.) pending
26. No NOC Required (FSSAI, CPCB, Narcotics etc.)
27. List of Bonds with Customs
28. Total import duty paid in past three years
29. Copies of Balance Sheet
30. Copies of Tax Audit Reports
31. Cost Audit Reports
32. Disclosure of Foreign Currency Transactions in the format as desired under IAS
33. Statements or Returns with FEMA and RBI
34. Names of other Govt Agencies where returns are files (RFCL, Narcotics, Central Insecticide Board Etc.)
35. QPR/APR by EOU
36. C.A. report in form No. 3CEB - Transfer Pricing
37. Auditors Report for Previous year
38. Journal Vouchers for adjustment entries rectification entries
39. Accounts maintained by the importer in terms of Customs (IGCRD)
40. Details of Bankers
41. Any other relevant documents

It is important to note that Principle Commissioner is authorised to appoint the experts like Chartered Accountant/Cost Accountants and experts in Computer Science or information technology etc. to ensure correct declaration by such importers / exporters in terms of their records, documents, MIS & ERP System maintained by them.

It is always better to do the self-audit in the same line of self-assessment so as to avoid any discrepancy during the departmental audit with the help of experts appointed by the department and thereby imposing the penalties, confiscation and seizure of the goods, heavy duty demands and withdrawal of certification granted to the importers/ exporters under various scheme.

REMISSION OF DUTIES AND TAXES ON EXPORTED PRODUCTS (RODTEP) SCHEME UNDER FOREIGN TRADE POLICY

Mr. Ramesh Chandra Jena
Advocate

Export Promotion Schemes under Chapter 4 of the Foreign Trade Policy 2015-20 is having provision of several schemes to boost exports of the Country by way of giving incentives to the domestic manufacturers to enhance export production. In order to give relief to the exporters by reimbursement of all State and local levies which are part of the prices of the goods exported, a new scheme has been introduced as Remission of Duties and Taxes on exported products (RoDTEP).

RoDTEP is a new scheme launched by the Government w.e.f. 01-Jan-2021 to replace the existing MEIS scheme for exports of goods from India and this scheme was announced vide press release dated 31-Dec-2020 by the advisory of Ministry of Finance, which is applicable to all export goods. The Scheme for Remission of Duties and Taxes on exported products has been notified vide Notification No.19/2015-2020 dated 17.08.2021 by the Ministry of Commerce & Industry, the Government of India.

Scheme Objective and Operational principles:

(i) The Scheme's objective is to refund, currently un-refunded.

(ii) The very fundamental principles of FTP, 'Let the goods are exported', not the taxes therein' and the objective behind introduction of RoDTEP scheme, under which a mechanism would be created for reimbursement of taxes / duties / levies, at the Central, State and local level, which are currently not being refunded under any other mechanism, but which are incurred in the process of manufacturing and distribution of exported products.

(iii) The rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

(iv) To boost exports scheme for enhancing Exports to International Markets.

(v) To make Indian exports cost competitive and create a level playing field for Indian exporters in international market

(vi) To boost to employment generation in various sectors,

(vii) It aims to boost dwindling outward shipments.

(viii) The determination of ceiling rates under the Scheme will be done by a Committee in the Department of Revenue/Drawback Division with suitable representation of the DoC/DGFT, line ministers and experts, on the sectors prioritize by Department of Commerce and Department of Revenue.

(ix) The overall budgetary for the RoDTEP Scheme would be finalized by the Ministry of Finance in consultation with Department of Commerce (DoC), taking into account all relevant factors.

(x) The Scheme will operate in a Budgetary framework for each financial year and necessary calibrations and revisions shall be made to the Scheme benefits, as and when required, so that the projected remissions for each financial year are managed within the approved Budget of the Scheme. No provision for remission of arrears or contingent liabilities is permissible under the Scheme to be carried over to the next financial year.

(xi) Under the Scheme, a rebate would be granted to eligible exporters at a notified rate as a percentage of FOB value with a value cap per unit of the exported product, wherever required, on export of items which are categorized under the notified 8 digit HS Code.

(xii) The rebate allowed is subject to the receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999 failing which such rebate shall be deemed never to have allowed.

(xiii) Mechanism of Issuance of Rebate: Scheme would be implemented through end to end digitization of issuance of rebate amount in the form of a transferable duty credit/electronic scrip(e-scrip), which will be maintained in an electronic ledger by the Central Board of Indirect Taxes & Customs(CBIC).

(xiv) The necessary provisions for recovery of rebate amount where foreign exchange is not realized, suspension / withholding of RoDTEP in case of frauds and misuse, as well as imposition of penalty will also be built suitably by CBIC.

Salient features of RoDTEP Scheme:

1. RoDTEP scheme is going to give a boost to the domestic industry and Indian exports providing a level playing field for Indian producers in the International market so that domestic taxes / duties are not exported.
2. Taxes such as VAT on fuel, excise duty on fuel, Mandi Tax, which were used in the production goods and used in the distribution ervices of export goods will be reimbursed through the RoDTEP scheme.
3. Thereby, the objective of Zero-rating of export products can be achieved through the RoDTEP scheme.
4. Under the scheme an inter-ministerial Committee will determine the rates and items for which the reimbursement of taxes and duties would be provided.
5. The refund would be claimed by the exporters as a percentage of the freight on board (FOB) value of export goods of each consignment once it is exported.
6. Refund under the scheme, in the form of transferable duty credit electronic scrip will be issued to the exporters, which will be maintained in an electronic ledger. The scheme will be implemented end to end digitization.
7. An exporter desirous of availing the benefit of the RoDTEP scheme shall be required to declare his willingness for each export items in the shipping bill or bill of export.
8. Once the rates are notified, System would automatically calculate the RoDTEP amounts for all the items where RoDTEP was claimed. No changes in the claim will be allowed after filing of export general manifest with Customs authority.
9. A monitoring and audit mechanism, with an information technology based risk management system (RMS), would be put in place to physically verify the records of the exporters.
10. Increase in loan availability for exporters introduced through ECG acting as guarantee for loans availed.
11. Decrease in credit interest rates to MSMEs.
12. A budget to provide higher insurance cover through Export Credit Guarantee Corporation (ECGC), to increase the lending opportunities from banks.
13. Reduction in turnaround time on airports and ports to decrease delays in exports. A real time monitoring of clearance status via digital platform will be made available.

Eligibility to avail benefits of the RoDTEP scheme:

- The Scheme will cover all sectors (including textiles), with priority given to labour-intensive sectors which are enjoying benefits under MEIS Scheme at 2%, 3% or 5% of the export value.
- Both merchant exporters and manufacturer exporters are eligible.
- There are no minimum turnover criteria or threshold limit to claim the RoDTEP.
- Goods exported through e-commerce platform via courier are also eligible.
- The exported products need to have country of origin as India.
- Re-exported products are not eligible under this Scheme.
- Special Economic Zone Units are also eligible to claim the benefits under this Scheme.

Remarks: As per clarification dated 15'th January'2021 by SEZ Division, Department of Commerce provided that if an SEZ unit files shipping bill under RoDTEP scheme, the same would be allowed after mentioning the following in the remarks column:

"Shipping Bill filed under RoDTEP scheme if applicable to SEZ unit & subject to such conditions as prescribed including the product coverage"

In case exports from SEZ are covered under the RoDTEP scheme, such exports may be taken into account under RoDTEP.

Ineligible exporters for the RoDTEP scheme:

The following categories of exporters shall not be eligible for rebate under RoDTEP Scheme:

(i) This scheme does not cover to the export of services only exporters of goods are eligible to avail this scheme.

(ii) Export of imported goods cover under paragraph 2.46 of FTP.

(iii) Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India.

(iv) Export products which are subject to Minimum export price or export duty.

(v) Products which are restricted for export under Schedule-2 of Export Policy in ITC (HS).

(vi) Products which are prohibited for export under Schedule-2 of Export Policy in ITC (HS).

(vii) Deemed Exports.

(viii)Supplies of products manufactured by DTA units to

SEZ / FTWZ units.

(ix) Products manufactured in EHTP and BTP

(x) Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act, 1962 (52 of 1962).

(xi) Products manufactured or exported in discharge of export obligation against an Advance Authorisation or Duty Free Import Authorisation or Special Advance Authorisation issued under a duty exemption scheme of relevant Foreign Trade Policy.

(xii) Products manufactured or exported by any of the units situated in Free Trade Zones or Export Processing Zones or Special Economic Zones.

(xiii) Products manufactured or exported availing the benefit of the Notification No. 32/1997-Customs dated 1'st April'1997.

(xiv) Exports for which electronic documentation in ICEGATE EDI has not been generated / Exports from non-EDI ports.

(xv) Goods which have been taken into use after manufacture.

The Government may modify any of the categories as mentioned above for inclusion or exclusion under the scope of RoDTEP at later date.

Process for claiming scrips / benefits under RoDTEP Scheme:

The ICEGATE portal (Indian Customs Electronic Gateway) having the details of credits available to the exports from the various scheme benefits under export products. The process for the generation and claiming of scrips under the RoDTEP scheme are listed as under:

1. The process starts with filing of the Export General Manifest (EGM) at ICEGATE.
2. The exporters' desires of availing the benefit of the scheme should make a declaration of the claim for RoDTEP in the shipping bill.
3. The exporter should log in to the ICEGATE portal and create a RoDTEP credit ledger.
4. After the RoDTEP credit ledger account is created, the exporters can log in to their account by using class-3 DSC.
5. The exporter can generate scrips by selecting the relevant shipping bills.
6. After processing the claim, a scroll with all individual shipping bills for the admissible amount will be generated and available in the users account at ICEGATE portal.
7. The exporters will be able to club the credits allowed for any number of shipping bills at a port and generate credit scrips for the same.
8. Once the scrips are generated the refund will be credited and reflected in the exporter's ledger account.
9. The e-scrips would be used only for payment of duty of Customs leviable under the First Schedule to the Customs Tariff Act, 1975 viz. Basic Customs Duty. The credit amounts are available in the ledger may be utilize for payment of the eligible duties during imports or for transfer to any other importers having IEC and a valid IECGATE registration.

Major benefits of the RoDTEP Scheme:

(i) The RoDTEP scheme will now be refunded the embedded central excise duty, madi tax, VAT, Coal cess on fuel or generation of electricity, which are used in the manufacture of export goods and services for the distribution of export goods.

(ii) The refund would be credited in an exporter's ledger account with Customs and used to pay Basic Customs duty on imported goods.

(iii) The refund will be issued in the form of transferable electronic scrips. These duty credits will be maintained and tracked through an electronic ledger.

(iv) The credits can also be transferred to other importers just like MEIS / SEIS scrips.

Conclusion: The RoDTEP scheme is the export subsidy scheme has been launched by the Government as a WTO (World Trade Organisation) compliant scheme. The new scheme of exports benefit has been announced by the Government through press release on 31'st Deceber'2020, w.e.f 1'st January'2021 for all export goods. The rate of duty of remission for the export products under RoDTEP scheme have been notified by the Government and the is available in Appendix 4R at the DGFT portal. Further, it is observed that benefit under RoDTEP Scheme would not be available to three sectors namely; iron & steel, chemicals and pharmaceuticals as export of these items are not covered under Appendix4R. A monitoring and audit mechanism with an IT based Risk Management System (RMS) would be put in place by the CBIC. For a board level monitoring, an output framework will be maintained and monitored at regular intervals. It is hoped that implementation of RoDTEP scheme replacing MEIS scheme would make India a compliant exporter and export products will be competitive price in the international market by giving incentives of refund of taxes on export products at the manufacturing stages.

STAY OF DEMAND UNDER INCOME TAX ACT

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Introduction:

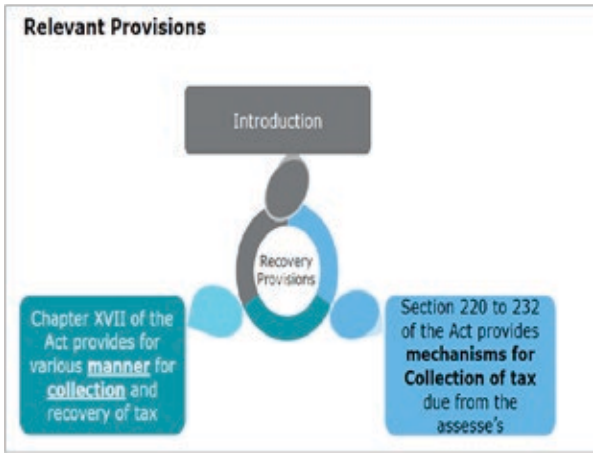
1.Demand Notice u/s 156: On completion of assessment, a demand notice is served for additional demand raised in the assessment. It is sometimes seen that huge demands are created against the assessee by framing high pitched assessments due to difference in opinion on interpretation of law or interpretation of facts or due to the fact that AO is not satisfied with the explanations offered by the assessee. Where any sum is determined to be payable by the assessee or by the deductor or collector u/s 143(1) or 200A(1) or 206CB(1), the intimation under those sections shall be deemed to be a notice of demand for the purposes of this section.

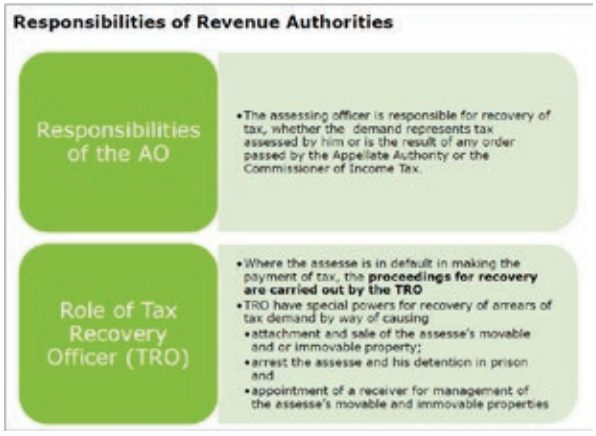
2.Time limit for payment of tax: The assessee should make the payment of amount demanded within 30 days of service of notice [Sec. 220(1)] Where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of 30 days is allowed, then he may with the previous approval of the Joint Commissioner direct that the sum specified in the notice of demand shall be paid within such time as may be specified by him in the notice.

Interest on delay in payment: If the payment is not made within 30 days (or time allowed in the notice), interest shall be payable @ 1% for every month (or part thereof) of the delay [Sec. 220(2)] An assessee in default shall be liable to a penalty of an amount not exceeding the amount of tax in arrears. [Sec. 221(1)]

3.Extension of time limit: On an application made by the assessee before the expiry of due date, the Assessing Officer may extend the time for payment or allow payment by installments, subject to such conditions as he may think fit to impose in the circumstances of the case. Interest on delay in payment: If the payment is not made within 30 days (or time allowed in the notice), interest shall be payable @ 1% for every month (or part thereof) of the delay [Sec. 220(2)]

Note: *Where interest is charged u/s 201(1A) on the amount of tax specified in the intimation issued u/s 200A(1) for any period, then, no interest shall be charged under this section on the same amount for the same period. Similarly, where interest is charged u/s 206C(7) on the amount of tax specified in the intimation issued u/s 206CB(1) for any period, then, no interest shall be charged under this section on the same amount for the same period.*





4.Petition for Stay of Demand:

The assessee may file an appeal against the demand as per order of income tax department and can also consequently apply for stay of such disputed tax demand since right to request for stay of demand in question is incidental to the right of appeal. Section 220(6) of the act provides that, where an assessee has presented an appeal under section 246 before Commissioner of Income Tax (Appeal) or section 246A before Income Tax Appellate Tribunal, the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed off.

Thus assessee may apply for stay of tax demand u/s 220(6) to the Assessing Officer and may request that he may not be treated as assessee in default. It should be noted here that accepting the request of an assessee u/s 220(6) is within the discretionary power of the Assessing Officer which cannot be exercised arbitrarily but has to be exercised judicialy and reasonably while exercising such discretionary power he is always treated as quasi-judicial authority. But before exercising such discretion in favour of the assessee he is empowered to impose such conditions as he may think fit to impose in the circumstances of the case.

