DTPA
ज्ञानं एक्यं च न्यायार्थम
Estd. 1982
Direct Taxes Professionals' Association
eBulletin

Headlines

September, 2020

Dear friends,

It give me immense pleasure to share the Fourth Edition of our DTPA E- BULLETIN for the month of September 2020. This month will be very busy for we professionals as tax audit due date for year ended 31st March 2020 and GSTR 9/9C relevant to financial year 2018-19 is getting due on 31st October 2020. Further festive season of Durga Puja and Laxmi Puja is also in the month of October.

Representation has been made for the extension of the due date of tax audit for the year ended 31st March 2020.

Wishing you Happy Durga Puja and Subho Bijayo in advance.

With regards

CA MAHENDRA K AGARWAL
Chairman- DTPA Journal Committee
5th October, 2020

Dear Members,

I am pleased to know that the Journal Sub Committee has prepared the E-Bulletin for the month of September 2020 well on time. The Bulletin is before you and I am sure you will find its contents useful.

DTPA Journal Sub-Committee Team, Office Bearers and Executive Committee members are all extending a great assistance in preparation of these Bulletins and deserve a big applaud.

I request all the members to send their articles and compilations for upcoming Bulletins at dtpakolkata@gmail.com.

Wishing you all good health,

With regards

CA Narendra Kumar Goyal
President -DTPA
5th October, 2020

TCS on Sale of Goods U/S. 206C (1H)

CA Raj K Lakhotia

The Finance Act, 2020 has introduced a new sub section (1H) to section 206C which has cast responsibility on seller to collect and deposit TCS as per rates specified therein for sale of goods in excess of 50 Lakhs during a year. The said amendment has given rise to numerous questions. We have tried to deal with few of them in this article.

The newly introduced sub section is reproduced below;

(1H) Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax:

Provided that if the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words "five per cent", the words "one per cent" had been substituted:

Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

Explanation.—For the purposes of this sub-section,—

(a) "buyer" means a person who purchases any goods, but does not include,—

(A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(B) a local authority as defined in the Explanation to clause (20) of Section 10; or

(C) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;

(b) "seller" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by

notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Let us deal with few issues which have emerged due to the above amendment. Few issues need immediate attention and clarification from the authorities before implementation to avoid any mistake.

Q1. When does the section 206C (1H) come into effect?

The provisions of this section shall be effective from 01st of October 2020.

Q2. Who is liable to collect TCS?

The "seller" as defined in the section, is liable to collect TCS and deposit with the Government. Only those sellers whose sales, gross receipt or turnover from business for immediately preceding financial year exceeds Rs. 10 crore are liable to collect TCS. Whether a Non Resident who is selling goods to a Resident Indian would also be liable to collect and deposit TCS is a matter of debate as the definition of "seller" and "buyer" has not excluded Non Residents from its purview.

Q3. Whether provisions of 206C (1H) shall be applicable for newly incorporated entities?

In case of newly incorporated entities, the sales for immediately preceding financial year is NIL, hence TCS provision shall not be applicable.

Q4. Whether TCS is applicable on amount over and above 50 Lakhs or on the entire consideration?

As per the provisions, TCS is required to be collected on amount over and above 50 Lakh. If suppose the total consideration for sale of Goods is 90 lakhs then TCS is required to collect on 40 lakh only and not on entire 90 lakhs.

Q5. What would be the rate of TCS?

The rate at which TCS is required to be deducted is 0.1% of sale consideration exceeding Rs. 50 lakhs. However the Finance Minister has announced measures for relief and credit support related to businesses, especially MSMEs to support Indian economy fight against COVID 19 on 13/05/2020. One of the measures is reduction in rate of TDS and TCS by 25%, and hence the applicable rate for Section 206C (1H) shall be .075% upto 31/03/2021.

Q6. Is the TCS collectible on sale of services also or only on Goods?

The TCS is required to be collected only on sale of Goods and not on services. The Income Tax Act has, however, not defined Goods. As per Sale of Goods Act, 1930,

2(7) "goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

As per above definition goods includes stocks and shares and hence the seller of shares and stocks are also required to collect and deposit TCS on sale of shares. Implementation of the same would be a big challenge.

Also if a company is engaged in the sale of both services and goods, whether the aggregate value of 50 lakhs is to be calculated for sale of goods only or sale of services also to be included, needs to be clarified.

Q7. If a person is selling goods which includes goods for exporting out of India also, whether the amount of goods exported outside India is to be excluded in calculating the limit of Rs. 50 Lakhs.