5.What should be done for stay of disputed demand:

As stated above, the assessee may file an appeal before CIT(Appeal) against any order of AO and consequent demand there on. After filing such appeal against any order and consequent demand there on, he should file a stay petition to the AO for stay of such demand and request him as not to treat him as assessee in default. The petition u/s 220(6) should be prepared by covering the following points.

- The petition should state the prima facie merits of the appeal which lies mush upon the strong grounds of appeal.
- The financial position / hardship involved in the recovery of the disputed demand should be clearly and precisely stated. The petition should state why and how the balance of convenience is in favour of the stay, e.g. bad effect on the liquidity position of the business etc,
- Proof of appeal filed along with copies of grounds of appeal as well as statement of facts should be accompanied with the satay petition to show the prima facie merits of the appeal.
- The petition should be submitted within 30 days of receipt of demand notice.

Stay of realization cannot be granted simply because an appeal has been preferred- Gouri Shankar Awasthi v. ITO 78 ITR 784 (Cal.)

6.AO should exercise the discretionary power judicially:

The AO has been vested with discretionary power u/s 220(6) which is not arbitrary power but a power coupled with a responsibility and the concerned officer should take all the circumstances into account and all the considerations that could be urged or are urged by the assessee as to why he should not be treated as not being in default and then make such order as is appropriate to the facts of case. So a request for the exercise of the power u/s 220(6) cannot be merely summarily rejected on the basis that the power is there with the officer but that he is not bound to exercise it.

7.Reasons for dismissing an application for stay should be stated by AO:

The AO cannot simply reject the stay application filed by assessee without giving any reason for the same., AO must pass a speaking order while dismissing stay application. As the exercise of discretion by AO u/s 220(6) is quasi-judicial function and he has to exercise his power fairly and reasonably and not arbitrarily or capriciously. So the AO should give reasons for dismissing an application made by an assessee for involving his discretion and should also hear the assessee. (Ref the decisions in case of M/S Seth Gopaldas Paliwal v. WTO [1983] 139 ITR 900 (MP). Teletube Electronics Ltd. V CIT [1998] 230 ITR 705, 707 (Del.); Chesebrough Pond's Inc v A.A.C. (C.T.), [1973] 32 STC 464 (Mad.)

8.Assessee cannot be treated in default until stay application is disposed off:

It should be noted also that until application for stay of demand is disposed off by a speaking order assessee cannot be considered as assessee in default. Moreover demand remains stayed until the disposal of the application for stay. "Where an application for stay of demand in pending for disposal u/s 220(6), the demand should be stayed until the application is considered and an order is passed"-Sat Pal v ITAT 317 (P&H); Bongaigaon Refinery and Petro Chemicals Ltd. V. CIT 256 ITR 698 (Gau.); Debasish Moulik v. DCIT 231 ITR 737 (Cal.).

9.Stay should be granted if grounds of appeal are not frivolous:

Normally, once the officer is satisfied that an appeal has been filed (and the grounds are not frivolous), he has to treat the assessee as not in default to the extent of the portion of tax disputed in the appeal. Though section

220(6) doesnot indicate in what cases denial of discretion shall be justified, the fact that the assessee is financially sound and is in a position to pay is not in itself a ground for refusing to exercise the discretion in granting the stay- R.P. David v. Ag. ITO [1972] 86 ITR 699 (Mad.).

10.Penalty u/s 221 cannot be imposed before disposing off of the stay petition:

As noted earlier till the time stay application is disposed off by the AO, the demand remains stayed and hence assessee is not considered in default. Thus until the time stay application is being disposed off, no penalty u/s 221 can be imposed for non-payment of demand because assessee will not be considered as assessee in default till the disposing off of stay application.

In CIT v. DLF Universal Ltd. [2008] 297 ITR 342 (Del.), the Delhi High Court held that Assessing Officer should have decided the stay applications filed by the assessee before levy of penalty u/s 221. In this case High Court held that the assessing officer should have decided the stay applications filed by the assessee before taking any steps prejudicial to the interests of the assessee.

11.Instructions of CBDT in regard to stay of demand:

Instructions of CBDT on the subject of stay of demand can be started with the Instruction No. 96 dated 21.08.1969 (referred to in the judgments by the courts). The aforesaid instruction was issued by CBDT on the basis of assurance given by the then Deputy Prime Minister in 8th meeting of the Informal Consultative Committee that in the cases where income on assessment determined was substantially higher than the returned income, the collection of the tax in dispute should be kept in abeyance till the decision on the appeals, provided there was no lapse on the part of the assesses. So the intent that in a case where high pitched assessment has been made the demand should be kept in abeyance till the decision on the appeal. Subsequent to above Instruction the department felt that the aforesaid Instruction was not in the interest of the department from the point of view of collection of demand and, therefore, vide subsequent Circulars / Instructions CBDT issued clarifications in such a manner that full stay is not granted to assesses.

CBDT vide Instruction No. 1914 dated 02.12.1993, superseded the Instruction dated 21.08.1969 in the name of streamlining recovery procedure. The aforesaid Instructions, in fact, started with the words that "The Board is of the view that, as a matter of principle, every demand should be recovered as soon as it becomes due." For granting stay very limited situations were provided such as issue has been decided in assessee's favour by an Appellate Authority earlier or the Assessing Officer has adopted an interpretation of law in respect of which conflicting decisions of High Courts are there. It was further provided that even in such cases the Assessing Officer will impose the conditions such as giving a suitable security by the assessee, making reasonable part payment and also adjustment of refunds due to the assessee.

Further CBDT vide clarification dated 01.12.2009, reiterated that Instruction No. 96 dated 21.8.1969 which was superseded vide Instruction No. 1914 dated 02.12.1993. It was also stated therein that decision of the Board had been approved by the Finance Minister. In the aforesaid clarification reference was also made to numbers of instructions / clarifications issued from time to time between 1969 to 1980 and the Instructions dated 02.12.1993. It was also stated therein that "the magnitude of addition to income returned cannot be the sole determinative in this regard". Accordingly, the department has been insisting for part payment of demand in all the cases irrespective of the quantum and the merits of the case.

In order to provide relief to the assesses during pendency of appeal before CIT(A), Instructions dated 29.02.2016 were issued wherein it was provided as a general rule that in the cases where outstanding demand is disputed before CIT(A), the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 15% of disputed demand. The Assessing Officer was also given a discretion to direct for payment of higher or lower amount in deserving cases with the approval of Pr. Commissioner / Commissioner. It was also provided in the circular that in case the assessee is not satisfied with the decision of the Assessing Officer for making payment of 15% of the disputed demand, he can approach the Pr. Commissioner / Commissioner for review of the decision.

These Instructions were, however, revised after a short period vide Instructions dated 31.07.2017. It was stated that rate of 15% was found to be on the lower side which revised to 20% of demand. The aforesaid Instructions dated 31.07.2017 are in force at present. In the light of aforesaid Instructions the Assessing Officers are insisting on payment of 20% of the demand in all the cases irrespective of the merits of the case or quantum of the demand. In case assessee is not able to comply with the direction of making payment of 20%, coercive measures are being taken as stated hereinabove.

This Circular provides that the AO may exercise his discretion u/s 220(6) and treat the assessee as not being in default in regard to demand payable in the following circumstances:

(a) The demand in dispute has arisen because the AO has adopted an interpretation of law on which there are conflicting decisions from the High Courts or the

jurisdictional High Court has adopted an interpretation, which has not been accepted by the I-T department.

(b) The demand in dispute relates to issues that have been decided in favour of the assessee in the past.

In respect of cases, which are not covered by (a) and (b), the AO has been advised to take into account all the relevant factors and communicate his decision to the assessee by a speaking order. It was said in this circular that while exercising discretion under this provision, the financial capacity of the assessee to pay the demand would not be relevant.

12.Stay of demand proceedings before Income-tax Appellate Tribunal

The Income Tax Appellate Tribunal may on an application made by the assessee and after considering the merits of the application, pass an order of stay in any proceedings relating to an appeal filed under section 253(1). If the ITAT is not able to dispose off the appeal under first proviso, the stay can be extended up to 365 days subject to the condition that appeal shall be disposed within the extended period. If for any reason, ITAT is not able to dispose off the appeal within 365 days, the order of the stay shall stand vacated even if the delay in disposing the appeal is not attributable to the assessee.

13.ITAT may grant stay subject to deposits not less than 20% of the amount. Section 254(2A) [effect from 01.04.2020]

The first proviso to Section 254 (2A) of the Act, provides that the ITAT may, grant stay under the first proviso subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof in any proceedings against the order of the Commissioner of Income-tax (Appeal).

14.Total stay granted by ITAT cannot exceed 365 days:Section 254(2A) [effect from 01.04.2020]

Second proviso to section 254(2A) provides that no extension of stay shall be granted by ITAT, where such appeal is not so disposed of which the said period of stay as specified in the order of stay. However, on an application made by the assessee, a further stay can be granted, if the delay in not disposing of the appeal is not attributable to the assessee and the assessee has deposited not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof.

The aggregate of the period of stay originally allowed and the period of stay so extended shall not exceed 365 days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

15.Provisions under Section 254(2A):

(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) of section 253:

Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order subject to the condition that the assessee deposits not less than twenty per cent. of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:

Provided further that no extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, unless the assessee makes an application and has complied with the condition referred to in the first proviso and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, so however, that the aggregate of the period of stay originally allowed and the period of stay so extended shall not exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:

Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

16.Powers of Tribunal to grant stay of demand

Assessee can approach to stay the recovery only when a valid appeal is pending before the Tribunal.

17.Fee for application for stay of demand [Section 253(7)]

An application for stay of demand shall be accompanied by a fee of five hundred rupees.

18.Procedure for Stay Petition– Rule 35A of the Income

-tax (Appellate Tribunal) Rules 1963

Rule 35A of the Income-tax Appellate Tribunal Rules prescribes the procedure for filing the Stay Petition. As per this rule, any assessee filing an appeal under taxation Laws, before the Income Tax Appellate Tribunal may prefer stay application in the following manner.

19.Procedure for filing and disposal of stay petition [Rule 35A Income-Tax (Appellate Tribunal) Rules, 1963]

(1) (a) Every application for stay of recovery of demand of tax, interest, penalty, fine, estate duty or any other sum shall be presented in triplicate by the applicant in person, or by his duly authorised agent, or sent by registered post to the Registrar or the Assistant Registrar, as the case may be, at the headquarters of a Bench or Benches having jurisdiction to hear the appeals in respect of which the stay application arises.

(b) Separate applications shall be filed for stay of recovery of demands under different enactments.

(2) Every application shall be neatly typed on one side of the paper and shall be in English and shall set forth concisely the following :-

(i) short facts regarding the demand of the tax, interest, penalty, fine, estate duty or any other sum, recovery of which is sought to be stayed ;

(ii) the result of the appeal filed before the Appellate Assistant Commissioner, if any;

(iii) the exact amount of tax, interest, penalty, fine, estate duty or any other sum demanded, as the case may be, and the amount undisputed therefrom and the amount outstanding ;

(iv) the date of filing the appeal before the Tribunal and its number, if known;

(v) whether any application for stay was made to the revenue authorities concerned, and if so the result thereof (copies of correspondence, if any, with the revenue authorities to be attached);

(vi) reasons in brief for seeking stay ;

(vii) whether the applicant is prepared to offer security, and if so, in what form ;

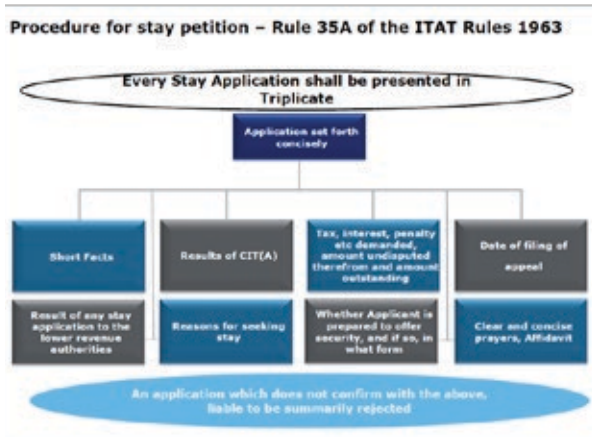
(viii) prayers to be mentioned clearly and concisely (stating exact amount sought to be stayed);

(ix) the contents of the application shall be supported by an affidavit sworn by the applicant or his duly authorised agent ;

(3) An application which does not conform with the above requirement is liable to be summarily rejected.]

20.Documents to be Annexed while filing stay petition before Hon'ble ITAT

- Covering Letter
- Index of Documents Attached
- Stay Application
- Correspondences before lower authorities
- Documents highlighting financial difficulties if any
- Duly notarized affidavit on Stamp paper of Rs. 100
- Challan of Rs. 500
- Letter of Authority on stamp paper



21.Legal Judgments:

Hon'ble Supreme Court in case of **Aeltemesh Rein vs. Union of India, AIR 1988 SC 1768** has stated that every discretionary power vested even in the executive should be exercised in a just, reasonable and fair way.

Coming specifically to the discretionary power conferred by section 220(6) on the Assessing officer, courts have held that such discretion is coupled with duty and if does not exercise it when the occasion called for it or if he exercises it in such a manner that it is not exercise of discretion at all, he can be compelled to discharge his duties. **[Ref: Ladhuram Tapuria's case (1951) 20 ITR 51(Cal); Aluminium Corporation of India's case (1959) 37 ITR 267 (Cal) and Vetcha Sreeramamurthy's case (1956) 30 ITR 252 (A.P.)]**

CBDT has issued Instructions and Circulars from time to time to guide the Assessing Officers in respect of the exercise of discretion under section 220(6). In Circular No. 530 dated 6.3.1989 CBDT stated some situations when the discretion will be exercised but specifically stated that the Assessing Officer will not look into the financial capacity of the assessee to pay the demand.

On the basis of representations received by the CBDT

against this particular clause of circular, a new Circular, being no. 589 dated 16.1.91 was issued substituting this particular clause by a new clause stating that while considering the situation for treating the assessees to be not in default, the Assessing officer would consider all relevant factors having a bearing on the demand and communicate his decision to the assessee in the form of speaking order.

Further, there was an Instruction no. 96 dated 21.8.1969 which was beneficial to the assessees inasmuch as it stated that where the income determined on assessment was substantially higher that the returned income say, twice the latter amount or more, the collection of tax in dispute should be held in abeyance upto the stage of first appeal.

The aforesaid Instruction was relied upon to grant relief to the assessee in **Vakram bhai Punjabhai Palkhiwala vs. S.M. Ajbanj (1990) 182 ITR 413 (Guj.) and recently also in Maharana Shri Bhagwat Singhji of Mewar vs. ITAT (1997) 223 ITR 192 (Raj.)**

However, the Calcutta High Court in **Dunlop India Ltd. vs. ACIT (1990) 183 ITR 528 (Cal.)** refused to take cognizance of the aforementioned Instruction because the counsel for the Revenue placed before the court a fresh Instruction, being no. 1362, which was issued in supersession of all the earlier instructions on the issue. The single Bench of the Calcutta High Court in the aforementioned case rejected the writ petition of the assessee for staying the Demand.

Some important highlights of the aforesaid Instruction No. 1362 is available in the judgement of the Division Bench, passed on an appeal filed by the assessee against the Single Bench Judgement (supra), as reported in ***Dunlop India Ltd. vs. ACIT (1990) 183 ITR 532 (Cal.).*** The said Instruction states that in granting the stay, the Assessing officer may impose conditions like offer of security to safeguard the interests of the Revenue, payment towards the disputed taxes a reasonable amount in lumpsum or in instalments and requiring an undertaking from the assessee that he will cooperate in early disposal of the appeal failing which the stay order will be cancelled.