Ans. As per the provisions of the sub section, the value of goods which are exported outside India is to be ignored for the purpose of calculating the aggregate amount of Rs. 50Lakhs to arrive at the applicability of the provision of this sub section. However, if the goods are sold in the process of export or prior to export, whether TCS is required to be collected or not requires clarity.

Q8. What would be the point at which the collection of Tax shall be done?

The law provides that at the time of receipt of the amount the seller should collect TCS as per the specified rates. Now there could be multiple scenarios. Let us deal with some of them;

Sales made before 01/10/2020 but payment received on or after 01/10/2020 – As the sales has already been concluded before the specified date (i.e. 01/10/2020) in my opinion the TCS is not required to be collected at the time of realisation of money on account of such sales.

Sales made after 01/10/2020 and payment received after 01/10/2020 – The provision shall very well apply to these transaction

Goods sent on consignment / approval before 01/10/2020 – If the approval is accorded after 01/10/2020 the TCS provision shall be applicable.

Q9. Is TCS required to be collected on advance received for sale of goods?

As per the section, the tax collection point is when the consideration for sale is received. Hence the prime requirement for applicability of the provision of this section is conclusion of sale. At the time when advance is received, the sale is yet to be concluded hence in my view it should not be applicable.

Q10. Is TCS required to be collected on Gross amount (i.e. including GST) or on Net Amount?

Vide circular No. 1/2014 dated 13/01/2014, CBDT has clarified that the TDS under chapter XVII-B is to

be deducted on the amount paid or payable without including such service tax component. The said clarification was reaffirmed post GST implementation vide circular No. 23/2017. As TCS Provisions fall under chapter XVII-BB, the TCS needs to be collected on gross amount including taxes till any further clarification in this regard is issued by CBDT.

Q11. What would be the situation in case of sale return? Whether TCS needs to be reversed?

In case the goods are returned before the consideration is received, TCS can be collected on the net amount. However if the goods are returned post payment of consideration, the seller need to seek refund of the amount from the Government.

Q12. Is TCS required to be collected on real estate transactions?

Real Estate does not fall under the definition of Goods as per Sale of Goods Act, 1930 and hence TCS provision shall not be applicable.

Disclaimer

The views expressed in this article are the personal views of the author. Neither the views nor the analysis constitute a legal opinion and are not intended to be an advice. In case of any query please feel free to contact the author CA Raj K Lakhotia, Managing Partner of M/S. LABH & Associates, Chartered Accountants at rajlakhotia@gmail.com

Frequently asked question on TCS on Sale [Section 206C (1H)]

Article by BKS & CO, Chartered Accountants

Q1. When does the section 206C (1H) come into effect?

The section shall come into effect on 1st October, 2020.

Q2. Who is liable to collect TCS?

The "seller" as defined in the section, is liable to collect TCS and deposit with the Government.

Only those sellers whose *sales, gross receipt or turnover* from business for immediately preceding financial year exceeds Rs. 10 crore are liable to collect TCS.

Q3. Whether a Non Resident who is selling goods to a Resident Indian would also be liable to collect and deposit TCS?

The definition of "seller" and "buyer" has not excluded Non Residents from its purview. Hence the matter is debatable.

Q4. Whether provisions of 206C (1H) shall be applicable for newly incorporated entities?

As the *sales, gross receipt or turnover* for a newly incorporated entity immediately preceding financial year is NIL, the TCS provision shall not be applicable for the current financial year. However, it may get applicable in the upcoming financial year.

Q5. How to calculate the TCS amount?

As per the provisions, TCS is required to be collected on amount over and above 50 Lakh. Therefore, if the total consideration for sale of Goods is 90 lakhs then TCS is required to collect on 40 lakh only and not on entire 90 lakhs. TCS need to be collected on Gross bill amount i.e, including GST.

Q6. What would be the rate of TCS?

The rate at which TCS is required to be deducted is 0.1% of sale consideration exceeding Rs. 50 lakhs.

However the Finance Minister has announced measures for relief and credit support related to businesses, especially MSMEs to support Indian economy fight against COVID 19 on 13/05/2020. One of the measures is reduction in rate of TDS and TCS by 25%, and hence the applicable rate for Section 206C (1H) shall be .075% upto 31/03/2021.

Q7. Applicability of the provision is to be assessed on yearly basis?

Yes, the applicability of the provision requires to be assessed on annual basis on the basis of previous years turnover.

Q8. Is the TCS collectible on sale of services also or only on Goods?

The TCS is required to be collected only on sale of Goods and not on services. The

Q9. Whether export sales shall be included in the amount for calculating the TCS for a buyer?

No, the value of goods which are exported outside India is to be ignored for the purpose of calculating the aggregate amount of Rs. 50Lakhs to arrive at the applicability of the provision of this sub section.