Further, it gave direction to the A.O. to look into, interalia, the following aspects in exercising the discretion-

(a) Whether the points in dispute relate to facts.

(b) Whether they arise from different interpretations of law. (c) Whether the additions have been made as a result of detailed investigation.

(d) Whether the disputed addition to income has been assessed elsewhere by way of protective assessment and the tax thereon has been paid by such person.

But the Instruction No. 1362 specifically provides that the magnitude of the additions to the income returned cannot be the sole determinant in this regard.(in contrast to Instruction No. 96 (supra)). Each disputed addition will need to be considered to arrive at the quantum of tax that may need to be stayed. However, it states that the discretion exercised should be the discretion of a reasonable man. Recently, CBDT has issued Instruction No. 1914 on the above subject and it is stated therein that this Instruction is issued in supersession of all earlier Instructions but it reiterates the existing circulars on the subject.

Remedy where discretion is not exercised judiciously: Where the Assessing Officer refuses to exercise his discretion or exercises it in a capricious or arbitrary manner or by taking into consideration irrelevant or extraneous considerations, the option before an assessee is to file a writ petition under Article 226 before the jurisdictional High Court.

In **Dunlop India Ltd. vs. ACIT 183 ITR 532,** the Division Bench of the Calcutta High Court found that while using discretion for the purposes of section 220(6), the office concerned had not appropriately dealt with or taken into consideration all the relevant factors which were necessary to be dealt with and considered. The Court, therefore, sent back the matter to the officer concerned for reconsideration and for giving due and proper reasons.

However, in I**ndia Foils Ltd. vs. IAC (1990) 186 ITR 429 (Cal.)** the Calcutta High Court dismissed the writ petition because application for stay of tax was rejected by the A.O. by giving proper reasons and there was no perversity in the order. It may, however be noted that High Court, as a rule, in proceedings under Article 226, does not grant any stay of recovery of tax except under very exceptional circumstances.

CIT(A)'s power to grant stay:

Though the statute has not conferred specific power to grant stay to the Commissioner of Income Tax (Appeals), courts have held that in view of the propositions laid down by the

Supreme Court in **ITO vs. M.K. Mohammed Kunhi (1969) 71 ITR 815**, the first appellate authority has power to grant stay, which is incidental and ancilliary to its appellate jurisdiction.

Some of the important judicial pronouncements in this regard are as follows-

(a) For invoking the power of CIT(A) to grant stay of demand, it is not necessary that the assessee should first approach the Assessing Officer under section 220(6) or that the A.O. should reject the assessee's prayer for

stay. **Tin Mfg. Co. of India vs. CIT (1995) 212 ITR 451 (All.) Bongaigon Refinery & Petrochemicals Ltd. vs. CIT(1999) 239 ITR 871 (Gauhati)**

(b) The recovery proceedings initiated against the assessee shall remain stayed till the disposal of stay petition filed by him. **Pradeep Ratanshi vs. Asst. CIT (1996) 221 ITR 502 (Ker.)**

(c) Mere filing/ pendency of an appeal does not constitute an automatice stay. **Paulsons Litho Works vs. ITO (1994) 208 ITR 676 (Mad.)**

ITAT's power to grant stay:

Like in CIT(A)'s case, no specific power has been conferred upon the Income Tax Appellate Tribunal to grant stay of recovery proceedings but the Apex Court in case of **ITO vs. M.K. Mohammed Kunhi (1969) 71 ITR 815,** case has held that section 254 confers powers of the widest amplitude upon the Appellate Tribunal and by implication it has power to pass orders for staying recovery proceedings pending an appeal before it. But Tribunal should grant stay only when a strong prima facie case is made out and not in a routine way.

Procedure: Procedure for filing stay petition before the ITAT has been laid down by Rule 35A of the Appellate Tribunal Rules. Every application of stay is to be presented in triplicate to the Registrar/ Asst. Registrar of the Tribunal and should be accompanied by a fee of Rs. 500/-. As per Rule 35A(2), every application for stay shall set forth concisely the following-

(i) short facts regarding the demand of the tax, interest, penalty, fine, estate duty or any other sum, recovery of which is sought to be stayed.

(ii) the result of the appeal filed before the CIT(A), if any;

(iii) the exact amount of tax, interest, penalty, fine, estate duty or any other sum demanded, as the case may be, and the amount undisputed therefrom and the amount outstanding;

(iv) the date of filing the appeal before the Tribunal and its number, if known;

(v) whether any application for stay was made to the revenue authorities concerned, and if so the result thereof (copies of correspondence, if any, with the revenue authorities to be attached);

(vi) reasons in brief for seeking stay;

(vii) whether the applicant is prepared to offer security, and if so, in what form;

(viii) prayers to be mentioned clearly and concisely stating exact amount sought to be stayed);

(ix) the contents of the application shall be supported by an affidavit sworn by the applicant or his duly authorised agent;

Other aspects:

Incase of **Soul v. Dy. CIT(2008) 220 CTR (Del) 211,** the Delhi High Court found that the assessment was 'high-pitched' –74 times of returned income. The Court therefore observed that demand raised needs to be stayed in view of the CBDT's circular no. 96 dated 21st August, 1961 and Instruction No. 1914 dated 2nd December, 1993. Hence garnishee order passed under Section 226(3) was ordered to be kept in abeyance by the HIGH COURT.

In the case of **M/s Valvoline Cummins Ltd. v. CIT and Ors. (2008) 217 CTR (Del) 292** had granted an absolute stay of demand because the assessment made was eight times of the returned income saying that a perusal of Para2 of the CBDT instruction No. 96, dated 21st Aug., 1969 would show that where the income determined is substantially higher than the returned income, that is, twice the latter amount or more, then the collection of tax in dispute should be held in abeyance till the decision on the appeal is taken. In this case, the assessment is almost 8 times the returned income. Clearly, Instruction No. 96, dt. 21st Aug.,1969 would be applicable to the facts of the case. Under the circumstances, the assessee would, in normal course, be entitled to an absolute stay of the demand on the basis of the above instruction.

The Delhi High Court has considered the issue relating to stay of disputed demands once again in T**aneja Developers and Infrastructure Ltd. v. Asstt. CIT (Del) (2009) 222 CTR (Del) 521** and has decided that assessment at a figure 350 times the returned income is unreasonably high-pitched. Hence recovery needs to be stayed in view of CBDT Instruction No. 96 dated 21st August, 1969.The Courts have held that it is wrong to assume that the exercise of discretion is only a naked arbitrary power to reject the application for stay of recovery of disputed amount of tax pending the appeal. The statute has conferred upon the Assessing Officer the power to grant stay, and it is his duty to examine and scrutinize the grounds on which the stay is asked for. The foregoing discussion clearly brings out the gravity of the situation and the chaos and the confusion that is prevailing in the matter of decision making on stay applications. A consolidated view should be taken of the existing Instructions/Circulars on the subject of stay of demand and a master circular on the subject should be issued by the CBDT covering all relevant aspects indicating the actions to be taken where deviation is made from such guidelines without justification.

In the case of ***LG Electronics*** that the administrative Circular (31/07/2017) will not operate as a fetter on the

Commissioner since it is a quasi-judicial authority and rejected the SLP of PCIT to go ahead with the lesser 20% deposit. In the case LG Electronics then approached the Delhi High Court. In an order on 8 August 2017, the HC set aside the order passed by the PCIT and directed the PCIT to hear the matter again without referring to the 31 July 2017 circular. The PCIT, however, decided to approach the Supreme Court. In its judgement, the apex court **(CIVIL APPEAL NO. 6850 OF 2018)** clarified that irrespective of the OMs from CBDT, the tax authorities, depending on facts of individual cases, can grant deposit orders for an amount less than 20% of the tax demand.

In the case of **Mrs. Kannammal vs Income Tax Officer , Ward 1(1) Tirupur WP No. 3849 of 2019 and WMP No 4278 of 2019 ,** the Hon'ble High Court has described the stay circulasr in detail and ordered the AO to pass on the speaking order on the merits of the case after considering all the circulars in the matter .

Pradeep Ratanshi vs. Asst. CIT (1996) 221 ITR 502 (Ker.)(c) The stay of demands clearly shows that the two circulars are only in addition to Instruction No 96 and not in supersession of what has been approved by the 'Informal Consultative Committee of Parliament' and the then deputy Prime Minister/finance minister. That instruction is still valid and has not been withdrawn so far. Hence, where income assessed is twice the income returned or more, the demand attributable to such high-pitched assessments, on applications made by the assessee, has to be stayed until the disposal of appeals by the CIT (A). The recovery proceedings initiated against the assessee shall remain stayed till the disposal of stay petition filed by him.

INCOME TAX AND ACCOUNTING STANDARDS

CMA S. VENKANNA
Practicing Cost Accountant

Corporate Reporting is a core business activity. An Accountant necessarily to play an important role every year during the course of finalization of annual accounts regarding various disclosures for the use of stakeholders.

For this purpose, the country has GAAP, Accounting Standards, Companies Act 2013, Income Tax Act 1961 and other guidelines.

In our country, separate set of books of accounts are not maintained, i.e., that is one for Financial Reporting and another for Income Tax purposes.

In the United States, laws allow companies to maintain two sets of books for financial and tax purposes. Because the rules that govern financial and tax accounting differ.

Differences in tax liabilities are simply temporary imbalances between a reported amount of income and its tax basis: The accounting disparities appear when there are differences between the taxable income and the pre-tax financial income or when the bases of assets or liabilities differ for financial accounting and tax purposes.

A simple example, amount due on a current receivable account cannot be taxed until collection is actually made, but the sale needs to be reported in the current period as per the financial reporting practices.

In order to comply with the corporate reporting practices, we have accounting standards. There bound tooccur differences in the Income as per financial accounts and Income Tax Act.

The purpose of both Accounting Standards is to find out the True and Fair View of the financial statements and the purpose of Income Tax Act 1961 determine the income the real income and not fictitious.

Under the disclosure requirement in financial statements vis-à-vis that of income and its tax liability, we have important accounting standards, viz.,

- Accounting Standard 22
- Indian Accounting Standard 12
- International Accounting Standard 12

The above Accounting Standards requires recognition of tax consequences of difference between carrying amounts of assets and liabilities and its tax bases.

Two important disclosures, are the Deferred Tax Asset and Deferred Tax Liability which are necessarily to be reported in the financial statements.

Deferred Tax liability is the amount of income tax payable in future periods with respect to the taxable temporary differences.

Deferred tax asset is the income tax amount recoverable in future periods in respect of the deductible temporary differences, carry forward of unused tax losses, and carry forward of unused tax credits.

Tax differences occur on account of difference between the books of accounts and income tax provisions.

The objective of Ind AS 12 is to prescribe the accounting treatment for income taxes. The important issue in accounting for income taxes is how to account for the current and future tax consequences of:

(a) the future recovery (settlement) of the carrying amount of assets (liabilities) that are recognised in an entity's balance sheet; and

(b) transactions and other events of the current period that are recognised in an entity's financial statements.

A deferred tax asset is an item on a company's Profit & Loss Account reduces its taxable income in the future.

Deferred tax liability arises when there is a difference between what a company can deduct as tax and the tax that is there for accounting purposes. A deferred tax liability signifies that a company may in the future pay more income tax because of a transaction in the present.

Financial Reporting Statements necessarily require to report future events for the information of stakeholders

keeping in view the reporting concept of Going Concern for a continued relationship with the entity. Compliance required as per Ind AS 37 (AS 29) regarding provisions and contingencies.

However, the provisions of Income Tax Act 1961 considers only current year transactions for deductions in computing the taxable income of an entity in accordance with Sec.37 of the Income Tax Act 1961. Though Sec.145 of the Income Tact 1961 provides for accrual method of accounting, future losses are not allowed as deductions.

In view of this there bound happen difference in the tax liability as per Financial Statements and Income Tax.

Ind AS 12 (IAS 12) or AS 22 require reporting of the impact of income taxes on income in the form of Deferred Tax Asset and Deferred Tax Liabilities. This is mainly because of timing differences between reporting date and income tax.

Deferrred Tax Asset results in excess payment of income tax and Deferred Tax Liability results in liability of income tax in future period. This two important accounting disclosures is explained with the following examples.

Deferred Tax Asset

As per Financial Statements	
Particulars	Amount in Rs.
Revenue as per P & L Account	1,00,00,000
Less:	
Expenses Debited	70,00,000
(Expenses including Selling and Distribution Expenses	
including Provision for Warranty for after sales service	
amounting to Rs.15,00,000	
Profit Before Tax	30,00,000
Tax Liability at 30%	9,00,000
Profit After Tax	21,00,000
As per Income Tax	
Revenue as per P&L Account	1,00,00,000
Less: Expenses	
(Rs.70,00,000 - Rs.15,00,000 - Not allowed under IT Act)	45,00,000
Taxable Income	55,00,000
Tax Liability at 30%	16,50,000
Tax Difference - Deferred Tax Asset	7,50,000

Deferred Tax Liability

Deferred Tax Liability arises due to timing differences. The company will pay lower taxes in the current year resulting increased tax liability in the future years.

Company Acquires a Capital Asset for Rs.100000 with a life of 5 years			
Details	As per Books	As per Income Tax	Difference
Profit Before Depreciation and Tax	1,00,000	1,00,000	
Less: Depreciation	20,000	40,000	
Profit Before Tax	80,000	60,000	20,000
Tax Liability at 30%	24,000	18,000	6,000
Profit After Tax	6,000	42,000	14,000
Deferred Tax Liability will be saving in Tax (Rs.24,000 - Rs.18,000)			

It is to be noted that both deferred tax asset and deferred tax liability are created for the temporary differences only. These differences are temporary in nature and with the lapse of time the impact of these differences gets eliminated.Other Items in financial statements that results in DTA/DTL, in addition to depreciation, are provisions bad and doubtful debts /unrealized receivables, employee benefits, when goods are sold on instalments, etc.

Impact of Book Profit (Sec.115JB)

In computing the Book Profit, the Deferred Tax Asset credited to P&L Account will result in reduction in Book Profit and Deferred Tax Liability debited to P&L Account will result in increase of book profit. The tax impact will be at 15%.

Conclusion

It is emphasised that there is no need to calculate deferred tax on each and every item of financial statement. The Deferred Tax is calculated yearlybycomparing book profit and taxable income. The Deferred Tax Liability or Deferred Tax Asset is derived from the Profit& Loss A/c and Balance sheet.

Inadmissible expenses as per Income Tax debited to Profit& Loss A/c will create Deferred Tax Asset. Admissible expenses willresult in Deferred Tax Liability.

The net difference of DTA / DTL is computed and transferred to Profit & Loss A/c. The Balance of DTLA/ DTL is reflected in Balance sheet under Current Assets/ Current Liabilities respectively.

OLD TAX VS NEW TAX REGIME: WHICH ONE WOULD YOU CHOOSE?

CMA Vishwanath Bhat

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With the initiation of a new tax regime, comes the confusion of which one is suitable for you. You, as the taxpayer, may find it challenging to identify which one of the two regimes is better and relevant to your income.With alterations in existing sections, many of you are trying to evaluate the difference between the old tax vs new tax regime. Here I have made small note on present tax REGIME and new tax REGIME.

The New Tax Regime

Let's discuss the new tax regime. It offers six tax slabs with prevailing rates reduced on income up to Rs. 15 lakh. Due to the income slabs and the various tax rates, multiple exemptions and deductions are not applicable here.

New tax regime is having its own advantages & disadvantages. Let us discuss……..

Advantages.

1) The current tax regime is still in place, and you as a taxpayer have the option to choose the best suitable one for you, that is either the old tax regime or the new tax regime. The Government has not enforced compulsion to switch to the new tax regime.

2) The new tax regime offers the flexibility to the taxpayer to invest their money as they prefer. With the new scheme, there is no obligatory requirement to invest in tax saving schemes and insurance plans which may not be in alignment with their financial goals.

3) With multiple tax slabs, you as the taxpayer will fit into the tax slab that best meets your yearlyincome.

Disadvantages.

1) Gradually, the present exemptions will be reviewed and slowly erased from the new tax regime.

2) With no exemptions, your total taxable amount will be higher as compared during the old tax regime.

3) Though there are six tax slabs, it may not be beneficial for all taxpayers if the income-tax authorities decide to do away with the old regime completely.

The following comparative table shows tax slab of old and new tax regime.

Income Tax Slab Old vs New:		
Income slabs (Rs)	Old Regime (with exemptions and deductions)	New Regime (without exemptions and deductions)
Up to 2.5 lakh	Nil	Nil
2.5-5 lakh	5%	5%
5-7.5 lakh	20%	10%
7.5-10 lakh	20%	15%
10-12.5 lakh	30%	20%
12.5-15 lakh		25%
Above 15 lakh		30%

Following are the exemption and deductions are not allowed in new regime.

Salaried individuals

Could claim a standard deduction of Rs 50,000.

Leave Travel Allowance.

House rent allowance depending upon salary structure and rent paid

Professional tax paid by a maximum of Rs. 2,500/-

Deductions available under Section 80TTA and 80TTB that is interest from Savings Account/Deposits

Tax deduction on entertainment allowance and deduction on professional tax For government employees

The interest amount payable on home loan for a self-occupied or any vacant property u/s 24 maximum deductions of Rs. 2 lakh

Deduction of Rs 15,000 allowed from family pension under clause (ii) (a) Section 57

Special Allowances that are provided under Section 10(14) except

Transport allowance granted to a disabled employee

Any allowances granted for meeting the cost of travel on tour or transfer of an employee

Daily allowance

Perquisites

Business owners and professionals will lose the exemption to Special Economic Zones under Section 10AA.

Deductions under Section 32AD, 33AB, 33ABA, 35(1)(ii),35(1)(ii((a), 35(1)(iii), 35(2AA), 35AD and 35CCC of the Income Tax Act.

Options of additional depreciation under Section 32(ii)(a) of the Income Tax Act

The option to carry forward or unabsorbed depreciation of earlier years

Tax-saving investment deductions under Income Tax Act , Chapter VI-A 80C, 80D, 80E, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc. These tax-saving investment options include ELSS, NPS, PPF tax relief on med claim insurance premium, FDR, dependents who are differently-abled, expenses for specified medical treatments, interest on education loan and many more.

But following exemptions will continue in new regime.

Interest received on Post Office Savings Account under Section 10(15)(i) the maximum amount of Rs. 3,500.

Gratuity received from employer up to a maximum amount of Rs. 20 Lacs.

Amount received from Life Insurance Policy on maturity under Section 10(10D).

Employer contribution in NPS or EPF up to 12% of salary and interest on EPF up to 9.5% p.a.

Income from Life Insurance.

Income from agricultural farming.

Standard reduction on rent.

Retrenchment compensation.

Leave encashment on retirement.

VRS proceeds up to Rs 5 lacs.

Retirement cum death benefit.

Money received as a scholarship for education.

Interest and maturity amount of PPF or Sukanya SmriddhiYojna.

Commutation of Pension. The new tax regime offers you to claim deductions u/s 80CCD(2) (employers contribution in notified pension scheme) and 80JJAA (for new employment).

Switching from one regime to another.

The salaried have the option to choose between both the regimes every year. Even if you have opted a particular tax regime with your employer, you can still choose the other regime while filing your ITR in case the other option seems more beneficial to you while computing the tax liability at the time of filing the ITR.

Please note that the self-employed do not have the choice to come back to old tax regime once the new one is opted unless they stop having business income. ***So the person with business income has to be vary careful while migrating to new regime.***

Conclusion

Old Tax vs New Tax Regime: Which one would you choose?

There is no specific answer to this question as it depends on your financial situation and your annual earnings. Both the new income tax slab vs old tax slab have its advantages and disadvantages. It all depends on whether you are interested in claiming the deductions and exemptions with the new tax slab offering a variation of earning buckets and corresponding rates. The old tax slab offers deductions and exemptions. It is recommended to do a comparative analysis and evaluation under both the tax regimes before you proceed to file your taxes.

As whole if the assesse is having more savings and exemptions old regime is better otherwise he can opt new regime.

CONDONATION OF DELAY IN FILING REFUND CLAIM AND CLAIM OF CARRY FORWARD OF LOSSES

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Some times it may happen that due to un-avoidance circumstances we could not file income tax return within the time allowed for belated income tax return under section 139(4) and in such case system does not allow filing of income tax return of that period after the end of relevant assessment year. Suppose a person due to any reason could not file his income tax return of previous year 2019-20 on or before 31st March, 2021, then a big question arise whether the income tax return can be filed after 31st March, 2021? Can a person claim his refund of income tax after 31st March of relevant assessment year? Can a person having loss of income can file his income tax return after the expiry of the relevant assessment year to carry forward of losses and set-off?

Answer is yes subject to the permission by the appropriate competent authority of Income Tax. Any person who did not furnished his income tax return due to circumstances beyond his control, can file income tax return under the provision of section 119(2)(b). The Central Board of Direct Taxes as conferred by the section 119(1) may, if it consider or expedient so to do for avoiding genuine hardship in any case by general or special order, authorise the Income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Income Tax Act, 1961 after the expiry of the period specified in Income tax Act for furnishing of return and deal with the same on merits in accordance with law. It is clear from the wording of sub clause (b) of sub section 2 of section 119 that an application under this section cannot be accepted in case where no claim for refund of income tax or carry forward of loss.

The Central Board of Direct Taxes, in supersession of all earlier instruction/circulars/guidelines, issued Circular No. 9/2015, Dated:- 09-06-2015 to deal with the application for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof under section 119(2)(b). The present circular is being issued containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

1. A monetary limit is prescribed and power of acceptance or rejection of application under the above said section is vested accordingly to the higher rank income tax authorities.

   i. In case where the claim of refund or carry forward of loss of any one assessment year is less than Rs. 10 lakhs, an application has to submit before the Principal Commissioner or Commissioner of Income Tax.

   ii. In case where such claim of any one assessment year is between Rs. 10 lkahs to Rs. 50 lakhs, an application has to submit before the Principal Chief Commissioner or Chief Commissioner of Income Tax.

   iii. In case where such claim of any one assessment year is more than Rs. 50 lakhs, an application has to submit before the Central Board of Direct Taxes.

2. A condonation applicationto claim for income tax refund/loss for any assessment year cannot be made after the expiry of Sixyears from the end of relevant assessment year.

3. This limit of Six years is applicable to all income tax authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board.

4. As per the above circular, the above authorities should disposeoff a condonation application within Six months from the end of the month in which the application is received by the competent authority, as far as possible. This means there is no time bar; it may be disposed off even after the expiry of six months.

5. In case where refund claim has arisen consequent of a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of Six years. In this case a condonation application must be filed within six month from the end of the month

in which the Court order was issued or the end of financial year whichever is later.

6. The competent income tax authority who are empowered of acceptance/rejection of the application in case of such claims will be subject to the following conditions:

   - At the time of considering the case under section 119(2)(b), it shall be ensured that the income/ loss declared and /or refund claimed is correct and genuine and also that the case is of genuine hardship on merits
   - The Principal Commissioner/Commissioner dealing with the case shall direct to the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the IT Act to ascertain the correctness of the claim.

7. A belated application for supplementary claim of refund i.e., claim of additional amount of refund after completion of assessment for the same year, can be admitted for condonation provided other conditions as referred above are fulfilled.

8. The acceptance or rejection of supplementary claim shall be subject to the following further conditions:

   - The income of the assessee is not assessable in the hands of any other person under any of the provisions of the IT Act.
   - No interest will be admissible on belated claim of refunds.
   - The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the IT Act.

8. In the case of an applicant who has made investment in 8% Savings Bonds, 2003 issued by the Government of India opting for scheme of cumulative interest on maturity but has accounted interest on mercantile basis and the intermediary banks at the time of maturity has deducted tax at source on the entire amount of interest paid without appropriating the accrued interest/TDS, over various financial years involved, the time limit of Six years for making such refund claims will not be applicable.

9. The Board reserves the power to examine any grievance arising out of an order passed or not passed by the competent authorities and issued suitable directions to them for proper implementation of this circular. However, no review of or appeal against the orders of such authorities would be entertained by the Board.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GST NOTIFICATIONS AND CIRCULARS

CENTRAL TAX

Notification No. 35/2021 – Central Tax

Seeks to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017

Dated – 24th September, 2021

The Government has amended the CGST Rules, 2017 vide Notification No. 35/2021 – Central Tax Dated 24th September 2021 in order to bring into effect some of the recommendations made in the 45th GST Council Meeting.

1. Aadhaar authentication has been made mandatory for filing refund claims and applications for revocation of cancellation of registration.[The date of applicability has not been notified yet and shall come into force on the date of their publication in the Official Gazette.]
2. Furnishing of Bank account on GST portal.[According to Rule 10A,after obtaining GST registration, a registered person is required to upload his bank details within 45 days of obtaining registration or else the registration might be canceled.The date of applicability has not been notified yet and shall come into force on the date of their publication in the Official Gazette.]
3. Amendment in Rule 45(3) for providing Relaxation in filing FORM GST ITC-04.[According to Rule 45(3), Taxpayers whose Aggregate Turnover in preceding Financial Year is greater than 5 Crores shall furnish ITC-04 once in six months and Taxpayers whose Aggregate Turnover in preceding Financial Year is less than 5 Crores shall furnish ITC-04 annually for a financial year.This amendment will come into effect from October 1st, 2021.]
4. Rule 59(6) regarding Restricting in the filing of Form GSTR-1.[A Registered Person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month. This amendment will come into effect from January 01, 2022.]
5. Refund to be disbursed in the bank account, which is linked with the same PAN.[Rule 96C has been inserted newly which states that the "bank account" for claiming refund shall be the bank account which is in the name of the applicant and obtained on his Permanent Account Number.The date of applicability has not been notified yet and shall come into force on the date of their publication in the Official Gazette.]

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-35-central-tax-english-2021.pdf

Notification No. 36/2021 – Central Tax

Seeks to amend Notification No. 03/2021 dated 23.02.2021

Dated – 24th September, 2021

Central Government has made an amendment in the notification No. 03/2021-Central Tax which was issued 23rd February 2021In first paragraph of this notification, after the words "hereby notifies that the provisions of", the words, brackets, figure and letter "sub-section (6A) or" shall be inserted.Government has clarified by this notification [that specified persons such as Government Departments, PSUs, the person who is not a citizen of India, etc. who are already registered under the GST law, are excluded from the requirement of getting Aadhaar Authentication.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-36-central-tax-english-2021.pdf

CENTRAL TAX(RATE)

Notification No. 06/2021- Central Tax (Rate)

Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 45th meeting held on 17.09.2021

Dated – 30th September, 2021

CBIC has made an amendment in notification No. 11/2017 of Central Tax (Rate) so as to notify CGST rates of various

services.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-06-2021-2020-cgst-rate.pdf;jsessionid=AC50AC60865B51162408869CDA64F0D8

Notification No. 07/2021- Central Tax (Rate)

Seeks to amend notification No. 12/2017- Central Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021

Dated – 30th September, 2021

CBIC hasamended notification No. 12/2017 of Central Tax (Rate) to implementChanges in CGST exemption on Supply of services with effect from 01.10.2021.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-7-2021-igst-rate-english.pdf;jsessionid=185EF8FF53FEFB1A0BD47AA841FBF2D8

Notification No. 08/2021- Central Tax (Rate)

Seeks to amend notification No. 1/2017- Central Tax (Rate)

Dated – 30th September, 2021

CBIC has amended CGST Rate on certain goods with effect from 1stOctober, 2021.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-08-2021-cgst-rate.pdf;jsessionid=844CAC13E4CB780F6EA32581E1973AF9

Notification No. 09/2021- Central Tax (Rate)

Seeks to amend notification No. 2/2017- Central Tax (Rate)

Dated – 30th September, 2021

CBIC has amended in CGST exemption on Seeds, fruit and spores of a kind used for sowing (not cover seeds meant for any use other than sowing) with effect from 1st October, 2021.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-09-2021-cgst-rate.pdf;jsessionid=2FB7E8C81A20D8CDDCCA1A61B456AC44

Notification No. 10/2021- Central Tax (Rate)

Seeks to amend notification No. 4/2017- Central Tax (Rate)

Dated – 30th September, 2021

CBIC has notified essential oils other than those of citrus fruit as goods on which CGST is payable under Reverse Charge Mechanism (RCM) with effect from 1st October.

3A	33012400, 33012510, 33012520, 33012530, 33012540	Following essential oils other than those of citrus fruit namely: - a) Of peppermint (Mentha-piperita); b) Of other mints: Spearmint oil (exmenthaspicata), Water mint-oil (exmentha aquatic), Horsemint oil (exmenthasylvestries), Bergament oil (exmentha citrate).	Any Unregistered Person	Any Registered Person.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-10-2021-cgst-rate.pdf;jsessionid=5364000B86C9A79A4711BAF9DF790C4D

Notification No. 11/2021- Central Tax (Rate)

Seeks to amend notification No. 39/2017- Central Tax (Rate)

Dated – 30th September, 2021

CBIC has amended notification No. 39/2017 of Central Tax (Rate) related to GST Rate on Food for free distribution to economically weaker sections.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-11-2021-cgst-rate.pdf;jsessionid=C7CA70D3E2F9EAFC1ED318251F416A29

Notification No. 12/2021- Central Tax (Rate)

Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021

Dated – 30th September, 2021

CBIC has exempted CGST on specified medicines used in COVID-19, up to 31st December, 2021.

Sl. No.	Chapter, Heading, Sub- heading or Tariff item	Description of Goods	Rate
(1)	(2)	(3)	(4)
1	30	Tocilizumab	Nil
2	30	Amphotericin B	Nil
3	30	Remdesivir	2.5%
4	30	Heparin (anti-coagulant)	2.5%
5	30	Itolizumab	2.5%
6	30	Posaconazole	2.5%
7	30	Infliximab	2.5%
8	30	Bamlanivimab & Etesevimab	2.5%
9	30	Casirivimab & Imdevimab	2.5%
10	30	2-Deoxy-D-Glucose	2.5%
11	30	Favipiravir	2.5%

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-12-2021-cgst-rate.pdf;jsessionid=43EE4D90B6D1750B08BCE90FC462D6AD

INTEGRATED TAX (RATE)

Notification No. 06/2021- Integrated Tax (Rate)

Seeks to amend notification No. 08/2017- Integrated Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 45th meeting held on 17.09.2021

Dated – 30th September, 2021

CBIC has amended notificationNo. 08/2017- Integrated Tax (Rate) so as to notify CGST rates of various services.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-6-2021-igst-rate-english.pdf;jsessionid=0FF41D23DC3BC907B0FC27FFE7D94EBD

Notification No. 07/2021- Integrated Tax (Rate)

Seeks to amend notification No. 09/2017- Integrated Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021

Dated – 30th September, 2021

CBIC has amended Notification No. 09/2017- Integrated Tax (Rate) so as to implement related to Changes in CGST exemption on Supply of services WEF 01.10.2021.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-7-2021-igst-rate-english.pdf;jsessionid=CBC3DDCF35D8E95347720F4568D6C505

Notification No. 08/2021- Integrated Tax (Rate)

Seeks to amend notification No. 1/2017- Integrated Tax (Rate)

Dated – 30th September, 2021

CBIC has amended IGST Rate on certain goods with effect from 1st October.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-8-2021-igst-rate-english.pdf;jsessionid=94D55DADFE0BFBEA59BFC34DAE60E201

Notification No. 09/2021- Integrated Tax (Rate)

Seeks to amend notification No. 2/2017- Integrated Tax (Rate)

Dated – 30th September, 2021

CBIC has amended in IGST Exemption on Seeds, fruit and spores, of a kind used for sowing (not cover seeds meant for any use other than sowing) with effect from 1st October.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-9-2021-igst-rate-english.pdf;jsessionid=3186BC7CD6809722B3A92397D16CA645

Notification No. 10/2021- Integrated Tax (Rate)

Seeks to amend notification No. 4/2017- Integrated Tax (Rate)

Dated – 30th September, 2021

CBIC has notified essential oils other than those of citrus fruit as goods on which IGST is payable under Reverse Charge Mechanism (RCM) with effect from 1st October.