Q10. What would be the situation in case of sale return? Whether TCS needs to be reversed?

In case the goods are returned before the consideration is received, TCS can be collected on the net amount. However if the goods are returned post payment of consideration, the seller need to seek refund of the amount from the Government.

Q11. Is TCS required to be collected on real estate transactions?

Real Estate does not fall under the definition of Goods as per Sale of Goods Act, 1930 and hence TCS provision shall not be applicable.

Q12. Is it mandatory to provide PAN or Aadhaar? What happens if PAN or Aadhaar details not provided?

Yes, its mandatory to provide PAN or Aadhaar no., in lack of it in place of 0.1% a higher percentage of 1% shall be collected and deposited.

Q13. What is the challan to deposit the TCS collected?

The seller has to deposit the TCS amount in Challan 281 within 7 days from the last day of the month in which the tax was collected.

If the tax collector responsible for collecting the tax and depositing the same to the government does not collect the tax or after collecting doesn't pay it to the government as per above due dates, then he will be liable to pay interest of 1% per month or a part of the month

Q14. What return is to filled for the TCS deposited?

Every tax collector has to submit **quarterly** TCS return i.e in **Form 27EQ** in respect of the tax collected by him in a particular quarter.

The interest on delay in payment of TCS to the government should be paid before filing of the return.

Q15. Is the provision applicable on retrospective basis?

No, the provisions are not applicable on retrospective basis. Tax has to be collected against the consideration received from the buyer after 01.10.2020. It includes sales made on or prior to 30th September if collection is afterwards.

Q16. Whether any certificate for TCS collected?

Yes, when a tax collector files his quarterly TCS return i.e Form 27EQ, he has to provide a TCS certificate to the purchaser of the goods. Form 27D is the certificate issued for TCS returns filed.

Q17. How to be collect TCS from the buyer?

To collect TCS under Section 206C(1H), the seller needs to raise sale invoice **including the amount of TCS**, account in the books as a TCS liability even though not payable.

Even though the TCS amount is debited to the buyer, the liability under Section 206C (1H) does not arise until the time the amount is collected.

Q18. Whether TCS will be applicable on sale of software?

These provisions **shall not apply** if the buyer is liable to deduct tax at source under any other provision of this Act and has deducted such amount.

Q19. Whether TCS will be applicable on Adhoc sale consideration?

Wherever the amount collected from the buyers is an ad hoc amount, the seller needs to gross it up and remit the TCS accordingly.

Q20. Whether TCS will be applicable on Security deposits?

Where a buyer is required to keep earnest money deposit, security deposit, or performance guarantee, and if such amounts are later on **adjusted towards sale consideration**, the seller still will have to remit TCS.

Q21. Whether TCS will be applicable if TDS is applicable on that transaction? Like; composite contract and turnkey Projects?

The provisions of Section 206C (1H) is not applicable if the buyer is liable to deduct tax at source under any other provision of the Act on the goods purchased by him from the seller under the said contract.

Q22. Who are exempted from this provision?

The following category of buyers are exempted from the said provision:-

- the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state; or
- a local authority as defined in the Explanation to clause (20) of section 10; or
- a person importing goods from India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;

AT A GLANCE:

Due date for TCS Payment, Return filing and issue of TCS certificate

AT A GLANCE:

Due date for TCS Payment, Return filing and issue of TCS certificate

Quarter ended	Due date for furnishing of returns under Form-27EQ	Due date for Issue of TCS certificate under Form-27D
30th June	15th July of the FY	30th July
30th September	15th October of the FY	30th October
31st December	15th Jan of the FY	30th January
31st March	15th May of the immediately following the FY	30th May

Payment is to be made by 7th of next month

Applicability of Insolvency over Anil Ambani

Binay Kumar Singhania

State-run banks are set to invoke the personal guarantees given by as many as 300 promoters for corporate loans following instructions from the finance ministry. The move follows an August 26 communication by the finance ministry to state-run banks, asking them to prepare a list of cases where personal guarantees of promoters can be invoked based on the revised Insolvency Resolution Process Rules, 2019, which has empowered lenders to file bankruptcy applications against personal guarantors of corporate loans before the National Company Law Tribunal (NCLT). The rules came into effect on December 2019.A personal guarantee obligates the guarantor to pay back a business loan if the corporate borrower defaults. In such cases, promoters, typically, provide personal assets as collateral.

Recent instances of invoking personal guarantees include State Bank of India's move against Reliance Group chairman Anil Ambani.The Mumbai bench of the National Company Law Tribunal (NCLT) allowed the initiation of insolvency resolution proceedings against Anil Ambani after two of the companies promoted by him failed to pay dues of Rs 1,200 crore that they had borrowed from State Bank of India.