3A	33012400, 33012510, 33012520, 33012530, 33012540	Following essential oils other than those of citrus fruit namely: - a) Of peppermint (Mentha-piperita); b) Of other mints: Spearmint oil (exmenthaspicata), Water mint-oil (exmentha aquatic), Horsemint oil (exmenthasylvestries), Bergament oil (exmentha citrate).	Any Unregistered Person	Any Registered Person.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-10-2021-igst-rate-english.pdf;jsessionid=C925E1AC54D92058AB7854136E5EAC48

Notification No. 11/2021- Integrated Tax (Rate)

Seeks to amend notification No. 40/2017- Integrated Tax (Rate)

Dated – 30th September, 2021

Central Government has amended in the notification No.40/2017-Integrated Tax (Rate),

In this notification, in the Table, against S. No. 1, -

(i) in column (3), for the entry, the entry

(a) Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government;

(b) Fortified Rice Kernel (Premix) supply for ICDS or similar scheme duly approved by the Central Government or any State Government." shall be substituted;

(ii) in column (4), in the entry, for the words "food preparations" at both the places, where they occur, the word "goods" shall be substituted;

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-11-2021-igst-rate-english.pdf;jsessionid=A13C94BB6F15513CE54470D90FC8FD9B

Notification No. 12/2021- Integrated Tax (Rate)

Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021

Dated – 30th September, 2021

CBIC has exempted IGST on specified medicines used in COVID-19, up to 31st December, 2021.

TABLE

Sl. No.	Chapter, Heading, Sub- heading or Tariff item	Description of Goods	Rate
(1)	(2)	(3)	(4)
1	30	Tocilizumab	Nil
2	30	Amphotericin B	Nil
3	30	Remdesivir	5%
4	30	Heparin(anti-coagulant)	5%
5	30	Itolizumab	5%
6	30	Posaconazole,	5%
7	30	Infliximab	5%
8	30	Bamlanivimab & Etesevimab	5%
9	30	Casirivimab & Imdevimab	5%
10	30	2-Deoxy-D-Glucose	5%
11	30	Favipiravir	5%

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-12-2021-igst-rate-english.pdf;jsessionid=520A343F71D34EEBD5B5FAEBD5327BCD

UNION TERRITORY TAX (RATE)

Notification No. 06/2021- Union Territory Tax (Rate)

Seeks to amend notification No. 11/2017- Union Territory Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 45th meeting held on 17.09.2021

Dated – 30th September, 2021

CBIC has amended notification No. 11/2017- Union Territory Tax (Rate) so as to notify UTGST rates of various services with effect from 1st October, 2021.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-06-2021-utgst-rate.pdf;jsessionid=33811AE4CE44BA4029FB712920B64968

Notification No. 07/2021- Union Territory Tax (Rate)

Seeks to amend notification No. 12/2017- Union Territory Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021

Dated – 30th September, 2021

CBIC has amended notification No. 12/2017- Union Territory Tax (Rate) so as to implement related to Changes in CGST exemption on Supply of services WEF 01.10.2021.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-07-2021-utgst-rate.pdf;jsessionid=C17ABE024BBD069D8A83A8830A10B42E

Notification No. 08/2021- Union Territory Tax (Rate)

Seeks to amend notification No. 1/2017- Union territory Tax (Rate)

Dated – 30th September, 2021

CBIC has amended UTGST Rate on certain goods with effect from 1st day of October, 2021

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-08-2021-utgst-rate.pdf;jsessionid=D146EEFC4BBE5710C344F67D0EDE88B8

Notification No. 09/2021- Union Territory Tax (Rate)

Seeks to amend notification No. 2/2017- Union territory Tax (Rate)

Dated – 30th September, 2021

CBIC has notified amendment in UTGST Exemption on Seeds, fruit and spores, of a kind used for sowing (not cover seeds meant for any use other than sowing) with effect from 1st day of October, 2021.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-09-2021-utgst-rate.pdf;jsessionid=FCF6AECD0BAB3F6C428D787EC6EA167F

Notification No. 10/2021- Union Territory Tax (Rate)

Seeks to amend notification No. 4/2017- Union territory Tax (Rate)

Dated – 30th September, 2021

CBIC has notified essential oils other than those of citrus fruit as goods on which UTGST is payable under Reverse Charge Mechanism (RCM) with effect from 1stOctober, 2021.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-10-2021-utgst-rate.pdf;jsessionid=58AB63B37670006C3EA856D48F432F1E

Notification No. 11/2021- Union Territory Tax (Rate)

Seeks to amend notification No. 39/2017- Union territory Tax (Rate)

Dated – 30th September, 2021

CBIC has amended notification No. 39/2017- Union Territory Tax (Rate) related to GST Rate on Food for free distribution to economically weaker.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-11-2021-utgst-rate.pdf;jsessionid=C0228FB4738FB49332E887E7F17960AC

Notification No. 12/2021- Union Territory Tax (Rate)

Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021

Dated – 30th September, 2021

CBIC has exempted UTGST on specified medicines used in COVID-19, up to 31st December, 2021.

TABLE

Sl. No.	Chapter, Heading, Sub- heading or Tariff item	Description of Goods	Rate
(1)	(2)	(3)	(4)
1	30	Tocilizumab	Nil
2	30	Amphotericin B	Nil
3	30	Remdesivir	2.5%
4	30	Heparin(anti-coagulant)	2.5%
5	30	Itolizumab	2.5%
6	30	Posaconazole,	2.5%
7	30	Infliximab	2.5%
8	30	Bamlanivimab & Etesevimab	2.5%
9	30	Casirivimab & Imdevimab	2.5%
10	30	2-Deoxy-D-Glucose	2.5%
11	30	Favipiravir	2.5%

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-12-2021-utgst-rate.pdf;jsessionid=73B05DDE122AEC9FEBDA6C3789F3D7BC

Notification No.1 / 2021-Compensation Cess (Rate)

Seeks to amend notification No. 1/2017-Compensation Cess(Rate)

Dated – 30th September, 2021

CBIC has amended notification No. 1/2017-Compensation Cess (Rate), dated 28.6.2017 to specify Changes in Compensation Cess rate on Caffeinated Beverages & Motor vehicles.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Compensation_Cess01_2021_rate_eng.pdf;jsessionid=23519357B4A6EAE56F083312F03D6ECC

DIRECT TAX

Notification No. 110/2021

No TDS Under Section 194A on Interest payment to Scheduled Tribe by Scheduled Bank

Dated – 17th September, 2021

The Central Government has relaxed the provisions of tax deducted at source (TDS) under Section 194A on payment made to members of Scheduled Tribe residing in the specified area.

CBDT has notifiedthat no deduction of tax shall be made under section 194A on the payment in the nature of interest, other than interest on securities, made by a Scheduled Bank located in a specified area, to a member of Scheduled Tribe residing in any specified area, as referred to in section 10(26). However, the exemption is available subject to the fulfillment of the following conditions:

1) The Scheduled Bank satisfies itself that the receiver is a member of Scheduled Tribe residing in any specified area, and the payment is accruing or arising to, during the previous year relevant for the assessment year in which the payment is made. The bank is also required to obtain necessary documentary evidence in support of the same;

2) The Scheduled Bank reports the interest payment in the statements of deduction of tax as referred to in section 200(3); and

3) The payment made or aggregate of payments made during the previous year does not exceed Rs. 20 lakh.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification-no-110-2021.pdf.pdf

Notification No. 111/2021

CBDT notifies pension fund, namely '2452991 Ontario Limited' | Section 10(23FE)

Dated – 16th September, 2021

CBDT has notified pension fund, namely, '2452991 Ontario Limited' under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after 16th September, 2021 but on or before the 31st day of March, 2024.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification-no-111-2021.pdf

Notification No. 112/2021

CBDT notifies pension fund, namely '276522 Ontario Limited' | Section 10(23FE)

Dated – 16thSeptember, 2021

CBDT has notified pension fund, namely, '276522 Ontario Limited' under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after 16th September, 2021 but on or before the 31st day of March, 2024.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification-no-112-2021.pdf

Notification No. 113/2021

Aadhaar Linking, penalty proceedings completion due date extended

Dated – 17th September, 2021

Central Government, in continuation of its commitment to address the hardship being faced by various stakeholders on account of the Covid-19 pandemic and on consideration of representations received from various stakeholdershas decided to extend timelines for compliances under the Income-tax Act, 1961 (hereinafter referred to as "the Act") in the following cases, as under:

Time limit for intimation of Aadhaar number to the Income Tax Department for linking of PAN with Aadhaar has been extended from 30th September, 2021 to 31st March, 2022.

The due date for completion of penalty proceedings under the Act has also been extended from 30th September, 2021 to 31st March, 2022.

Further, the time limit for issuance of notice and passing of order by the Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988 has also been extended to 31st March, 2022.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification-no-113-2021.pdf

Notification No. 114/2021

CBDT notifies pension fund, namely 'BCI IRR India Holdings Inc.' | Section 10(23FE)

Dated – 20thSeptember, 2021

CBDT has notified pension fund, namely, 'BCI IRR India Holdings Inc.' under sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 in respect of the eligible investment made by it in India on or after 20th September, 2021 but on or before the 31st day of March, 2024.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification-no-114-2021.pdf

Notification No. 115/2021

Section 10(46) exemption to Gujarat Electricity Regulatory Commission

Dated – 20th September, 2021

Central Government has notified for the purposes of the said clause, 'Gujarat Electricity Regulatory Commission', a commission established by the state government of Gujarat, in respect of the following specified income arising to the Commission, namely:

(a) Annual license fee;

(b) Petition fee; and

(c) Interest earned on fixed/term deposits and savings account with nationalized banks/state sponsored financial institutions.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification-no-115-2021.pdf

Notification No. 116/2021

Corrigendum

Dated – 20th September, 2021

At page 3, in line 9 and 10, for "276522 Ontario Limited" read "2726522 Ontario Limited".

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification-no-116-2021.pdf

Notification No. 117/2021

Income-tax (30th Amendment) Rules, 2021

Dated – 24th September, 2021

CBDT has made the following rules further to amend the Income-tax Rules, 1962 and this shall be deemed to have come into force from the 1st April, 2021. In the Income-tax Rules, 1962, in rule 10TD, in sub-rule (3B), for the words and figures "assessment year 2020-21", the words and figures "assessment years 2020-21 and 2021-22" shall be substituted.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification-117-2021.pdf

CIRCULARS

Circular No. 159/15/2021-GST

Clarification on doubts related to scope of "Intermediary

Dated – 20th September, 2021

Clarification has been provided on doubts related to scope of "intermediary" as per Sec 2(13) of IGST Act. Primary requirements for the concept of intermediary services have been listed down which are as follows:

- There should be minimum of 3 parties
- There should be 2 distinct supplies – Main supply between 2 principals and an ancillary supply of intermediary services
- Intermediary should have a character of an agent, broker or any other similar person
- Intermediary does not include a person who supplies such goods or services or both or securities on his own account.
- Sub-contracting for a service is not an intermediary service.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20159_14_2021_GST.pdf

Circular No. 160/16/2021-GST

Clarification in respect of certain GST related issues

Dated – 20th September, 2021

Certain issues have been clarified which are summarised below:

- W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.
- For availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.2021.
- There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules (E-invoice).
- Only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20160_14_2021_GST.pdf

Circular No. 161/17/2021-GST

Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017

Dated – 20th September, 2021

CBIC has explained the Export of services as under:

I. The supplier of service is located in India;

II. The recipient of service located outside India;

III. The place of supply services outside India;

IV. Payment for such services received in convertible foreign exchange;

V. The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

VI. Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons,

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20161_14_2021_GST.pdf

Circular No. 162/18/2021-GST

Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act

Dated – 25th September, 2021

Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular%20No.%20162_18_2021_GST.pdf

CUSTOMS NOTIFICATIONS AND CIRCULARS

TARIFF NOTIFICATION

Notification No. 44/2021- Customs

Seeks to amend the BCD rate on Lentils (Masur) [0713 40 00], originating in or exported from USA

Dated – 17th September, 2021

Central Governmenthas amended the BCD rate on Lentils (Masur) [0713 40 00], originating in or exported from USA to 20%.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs44-2021.pdf

Notification No. 45/2021- Customs

Seeks to exempt COVID-19 vaccines from basic Custom duty till 31st December, 2021

Dated – 29th September, 2021

CBIC has exempted COVID-19 vaccines from basic Custom duty till 31st December.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs45-2021.pdf

Notification No. 46/2021- Customs

Seeks to implement GST Council recommendation on IGST on imports related to Spinal Muscular Atrophy disease, etc., as well Condition No. 102 pertaining to Services

Dated – 30th September, 2021

Central Government has made an amendment in notification No. 50/2017-Customs, which was issued on 30th June, 2017. As per this notification in the TABLE, for Sl. No. 607 and the entries relating thereto, Sl. No. and entries shall be substituted and imports related to Spinal Muscular Atrophy disease, etc., as well Condition No. 102 pertaining to Services.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs46-2021.pdf;jsessionid=DC6E8001ED269E96F3713E674502A286

Notification No. 47/2021- Customs

Seeks to implement GST Council recommendation on IGST on imports related to goods from Antarctica and Border haats

Dated – 30th September, 2021

Central Government has made an amendment on imports related to goods from Antarctica and Border haats.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs47-2021.pdf;jsessionid=D30F44F7F5C7211494A86DF73124E257

NON - TARIFF NOTIFICATION

Notification No. 74/2021-Customs (NT)

Exchange rates Notification

Dated – 16th September, 2021

CBIC has determined the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa which is specified in Schedule I and Schedule II and has effected from 17thSeptember, 2021.

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	55.10	52.75
Bahraini Dinar	201.40	189.00
Canadian Dollar	59.25	57.15
Chinese Yuan	11.60	11.25
EURO	88.45	85.30
US Dollar	74.40	72.70

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	68.55	66.05
Korean Won	6.50	6.10

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt74-2021.pdf

Notification No. 75/2021-Customs (NT)

Seeks to notify the Electronic Duty Credit Ledger Regulations, 2021

Dated – 23th September, 2021

CBIC has notified the manner to issue duty credit for goods exported under the Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP).

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt75-2021.pdf

Notification No. 76/2021-Customs (NT)

Seeks to notify the manner to issue duty credit for goods exported under the Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP)

Dated – 23th September, 2021

CBIC has notified the manner to issue duty credit for goods exported under the Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP).

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt76-2021.pdf

Notification No. 77/2021-Customs (NT)

Seeks to notify the manner to issue duty credit for goods exported under the continuation of Scheme for Rebate of State and Central Taxes and Levies (RoSCTL)

Dated – 24th September, 2021

CBIC has notified the manner to issue duty credit for goods exported under the continuation of Scheme for Rebate of State and Central Taxes and Levies (RoSCTL)

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt77-2021.pdf

Notification No. 78/2021-Customs (NT)

Fixation of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver

Dated – 30th September, 2021

CBIC has made the following amendments in the notification No. 36/2001-Customs (N.T.) which was issued on 3rd August, 2001. In this notification the following shall be substituted in TABLE-1 and TABLE-2 and TABLE-3

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	1130 (i.e., no change)
2	1511 90 10	RBD Palm Oil	1153 (i.e., no change)
3	1511 90 90	Others – Palm Oil	1142 (i.e., no change)
4	1511 10 00	Crude Palmolein	1160 (i.e., no change)
5	1511 90 20	RBD Palmolein	1163 (i.e., no change)
6	1511 90 90	Others – Palmolein	1162 (i.e., no change)
7	1507 10 00	Crude Soya bean Oil	1328 (i.e., no change)
8	7404 00 22	Brass Scrap (all grades)	5418

TABLE - 2

Sl No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	560 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50	724 per kilogram
3.	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. **Explanation.** - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	724 per kilogram
4.	71	(i) Gold bars, other than tola bars, bearing manufacturers 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.	560 per 10 grams

TABLE - 3

Sl No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	5149 (i.e., no change)

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt79-2021.pdf;jsessionid=37D48787FB6E355849DAB0C676F518EB

ANTI-DUMPING DUTY

Notification No. 51/2021-Customs (ADD)

Seeks to levy anti-dumpnig duty on imports of 'Aluminum foil' originating in or exported from China PR, Malaysia, Thailand, Indonesia for a period of five years.

Dated – 16th September, 2021

Central Government has imposed the levy Anti-dumping duty on imports of 'Aluminum foil' originating in or exported from China PR, Malaysia, Thailand, Indonesia for a period of five years.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd51-2021.pdf

Notification No. 52/2021-Customs (ADD)

Seeks to rescind Notification No. 11/2016-Customs (ADD) dated 29th March, 2016.

Dated – 22ndSeptember, 2021

Central Government has rescinded the notification No. 11/2016-Customs (ADD) which was issued on 29th March, 2016, except as respect things done or omitted to be done before such rescission.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd52-2021.pdf

Notification No. 53/2021-Customs (ADD)

Seeks to amend Notification No. 49/2017-Customs (ADD) dated 17th October, 2017 to extend the levy of ADD on 'Colour coated/pre-painted flat products of alloy or non-alloy steel' from China PR and EU up to 31st March, 2022

Dated – 22ndSeptember, 2021

CBIC has amended the Notification No. 49/2017-Customs (ADD) which was issued on 17th October, 2017 to extend the levy of ADD on 'Colour coated/pre-painted flat products of alloy or non-alloy steel' from China PR and EU up to 31st March, 2022.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd53-2021.pdf

Notification No. 54/2021-Customs (ADD)

Seeks to amend notification No. No. 29/2017-Customs (ADD), dated the 14th June, 2017 to extend levy of anti-dumping duty on "Glazed/Unglazed Porcelain/ Vitrified tiles in polished or unpolished finish with less than 3% water absorption" from China PR upto 28th February, 2022

Dated – 30thSeptember, 2021

Central Government has made further amendment in the notification No. 29/2017-Customs (ADD). As per this notification Anti-dumping duty on imports of Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption originating in or exported from China PR has been further extended till 28th February, 2022.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd54-2021.pdf;jsessionid=9D3E4DBFBBD0863DE1BA67153BA62491

Notification No. 55/2021-Customs (ADD)

Seeks to amend notification No. 54/2018 – Customs (ADD) dated 18th October, 2018 so as to extend the temporary revocation of the operation of the said notification up to 31st January, 2022

Dated – 30thSeptember, 2021

Central Government has extendedanti-dumping duty on Straight Length Bars and Rods of Alloy Steel originating in, or exported from People's Republic of China further till 31stday of January, 2022.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd55-2021.pdf;jsessionid=63CEF4DE58D1217C766622D13FED4521

Notification No. 56/2021-Customs (ADD)

Seeks to amend notification No. 38/2019 – Customs (ADD) dated 25th September, 2019 so as to extend the temporary revocation of the operation of the said notification up to 31st January, 2022

Dated – 30thSeptember, 2021

Central Government has extended anti-dumping duty

on High-Speed Steel of Non-Cobalt Grade, originating in, or exported from Brazil, People's Republic of China and Germany further till 31st day of January, 2022.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd56-2021.pdf;jsessionid=9D1B90F370198580267005810835C179

Notification No. 57/2021-Customs (ADD)

Seeks to amend notification No. 16/2020 Customs (ADD), dated the 23rd June, 2020 so as to extend the temporary revocation of the operation of the said notification up to 31st January, 2022

Dated – 30thSeptember, 2021

Central Government has extended anti-dumping duty on Flat rolled product of steel, plated or coated with alloy of Aluminum and Zinc, originating in or exported from People's Republic of China, Vietnam and Republic of Korea further till 31st day of January, 2022.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd57-2021.pdf;jsessionid=A54612A4CFC92F7C0DBD9DBDAB4480FA

COUNTERVAILING DUTY

Notification No. 4/2021-Customs (CVD)

CVD on import of Aluminum Wire in coil form/Wire Rod in coil form

Dated – 24th September, 2021

Central Government seeks to impose countervailing duty on Aluminum Wire in coil form/Wire Rod in coil form having diameter ranging from 9 mm to 13 mm exported from Malaysia for a period of 5 years.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-others2021/csot04-2021.pdf

CIRCULARS

Circular No. 21/2021-Customs

Easing container availability for export cargo

Dated – 24th September, 2021

As a temporary measure to ease containers available presently for export of containercargo and with aim of promoting export of laden marine containers, it has been guided that, where the initial period of 6 months is till on or before 31.03.2022, the above provision of the Circular may also be applied on receiving intimation before expiry of initial period of 6 months from the concerned importer that the container shall be re-exported in laden condition within the next 3 months.

For more details, please follow:

https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-21-2021.pdf

DIRECT TAX

PRESS RELEASE

Meeting of BRICS Heads of Tax Authorities and Experts on Tax Matters held virtually under Chairship of India

15th September, 2021

The Heads of Tax Authorities of the BRICS countries, namely the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa held a virtual meeting on 15th September, 2021under the Chairship of India.

Shri Tarun Bajaj, Secretary, Revenue, Government of India, in his capacity as Head of Tax Authorities in India, presided over this meeting.

The BRICS Tax Authorities engaged in discussion on thechallenges faced by BRICS tax administrations in the digital era, coupled with outbreak of COVID-19 pandemic, sharing experience and devising strategies to overcome those challenges. The broad theme of the meeting was redefining business processes of tax administration amidst challenges posed by COVID-19 and in the digital era. During the meetings, the tax authorities also exchanged opinions and views based on existing commitment to the principles of mutual respect, consolidation and continuity as stated in the XIII BRICS Summit, New Delhi Declaration issued on 9th September, 2021.

The meeting was preceded by meetings of the Tax Experts of BRICS countries on 13th & 14th September, 2021. In this meeting, the tax experts discussed potential areas of cooperation, exchanged views and the experiences. The discussion took place around relevant topics which include digitisation of tax administration, leveraging technology for tackling tax evasion, changing role of tax administration from enforcement to service, preparedness and strategies to deal with challenges of COVID-19 and evolution of tax administration to enhance voluntary compliance by taxpayers.

A communiqué was also issued at the conclusion of the Tax Heads meeting.

Central Government relaxes provisions of TDS u/s 194A of theIncome-tax Act, 1961 in view of the section of 10(26) of the Act

17th September, 2021

The Central Government in exercise of the powers conferred by sub-section(1F) of section 197A of the Income-tax Act, 1961("the Act") notified that no deduction of tax shall be made on the following payment under section 194A of the Act, namely payment in the nature of interest, other than interest on securities, made by a Scheduled Bank (hereinafter the 'payer') located in a specified area to a member of Scheduled Tribe (hereinafter the 'receiver') residing in any specified area as referred to in s.10(26) of the Act, subject to the following conditions:

(i) the payer satisfies itself that the receiver is a member of Scheduled Tribe residing in any specified area, and the payment as referred above is accruing or arising to the receiver as referred to in section 10(26) of the Act, during the previous year relevant for the assessment year in which the payment is made, by obtaining necessary documentary evidences in support of the same;

(ii) the payer reports the above payment in the statements of deduction of tax as referred to in sub-section (3) of section 200 of the Act;

(iii) the payment made or aggregate of payments made during the previous year does not exceed twenty lakh rupees.

For the purposes of the said notification, 'Scheduled Bank' means a bank included in the Second Schedule of the Reserve Bank of India Act, 1934.

Notification no. 110/2021 dated 17th September, 2021 has been issued. It is available on www.incometaxindia.gov.inand also on www.egazette.nic.in

Government extends certain timelines to ease compliances

17th September, 2021

The Central Government, in continuation of its commitment to address the hardship being faced by various stakeholders on account of the Covid-19 pandemic, has, on consideration of representations received from various stakeholders, decided to extend timelines for compliances under the Income-tax Act, 1961 (hereinafter referred to as "the Act") in the following cases, as under:

- Time limit for intimation of Aadhaar number to the Income tax Department for linking of PAN with Aadhaar has been extended from 30th September, 2021 to 31st March, 2022.
- The due date for completion of penalty proceedings under the Act has also been extended from 30th September, 2021 to 31st March, 2022.

Further, the time limit for issuance of notice and passing of order by the Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988 has also been

extended to 31stMarch, 2022.

Notification no. 113 of 2021 dated 17th September, 2021 has been issued in this regard and can be accessed at www.incometaxindia.gov.in

Income Tax Department conducts searches in Mumbai and other regions

18th September, 2021

The Income Tax Department conducted a search and seizure operation at various premises of a prominent actor in Mumbai and also a Lucknow based group of industries engaged in infrastructure development. Total 28 premises spread over Mumbai, Lucknow, Kanpur, Jaipur, Delhi, and Gurgaon have been covered in the search operation.

During the course of search at the premises of the actor and his associates, incriminating evidences pertaining to tax evasion have been found. The main modus operandi followed by the actor had been to route his unaccounted income in the form of bogus unsecured loans from many bogus entities. Investigations so far have revealed use of twenty such entries, the providers of which, on examination, have accepted on oath to have given bogus accommodation entries. They have accepted to have issued cheques in lieu of cash. There have been instances where professional receipts have been camouflaged as loans in the books of accounts for the purpose of evasion of tax. It has also been revealed that these bogus loans have been used for making investments and acquiring properties. The total amount of tax evaded unearthed so far, amounts to more than Rs. 20 crore.

The Charity Foundation incorporated by the actor on 21st July, 2020 has collected donations to the tune of Rs 18.94 crore from 01.04.2021 till date, out of which it has spent around Rs. 1.9 crore towards various relief work and the balance of Rs. 17 crore has been found lying unutilized in the bank account of the Foundation till date. It is seen that funds to the tune of Rs. 2.1 crore have also been raised by the Charity Foundation from overseas donors on a crowd funding platform in violation of FCRA regulations.

The simultaneous search operations carried out at various premises of an Infrastructure group in Lucknow in which the said actor has entered into a joint venture real estate project and invested substantial funds, have resulted in unearthing of incriminating evidences pertaining to tax evasion and irregularities in the books of account.

The search has revealed that the said Group is involved in bogus billing of subcontracting expenses and siphoning off of funds. Evidences of such bogus contracts found so far are to the tune of over Rs. 65 crore. Evidence of unaccounted cash expenses, unaccounted sale of scrap and digital data evidencing unaccounted cash transactions has also been found. Further, it has been unearthed that the said Infrastructure Group/company has entered into dubious circular transaction to the tune of Rs. 175 crore with an infrastructure company based in Jaipur. Further investigations are being carried out to establish the full extent of tax evasion.

Cash of Rs 1.8 crore has been seized during the course of the search and 11 Lockers have been placed under prohibitory order.

The search operation is still continuing and further investigations are in progress.

Income Tax Department conducts searches in Nagpur

20th September, 2021

The Income Tax Department carried out a search and seizure operation on 17.09.2021 in the case of a prominent public figure in Nagpur and his family members. The group is having wide business interest spanning the fields of Education, Warehousing and Agri-business in Nagpur and other parts of Maharastra. More than 30 premises were covered in the search and survey operations spread across Nagpur, Mumbai, New Delhi and Kolkata.

During the course of the search and seizure operation, many incriminating documents, loose sheets and other digital evidences were found and seized. These evidences clearly indicate the involvement of the group in unaccounted financial transactions made outside the regular books of accounts including inflation of expenses, money laundering, bogus donation receipts, unaccounted cash expenses etc. Evidence for receipt of bogus donation in the hands of the Trust run by the assesse group through money laundering, using Delhi based companies to the extent of Rs.4.00 crore has been found. This clearly substantiates the laundering of the unaccounted income of the assessee routed as donation to the Trust. Further, specific evidences have been unearthed which reveal that three Educational Institutions of the Trust have indulged in inflation of expenses in which salaries paid to the employees were partly collected back in cash. Such evidences were found for several financial years amounting to more than Rs.12 crore. During the search, it was also detected that the Trust, apart from suppression of receipts, has paid substantial amounts to brokers for arranging admissions. Such payments, to the tune of about Rs.87 lakh have been paid in cash and are completely unaccounted.

Evidence found during the search clearly indicates concealment of income to the extent of about Rs.17 crore. Several bank lockers found during the course of the search operation have been put under prohibitory orders. The evidence gathered during the search is being examined and further investigations are in progress.

Income Tax Department conducts searches in Delhi,

Punjab and West Bengal

21st September, 2021

The Income Tax Department carried out a search and seizure operation on 18.09.2021 on a leading business house of India involved in manufacture of textile and filament yarn having corporate offices in Delhi, Punjab and Kolkata.

During the course of the search operation, many incriminating documents, loose sheets, diaries, digital evidences etc have been recovered which indicate involvement of the group in routing of unaccounted funds back in its Indian entities, possession of foreign bank accounts unreported to the Department. Substantial evidence of transactions outside the books of accounts, cash transactions in land deals, bogus expenses debited in books of accounts, unaccounted cash expenditure, accommodation entries taken from entry operators have been gathered.

The group has maintained unaccounted funds of about Rs. 350 crore in its foreign bank accounts and has also routed these funds back into its business through shell entities in tax havens. The modus operandi detected was related to investment by foreign entities, under control of the group, in Foreign Currency Convertible Bonds, issued by its main concern, and subsequently under the garb of defaulting on payments, converting it into shares of the company. It was also seen that foreign companies and trusts were being paid management fees for managing the unaccounted funds. Though there is a specific requirement of disclosing foreign assets owned/managed in the form of companies and bank accounts in Schedule FA in Income Tax Returns, the same has not been disclosed by the group to the Department.

Details of accounts related to unexplained personal expenditure in cash were found to be meticulously maintained in one of the main offices of the company. Evidence has been gathered that cash of about Rs. 100 crore was generated by debiting bogus expenditure in company accounts and cash transactions in land deals.

The search operation is still continuing and further investigations are in progress.

Income Tax Department conducts searches in West Bengal

21st September, 2021

The Income Tax Department carried out a search and seizure operation on 17.09.2021 on a prominent group engaged in manufacturing of steel products. 25 premises consisting of 8 residences, 9 offices and 8 factories, spread over Kolkata, Durgapur, Asansol and Purulia and other regions of West Bengal were covered in the operation.

The search operation has led to the detection of huge quantity of incriminating documents and digital evidence from different premises. Evidences pertain to generation of unaccounted income by the group by way of unaccounted cash sales, unaccounted cash expenditure, purchase from bogus parties, under-reporting of actual production, cash purchases of scrap, several documents of land purchases and sale etc. Evidence has also been found pertaining to the utilisation of the unaccounted income in the form of unsecured loans and sale of shares of shell entities though layering of the unaccounted income. A large number of property documents pertaining to one of the members of the group, showing land and property holding in different names, have also been seized. The total amount of such incriminating evidences pertaining to the manufacturing group exceeds Rs. 700 crore. The operation has led to seizure of unaccounted cash amounting to Rs.20 lakh while 2 lockers remain to be operated.

During the search operation, an accommodation entry provider, who was providing entries to the searched group, was also covered. From his secret back office, huge number of incriminating documents pertaining to providing accommodation entries through modes like sale of shares of shell companies, unsecured loans from shell entities, bogus billing, etc. have been found, the total amount of which runs into several hundreds of crores of rupees. Evidence of more than 200 companies/entities having more than 200 bank accounts being managed from the entry operator's premises have been found. On the basis of preliminary examination of these documents, it appears that these bank accounts and entities have been used as conduit to route the unaccounted income of many beneficiaries.

Further investigations are in progress.

Gross Direct Tax collections for the Financial Year (FY) 2021-22 register a growth of 47%

Advance Tax collections for the FY 2021-22 stand at Rs. 2,53,353 crore as on 22.09.2021which shows a growth of approximately 56%

Refunds aggregating to Rs. 75,111 crore have been issued in the current fiscal

24thSeptember, 2021

The figures of Direct Tax collections for the Financial Year 2021-22, as on 22.09.2021 show that net collections are at Rs. 5,70,568 crore, compared to Rs. 3,27,174 crore in the corresponding period of the preceding Financial Year i.e. FY 2020- 21, representing an increase of 74.4%. The net collection (as on 22.09.2021) in FY 2021- 22 has registered a growth of 27% over FY 2019-20 when the net collection was Rs. 4,48,976 crore.

The Net Direct Tax collection of Rs. 5,70,568 crore (as on

22.09.2021) include Corporation Tax (CIT) at Rs. 3,02,975 crore (net of refund) and Personal Income Tax (PIT) including Security Transaction Tax(STT) at Rs. 2,67,593 crore (net of refund).

The Gross collection of Direct Taxes (before adjusting for refunds) for the FY 2021-22 stands at Rs. 6,45,679 crore compared to Rs. 4,39,242 crore in the corresponding period of the preceding financial year, registering a growth of 47% over collections of FY 2020-21. The Gross collection (as on 22.09.2021) in FY 2021-22 has registered a growth of 16.75% over FY 2019-20 when the Gross collection was Rs. 5,53,063 crore.

The Gross collection of Rs. 6,45,679 crore includes Corporation Tax (CIT) at Rs. 3,58,806 crore and Personal Income Tax (PIT) including Security Transaction Tax(STT) at Rs. 2,86,873 crore. Minor head wise collection comprises Advance Tax of Rs. 2,53,353 crore; Tax Deducted at Source of Rs.3,19,239 crore; Self-Assessment Tax of Rs. 41,739 crore; Regular Assessment Tax of Rs. 25,558 crore; Dividend Distribution Tax of Rs.4,406 crore and Tax under other minor heads of Rs. 1383 crore.

Despite extremely challenging initial months of the fiscal year 2021-22, the Advance Tax collection in the second quarter (1st July, 2021 to 22nd September, 2021) of FY 2021-22 is Rs. 1,72,071 crore which shows a growth of 51.50% over the corresponding period in FY 2020-21 when the Advance Tax collection was Rs. 1,13,571 crore.

The cumulative Advance Tax collections for the first and second quarter of the FY 2021-22 stand at Rs. 2,53,353 crore as on 22.09.2021, against Advance Tax collections of Rs. 1,62,037 crore for the corresponding period of the immediately preceding Financial Year i.e 2020-21, showing a growth of 56%(approximately). Further, the cumulative Advance tax collection of Rs. 2,53,353 crore as on 22.09.2021 (FY 2021- 22) shows a growth of 14.62% over the corresponding period in FY 2019-20 when the Advance Tax collection(cumulative) was Rs. 2,21,036 crore. The Advance Tax collection of Rs. 2,53,353 crore as on 22.09.2021 comprises Corporation Tax (CIT) at Rs. 1,96,964 crore and Personal Income Tax (PIT) at Rs. 56,389 crore. This amount is expected to increase as further information is awaited from Banks.

Refunds amounting to Rs. 75,111 crore have also been issued in the FY 2021- 22 so far.

Income Tax Department conducts searches in Tamil Nadu

25th September, 2021

The Income Tax Department carried out search and seizure operations on 23.09.2021 on two private Syndicate Financing groups based in Chennai. The search operation was carried out at 35 premises located in Chennai.

The evidence found in the premises of the financiers and their associates revealed that these groups have lent to various big corporate houses and businesses in Tamil Nadu, a substantial portion of which is in cash. During the search, it was detected that they are charging high rate of interest, a part of which is not offered to tax. The modus operandi adopted by the groups revealed that most of the interest payments by borrowers are received in dummy bank accounts and the same has not been disclosed for tax purposes. Further, the unaccounted monies are disguised and brought into the books of account of the groups as unsecured loans, sundry creditors, etc.

Other evidence found during the course of the search revealed numerous undisclosed property investments and other income suppression by these persons.

The searches, so far, have resulted in the detection of undisclosed income of more than Rs. 300 crore. Unaccounted cash of Rs. 9 crore has been seized so far.

Further investigations are in progress.

Income Tax Department conducts searches in Gujarat

25th September, 2021

The Income Tax Department carried out search and seizure operations on 22.09.2021 on premises of a leading Diamond manufacturer and exporter from Gujarat, based on intelligence input about tax evasion. Apart from the diamond business, the group was also in the business of manufacturing of tiles. The operation covered 23 premises located in Surat, Navsari, Morbi, Wankaner in Gujarat & Mumbai in Maharashtra.

The highlight of the search includes seizure of large volume of unaccounted data seized in paper as well as digital form, which was kept at secret locations under the custody of its trusted employees at Surat, Navasari, Mumbai. The data includes proof of unaccounted purchases, unaccounted sales, taking accommodation entries for purchases against which cash is received, the movement of such cash and stock through angadia firms, keeping the unaccounted cash with angadias, investment of such unaccounted income for purchase of property and stock, etc for the last five years.

The primary analysis of data reveals that the assessee has made unaccounted purchase and sale of small polished diamonds of about Rs. 518 crore over the period. Further, the data reveals that the assessee has sold more than Rs. 95 crore of diamond scrap in cash generated from its manufacturing activities, which remains unaccounted for and represents its income. The assessee, over these years, has accounted for sale of about Rs. 2,742 crore of small diamonds in its books, against which, substantial part of purchases were made in cash, but the purchase bills were taken from accommodation entry providers.

Furthermore, the assessee was also making its major purchases of rough diamonds through imports and making export sales of finished bigger diamonds through its company registered in Hongkong, which is effectively controlled and managed from India only. The data reveals that the assessee has made purchases of Rs. 189 crore and sale of Rs. 1040 crore in the last two years through this entity.

During the search, the complete financial transactions of real estate deals were found which led to the detection of unaccounted income of Rs. 80 crore. Further, the sale transactions of shares pertaining to the business of tiles were examined, which led to the detection of Rs. 81 crore of unaccounted income.

During the search operation, unaccounted cash and jewellery of Rs. 1.95 crore has been seized, and unaccounted diamond stock of 8900 carat worth Rs. 10.98 crore has been detected so far. A large number of lockers belonging to the group have been identified, which have been placed under restraint and will be operated in due course.

The search operation is still continuing and further investigations are in progress.

Income Tax Department conducts searches in Gujarat

25th September, 2021

The Income Tax Department carried out a search and seizure operation on 23.09.2021 on a group of four major Steel Rolling Mills based in Jalna, Maharashtra. These companies are engaged in the business of manufacturing steel TMT bars and billets mostly using steel scrap as raw material. The operation was conducted in more than 32 premises spread across Jalna, Aurangabad, Pune, Mumbai and Kolkata.

During the course of the search and seizure operation, many incriminating documents, loose sheets and other digital evidences were found and seized. These evidences clearly indicate the involvement of the companies in large scale unaccounted financial transactions made outside the regular books of accounts, including inflation of purchases using entry providers, unaccounted cash expenses and investments, etc. The evidences found also indicate the laundering of substantial amount of unaccounted income earned by the companies in the guise of share premium and unsecured loans using shell companies. Evidence for unaccounted purchase in excess of Rs.200 crore has been found. Huge quantity of unaccounted stock was also found in the factory premises of the companies.

12 bank lockers were unearthed during the search operation. Unaccounted cash of more than Rs. 2.10 crore and jewellery amounting to Rs. 1.07 crore has been seized from different premises. Evidence detected so far, indicates that, unaccounted income is likely to exceed Rs. 300 crore and the four companies have already disclosed additional income to the extent of Rs. 71 crore consequents to the search.

Further investigations are in progress.

JUDGEMENTS

INDIRECT TAX

GST applicable on Royalty paid on Tertiary Treated Water supplied to MAHAGENCO: The AAR, Maharashtra

Fact of the Case

The applicant, Nagpur Municipal Corporation (NMC) is constituted under the city of Nagpur Corporation Act, 1948. Therefore, NMC is a "Local Authority". The NMC, under Article 243W of the Constitution of India, read with 12th Schedule to the Constitution, is required to provide the services of management of sewage system for the city of Nagpur for which, it has set up and is operating the Sewage Treatment Plant (STP) located at Bhandewadi, Nagpur for reuse of Sewage Effluent/Water.

NMC thereafter decided to augment and expand capacity of existing SWP and for that has appointed the applicant, under PPP contract basis, for Implementing, Designing, Engineering, Developing in Financing, Procurement, Supply, Install, Construction, Augmentation, Testing and Commissioning of all Civil, Electrical, Mechanical and Instrumentation works consisting of Intake works and Raw Sewage Pumping station, Transmission pipelines from Intake works to existing STP, Augmentation of existing STP, Treated Sewage Pumping station and Tertiary Treated facility (if any) along with operation and maintenance of the entire plant for treatment of sewage water for a period of 30 years, under a contract, to set up and operate the Sewage Treatment Plant (STP) located at Bhandewadi, Nagpur on Build Operate and Transfer basis (BOT basis).

The applicant has sought the advance ruling on the issue Whether the Royalty paid or payable by the applicant to Nagpur Municipal Corporation (NMC) for supplying "Tertiary Treated Water" to Mahagenco, by treating the Sewage Water supplied by IMC is liable to tax under the GST Law.

Decision of the Case

The coram ruled that the Royalty paid or payable by the applicant to Nagpur Municipal Corporation (NMC) for supplying "Tertiary Treated Water" to Mahagenco, by treating the Sewage Water supplied by IMC is liable to tax under the GST Law.

The AAR further added that the taxes are to be paid by the applicant under reverse charge basis (RCM). NMC is not liable to pay taxes on the subject transaction in present order. ITC would be available to the applicant subject to fulfillment of the conditions mentioned under sections 16 to 21 of CGST/MGST ACT, 2017.

The Maharashtra Authority of Advance Ruling (AAR) held that GST applicable on Royalty paid on Tertiary Treated Water supplied to Maharashtra State Electricity Generating Co. Ltd. (MAHAGENCO).

GST payable on Amount Forfeited on account of Breach of Agreement of Sale of Land: The AAR, Gujarat

Fact of the Case

The applicant, has submitted that they want to sell factory land to Mr. B for Rs.1 crore. Mr. B showing acceptance to the sale agreement, gives advance money amounting to Rs. 20 lakhs which is 20% of the total sale amount. Now for some reasons Mr. B could not complete the transaction upon which Fastrack forfeits an amount of Rs. 20 lakhs.

The applicant has sought the advance ruling on the issues whether the amount forfeited on account of breach of agreement of sale of land is liable to GST or not and who will be considered as Service Receiver and Service Provider. The coram of Sanjay Saxena and Mohit Aggarwal ruled that the amount forfeited by Fastrack will attract GST.

Decision of the Case

"As per Section 7(1) of the CGST Act, 2017, activities referred to in Schedule II are covered under the scope of supply of goods and service. Clause 5(e) to Schedule II to CGST Act 2017, declares that 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' shall be treated as supply of service. The amount, which was received from Mr. B and forfeited by the applicant, was a part of the terms and condition of an agreement held between the applicant and Mr. B (customer). This means that while entering into the agreement, Mr. B was well aware about the terms and condition of the contract that in absence of breach of agreement or non- fulfillment of terms and condition of payment as per the contract, the amount given as an advance would become forfeited by the applicant being settlement of exit of the contract," the AAR said.

The AAR further said that the amount forfeited/ received by the applicant is covered under supply of service as per clause 5(e) of Schedule II of CGST Act, 2017 and therefore, liable to GST

The Gujarat Authority of Advance ruling (AAR) ruled that GST payable on Amount forfeited on account of breach of agreement of sale of land.

No GST Registration required if Supplies Exempted from GST: The AAR, Maharashtra

Fact of the Case

The Maharashtra Jeevan Pradhikaran (MJP) has appointed Mekorot Development & Enterprise Ltd (MDE) as a consultant for the study, survey, drafting and formation of the Water Supply Master Plan (WSMP) to address the water drought problem in the Marathwada region and assist the Government of Maharashtra (GOM) to make a comprehensive strategy to solve the Marathwada (Aurangabad division) Water Crisis permanently. In this case MDE is the applicant.

MDE is a fully owned subsidiary of Mekorot, the national water company of Israel which is fully owned by the Government of Israel. MJP is a Government of Maharashtra undertaking established through The Maharashtra Jeevan Authority Act, 1976. MJP was constituted in 1977 under The Maharashtra Water Supply and Sewerage Board Act, 1976 (MWSSB Act), for rapid development and proper regulation of Water Supply and Sewerage service in the State of Maharashtra. The act was later changed to The Maharashtra Jeevan Authority Act. 1976. MJP being a GOM undertaking, the Maharashtra state government holds 100% controlling power in MJP.

The applicant has sought the advance ruling on the issue if it is concluded that the supplies made or proposed to be made by MDE to MJP qualifies for an exemption then the consequent question is whether MDE requires to obtain registration under GST law.

Decision of the Case

The Coram ruled that if the impugned supplies made or proposed to be made by the applicant to MJP are the only supplies undertaken by the applicant, in such a case, the applicant is not required to obtain registration under GST law, since the impugned supply is held to be exempt under the provisions of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017.

However, if the applicant is undertaking or proposes to undertake any taxable supply of goods or services or both, then in such a scenario the applicant will be required to obtain GST registration under section 22 of the GST Act, on crossing the threshold turnover limit.

The Maharashtra Authority of Advance Ruling (AAR) ruled that no GST Registration was required if supplies were exempted from GST.

18% GST payable on Crumb Rubber or Granule: The AAR, Maharashtra

Fact of the Case

The applicant, Green Rubber Crumb Private Ltd. has been producing crumb rubber/granules from used/waste tyres and has submitted during the course of the hearing that the waste/used tyres are not usable because they are worn out tyres due to wear and tear.

The applicant has submitted that Crumb rubber or granules less than 35 mm having a mixture of rubbers mentioned in 4001, falls under 4002. Even if the granule/ crumb is manufactured from waste /used tyres it is a finished product and not a waste. MOEF which is a recognized agency to differentiate waste from the finished product has clarified that powder/ granules which are generated as a by-product during the manufacture of a product is waste and hence should be classified as 4004. However, when some powder or granule is made as the main product by processing any waste rubber it is considered a finished product under 4002.

The applicant has sought the advance ruling on the issue in respect of HSN classification of Crumb rubber/granule and applicability of Current duty.

Decision of the Case

The Coram noted that Powders and granules, obtained from such goods of such rubber (other than hard rubber) are definitely not usable as such because of cutting-up, wear or other reasons" which includes worn-out rubber tyres, are covered under Heading 4004.

"In view of the above discussions, we find that the used/ waste tyres, made of rubber are nothing but rubber and rubber goods not usable as such because of cutting up, wear or other reasons from which the subject goods are produced. Thus the impugned goods are squarely covered under the Heading 40.04 of the GST Tariff Act, 2017," the AAR said.

The Maharashtra Authority of Advance Ruling (AAR) ruled that 18% GST is payable on Crumb rubber or granule.

5% GST payable on Supply of Batteries for Use in Warships such as Submarines of Indian Navy: The AAR, Maharashtra

Fact of the Case

The applicant, M/s. Exide Industries Limited, manufactures and supplies lead-acid storage batteries falling under Chapter 85 of the First Schedule to the Customs Tariff Act 1975.

The applicant has sought an advance ruling on the rate of GST leviable on the supply of batteries for use in warships, specifically submarines, by the Indian Navy. The applicant also seeks applicability of Entry No. 252 of Notification No. 01/2017-Integrated Tax (Rate) for the supply of batteries for use in warships, specifically submarines, to the Indian Navy.

Decision of the Case

The Coram noted that batteries will be considered as parts

of vessels falling under heading 8901, 8902, 8904 to 8907, only if they are used in manufacturing goods falling under Tariff Headings 8901, 8902, 8904 to 8907.

The AAR held that the batteries supplied by them for exclusive use in goods falling under heading 8901, 8902, 8904 to 8907 will be taxable at the rate of 5% IGST (2.5% CGST and SGST each). However, it is to reiterate that the benefit of reduced CGST and SGST for such batteries is RULINA only available if the said batteries are used as parts of goods falling under heading 8901, 8902, 8904 to 8907 of the GST Tariff. The benefit of reduced GST rates would not be available in respect of subject batteries supplied for use in goods other than goods of heading 8901, 8902, 8904 to 8907 of the GST Tariff.

"Batteries are essential requirements in the manufacture of submarines and are classified under heading 85 of the GST Tariff and are parts of submarines. Since the subject goods are meant for use in the manufacture of submarines and are supplied for purpose of use or application in the manufacture of goods that are classifiable under Tariff headings 8901, 8902, 8904, 8905, 8906, 8907, the said goods can be considered as parts of a submarine. Entry at Sr. No. 252 covers goods that merit classification under "Any Chapter" of the GST Tariff wherein the description in Sr. No. 252, is "Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907". Accordingly, in the present matter, the Subject Goods will be covered under Sr. No.252," the AAR noted.

The Maharashtra Authority of Advance Ruling (AAR) ruled that 5% GST payable on the supply of batteries for the use in warships such as submarines of the Indian Navy.

DIRECT TAX

Private Parties can't apportion Income Tax Liabilities By Private Agreements: Delhi High Court

Rajeev Behl Vs PCIT (Delhi High Court)

Appeal Number : W.P.(C) 7869/2021 & CM APPL. 24474-475/2021

Date of Judgement/Order : 24/09/2021

Fact of the Case

1. Mr. Salil Aggarwal, the counsel for the petitioner, Rajiv Bhel stated that no action to recover the demand from the Realtech Group of Companies had been taken by the Assessing Officer.

2. He also stated that the three Directors of Realtech group of companies had agreed amongst themselves that the tax liabilities of the Realtech Group would be borne by one of the directors, namely, Mr. Pankaj Dayal and therefore the recovery against the petitioner was bad in law.

3. In support of his contention, senior counsel for the petitioner relied upon the MOU by which the tax liabilities of the Realtech Group of Companies were assumed by one of the Directors by way of a private arrangement between the Directors of the company of the various companies of Realtech Group and later affirmed by an Arbitral Award which was subsequently upheld by this Court.

4. On the other hand, the counsel for the respondents submitted that the present petition was an abuse of process of law as the petitioner was seeking to settle his private scores with different parties through the income tax department.

5. According to him, on this ground alone, the petition deserves to be dismissed with costs.

Decision of the Case

1. The division bench of Justice Manmohan and Navin Chawla held that the MOU, Settlement Deed, and an Arbitral Award govern rights in personam and cannot bind a statutory authority like the respondent-Revenue.

2. It is settled law that while rights in personam are arbitrable, rights in rem are unsuited for private arbitration and can only be adjudicated by the Courts or Tribunals.

No Disallowance of Interest for earning exempt Income u/s 14A: ITAT grants relief to Bajaj

M/s Bajaj Resources Ltd vs. The A.C.I.T, New Delhi

ITA No. 4018/DEL/2018 [A.Y 2014-15]

Date of Judgement/Order : 24.09.2021

Fact of the Case

1. The assessee company, M/s Bajaj Resources Ltd is engaged in the business of Ownership of FMCG product brands activities for development of brands and inter-corporate deposits.

2. Return of income for the year under consideration was filed admitting a total income under normal provisions and under the provisions of section 115JB of the Income-tax Act, 1961. The return was selected for scrutiny assessment and accordingly, notices were issued and duly served on the assessee.

3. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed exemption in respect of dividend income and profit in LLP. The Assessing Officer found

that no expenditure in relation to exempt income was disallowed by the assessee u/s 14A of the Act.

4. It was strongly contended that the assessee has sufficient own interest free funds to make investments and, therefore, there is no question of investment made out of borrowed funds.

5. It was brought to the notice of the CIT(A) that all these investments have been made in earlier assessment years and no borrowed funds were utilised for making these investments.

6. The CIT(A) held that the submissions of the appellant are comprehensive regarding why Section 14A should not be applicable. There is no doubt that investment has been made to enhance the business of the group company and lesser intention of getting interest free income, which was challenged by the Revenue.

Decision of the Case

1. The coram of Judicial Member Sudhanshu Shrivastava and Accountant Member, N.K.Billaiya in light of the financial statements exhibited elsewhere, and in light of the ratio laid down by theSupreme Court in the case of South Indian Bank Ltd held that there cannot be any disallowance of interest for earning exempt income and there is no reason to interfere with the findings of the CIT(A).

2. In so far as the disallowance on account of administrative expenses is concerned, the ITAT found that there is no dispute that all the investments are made in the sister concern in which the assessee has deep business interests and under business expediency, it has invested various amounts in shares of group companies. These investments are strategic investments made for furtherance of business of its sister concern.

3. In a relief to Bajaj Resources Ltd, the Delhi bench of Income Tax Appellate Tribunal (ITAT) ruled that no disallowance can be made on interest for earning exempt income under section 14A of the Income Tax Act.

No Disallowance merely when Assessee has not earned any Business Income but Office, Infrastructure is Ready for Future Business

Dhanyata Enterprises Private Limited vs. The DCIT, New Delhi

ITA.No.404/Del./2020

Date of Judgement/Order : 24.09.2021

Fact of the Case

1. The assessee, Dhanyata Enterprises Private Limited has not carried out any business activity during the year and no business income has been declared, the A.O. asked the assessee to explain as to why the expenses were debited in the P & L A/c should not be disallowed. It was explained by the assessee that all the expenses incurred by the assessee are for business purposes.

2. However, the A.O. was not satisfied with the explanation given by the assessee. He observed that apart from claiming salary expenses of Rs.6 lakhs under the Head "Employee Benefits", the assessee has also incurred various expenses.

3. The assessee submitted that it has not stopped its business activity and because of less number of students, it was not viable for the assessee to run the business so the assessee did not prefer to incur huge expenditure and thereby huge loss.

Decision of the Case

1. The Coram of Accountant Member, R.K. Panda in the light of the decision of Delhi High Court in the case of Commissioner of Income Tax vs., Integrated Technologies Ltd. ruled that merely because the assessee has not earned any business income during the year, but, has every intention to revive the same, therefore, the various expenses debited to the P & L A/c cannot be disallowed especially when the assessee is maintaining its Office and kept its infrastructure ready for future business.

2. In this view of the matter The ITAT while setting aside the order of the CIT(A) directed the AO to allow the expenses claimed at Rs.9,94,872/-.

Relief to Toyota: ITAT allows Income Tax Deduction of CSR Expenses towards provision of Toilet facilities in Govt. Schools

M/s. Toyota Boshoku Automotive India Private Limited vs.

The Deputy Commissioner of Income Tax, LTU-Bangalore

ITA No.1704/Bang/2018

Date of Judgement/Order : 24.09.2021

Fact of the Case

1. In the present case M/s. Toyota Boshoku Automotive India Private Limited is the assessee

2. The company, during the relevant assessment year, paid a sum of Rs.6,10,541/- towards provision of toilet facilities in government schools where the children of employees of the assessee were studying. While filing the income tax returns for the year, the assessee claimed the amount as CSR expenses and submitted that by incurring the expenses, its productivity improves and the loyalty of its employees are also ensured.

3. The AO took the view that the expenditure had no nexus with the business of the assessee and he accordingly disallowed the claim of the assessee for deduction.

4. It was contended on behalf of the assessee that the expenditure was incurred for the purpose of business of the assessee and should be allowed as a deduction. However, the authorities, including the CIT(A) held that the expenses were in the nature of corporate social responsibility and were therefore not allowable in view of explanation 2 to section 37(1) of the Act.

Decision of the Case

1. The Tribunal bench comprising ITAT Vice President N V Vasudevan and Accountant Member B R Bhaskaran observed that Explanation 2 to section 37(1) of the Act was inserted by the Finance Act, 2014 w.e.f. 01.04.2015 and therefore not applicable to Assessment Year 2012-13.

2. "The CIT(A) was therefore not right in concluding that the expenditure in question was in the nature of corporate social responsibility and hence not allowable as a deduction. We are of the view that going by the nature of expenses incurred by the assessee, the deduction claimed should be allowed.

Relief to Shell India: No TDS on consideration received from Resale / Use of Computer Software through EULAs/Distribution Agreements: ITAT

Shell India Markets Private Limited vs. ITO(TDS)

Mumbai

I.T.A. Nos. 6064, 6065, 6066 and 6067/Mum/2019

Date of Judgement/Order : 24.09.2021

Fact of the Case

1. In the present case Shell India is the assessee

2. During the assessment proceedings, the Assessing Officer held that the payments made by the assessee in respect of the payments made to M/s. Shell International B.V. (SIBV) under the (1) Terms of agreement of the Service Order 1 for availing the HR helpdesk support services and ongoing support services are subject to TDS under section 195 of the Income Tax Act, 1961.

Decision of the Case

1. Judicial member Pavan Kumar Gadale and Accountant Member Shamim Yahya found that assessee's plea that issue is squarely covered in favour of the assessee by the decision of Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Private Limited v. CIT is acceptable where the Court has elaborately examined the issue and has decided the issue in favour of the assessee.

2. The Income Tax Appellate Tribunal (ITAT), Mumbai bench has held that Shell India not taxable in India for consideration received from resale/use of the computer software through EULAs/distribution agreements since the amount does not constitute 'royalty' within the meaning of section 195 of the Income Tax Act, 1961.

Relaxation to Normal Taxpayers in Filing of Monthly Return in Form GSTR-3B		
Tax Period	**Class of Taxpayer (Based on AATO)**	**Due date of filing**
September, 2021	> Rs. 5 Cr.	20th October, 2021

Relaxation in filing of Form GSTR-3B (Voluntary Monthly Taxpayer less than 5cr)		
Tax Period		**Due date of filing**
September, 2021	Category A	22nd October, 2021
September, 2021	Category B	24th October, 2021

Others Returns		
From	**Description**	**Due Date**
GSTR - 1	Monthly	
	September, 2021	11th October, 2021
GSTR - 5 & 5A	Filed by Non-resident taxable person and OIDAR respectively	
	September, 2021	20th October, 2021
GSTR - 6	For input Services Distributor who are required to furnish details of invoice on which credit has been received	
	September, 2021	13th October, 2021
GSTR - 7	Filed by person required to deduct TDS under GST	
	September, 2021	10th October, 2021
GSTR - 8	E-commerce operator who are required to deduct TCS	
	September, 2021	10th October, 2021

INCOME TAX EXTENSION FOR A.Y. 2021-22

Particulars	Original Due Date	Extended Due Date	Further Extended Due Date
Income Tax Return for Regular Assessees (Non-Audited)	31.07.2021	30.09.2021	31.12.2021
Tax Audit Assessees	31.10.2021	30.11.2021	15.02.2022
Assessees with Transfer Pricing Report	30.11.2021	31.12.2021	28.02.2022
Belated/Revised (ITR)	31.12.2021	31.01.2022	31.03.2022
Furnishing Tax Audit Report	30.09.2021	31.10.2021	15.01.2022
Transfer Pricing (TP) Report	31.10.2021	30.11.2021	31.01.2022

DIRECT TAX CALENDAR – OCTOBER, 2021

Due Date	Compliances
7 October 2021	➢ Due date for deposit of tax deducted/collected for the month of September, 2021. 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
	➢ Due date for deposit of TDS for the period July 2021 to September 2021 when Assessing Officer has permitted quarterly deposit of TDS under **section 192, 194A, 194D** or **194H**
15 October 2021	➢ Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of September, 2021 has been paid without the production of a challan
	➢ Due date for issue of TDS Certificate for tax deducted under **section 194-IB, 194-IA & 194-M** in the month of August, 2021
	➢ Quarterly statement of TCS deposited for the quarter ending September 30, 2021.
	➢ 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 September, 2021
30 October 2021	➢ Due date for furnishing of challan-cum-statement in respect of tax deducted under **section 194-IA, 194-IB & 194-IM** in the month of September, 2021

	➢ Quarterly **TCS certificate** (in respect of tax collected by any person) for the quarter ending September 30, 2021
31 October 2021	➢ Intimation by a designated constituent entity, resident in India, of an international group in **Form no. 3CEAB** for the accounting year 2020-21
	➢ Quarterly statement of **TDS deposited** for the quarter ending September 30, 2021
	➢ Due date for furnishing of Annual audited accounts for each approved programmes under **section 35(2AA)**
	➢ Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending September 30, 2021
	➢ Copies of declaration received in **Form No. 60** during April 1, 2021 to September 30, 2021 to the concerned Director/Joint Director
	➢ Due date for e-filing of report (**in Form No. 3CEJ**) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager (if the assessee is required to submit return of income on October 31, 2021).
	➢ Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is October 31, 2021).
	➢ Application in **Form 9A** for exercising the option available under Explanation to **section 11(1)** to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on October 31, 2021).
	➢ Statement in Form no. 10 to be furnished to accumulate income for future application under **section 10(21)** or **section 11(1)** (if the assessee is required to submit return of income on October 31, 2021).
	➢ Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2019-20 and of foreign tax deducted or paid on such income in Form no. 67. (If due date of submission of return of income is October 31, 2021).
	➢ Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under **section 35(2AB)** [if company does not have any international/specified domestic transaction]
	➢ Payment of tax under the Direct Tax **Vivad se Vishwas** Act, 2020 with additional charge

COURSES OFFERED BY
TAX RESEARCH DEPARTMENT

[illegible]

- 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

EXISTING COURSES

[illegible]

[illegible]- Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

[illegible] Rs. 1, 000 + 18% GST
[illegible] – 30 Hours
M[illegible] – Online

[illegible]M [illegible]

[illegible] Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

[illegible] Rs. 1, 000 + 18% GST
[illegible] – 30 Hours
M[illegible] – Online

[illegible]

[illegible] Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

[illegible] Rs. 1, 000 + 18% GST
[illegible] – 72 Hours
M[illegible] – Online
** Special Discount for Corporate*

[illegible]

[illegible]- Rs. 14,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

[illegible] Rs. 1, 000 + 18% GST
[illegible] – 40 Hours
M[illegible] – Online

[illegible]

[illegible] – 50 (Minimum)

[illegible] B.COM/B.B.A pursuing or completed
M.COM/M.B.A pursuing or completed

[illegible] Rs. 1,000 + 18% GST
[illegible] Rs. 200 + 18% GST
[illegible] 32 Hours

[illegible]M [illegible]

[illegible] – 50 (Minimum)

[illegible] B.COM/B.B.A pursuing or completed
M.COM/M.B.A pursuing or completed

[illegible] Rs. 1,500 + 18% GST
[illegible] Rs. 500 + 18% GST
[illegible] 32 Hours

Admissions open for the courses - *https://eicmai.in/advscc/DelegatesApplicationForm-new.aspx*

NEW COURSES

[illegible]M [illegible]

[illegible]- Rs. 12,000 +18% GST [Including Exam Fee]
[illegible] – 30 Hours
M[illegible] – Online

[illegible]M [illegible]

[illegible]- Rs. 12,000 +18% GST [Including Exam Fee]
[illegible] – 30 Hours
M[illegible] – Online

[illegible]

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

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

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

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. 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.

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

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