On being approached by Financial Creditor the NCLT shall allow initiation of insolvency proceedings and appointment of an Insolvency Professional (IP) to act as a Resolution Professional in the matter. However, in case of personal guarantee the bank can attach only the personal property of the guarantor. The lenders are eligible to recover their dues only from the collateral deposited or personal assets belonging to that person. Any or all assets mentioned in the list of assets provided at the time of sanctioning of the loan, even if transferred to someone else, can also be attached and sold.

On Aug. 21, the Mumbai bench of the National Company Law Tribunal had agreed to hear the personal insolvency case against Anil Ambani and appointed a resolution professional to verify the claims of the bank.

Soon after the admission of the Insolvency Resolution Process, Anil Ambani approached a division bench of the Delhi High Court challenging the personal insolvency provisions of the Insolvency and Bankruptcy Code which became effective recently. He has challenged the constitutional validity of the provision regarding the personal guarantee and bankruptcy and argued that there is no provision as such in the IBC for such an order.

Anil Ambani in his petition relied on a recent order in the matter of Lalit Jain, where Delhi High Court stayed insolvency proceedings and issued notices to MCA, IBBI & Law Ministry.In the said matter, Lalit Kumar Jain,a businessman had moved a petition at Delhi high court seeking that the personal insolvency proceedings against him should be stayed. In his petition he claimed that the personal bankruptcy proceedings under Insolvency and Bankruptcy Code was ultra vires, meaning beyond legal authority and power. On 4th Aug, 2020 the Hon'ble High Court ruled that the insolvency proceeding against Lalit Jain should remain stayed but the liability of the petitioner, the personal guarantor, should be examined by the RP.

Following the plea filed by Anil Ambani, the bench of Justice Vipin Sanghi and Justice Rajnish Bhatnagar at the High Court of Delhipassed an order, staying the personal insolvency resolution process proceedings initiated against Mr. Anil Ambani in relation to the recovery of the aforementioned two loans from SBI and placing them on hold. In the same order, the High Court of Delhi also restrained Mr. Anil Ambani from transferring, alienating, encumbering or disposing of his assets or legal rights and interests therein till the next date of hearing in the matter

The Delhi High Court in its order also directed that, in the meantime the proceedings in relation to the Corporate Insolvency Resolution Process (CIRP) would continue for the corporate debtors and while dealing with those proceedings the liability of the Anil Ambani (Personal Guarantor) may also be examined by the insolvency resolution professional appointed.

After the stay order issued by the Delhi High Court, State Bank of India filed a plea with the Hon'ble Supreme Court to vacate the said stay order on the Insolvency Resolution Process of the personal guarantor. However, on 17th September the Hon'ble Supreme Court of India rejected State Bank of India (SBI) plea to initiate insolvency proceeding.

A three-judge panel headed by Justice L Nageswara Rao ruled that the bankruptcy case against Anil Ambani will remain suspended and directed the Delhi High Court to decide on Ambani's challenge to provisions of India's insolvency law.

The move to include personal guarantees issued by corporate promoters within the scope of IBC was made with a view to quicken the recovery process and improve chances of bad loan resolution by giving lenders strong leverage against erring promoters. Promoters of several renowned companies have given personal guarantees to lenders, including Jet Airways founder Mr. Naresh Goyal, Amtek Auto's promoter Arvind Dham, Bhushan Power & Steel chairman Sanjay Singal, and defunct Kingsher Airlines' chairman Mr. Vijay Mallya. The hope for lenders was that attachment of promoter's assets in the bankruptcy resolution process would increase their chance of recovery of dues. This could also potentially ensure that promoters take accountability and prevent them from getting away unscathed when the company is in trouble and several lenders are looking at crores worth in bad loans.

This case being among the first few high-profile ones after rules were set for personal bankruptcy last year. Bankers and investors in stressed assets are keenly watching the case as its final outcome may decide the power of lenders in taking action against founders who guaranteed repayments of loans by companies that later went bankrupt. It will be interesting to see how these matters pan out, since it would have far-reaching implications on the treatment of personal guarantors hereafter. The matter is next listed for hearing on October 2020.

We at DTPA being a Professional organisation, would be happy to answer any of your queries related to Insolvency Law. Mail your queries on IBC at dtpakolkata@gmail.com

LIST OF FORMS-CFSS,2020 & LLP MODIFIED SETTLEMENT SCHEME 2020

S.No.	Act	Form No.	Form Description
1	CA 1956	20B	Annual Return
2	CA 1956	21A	Annual Return for company having no sh capital
3	CA 1956	23B	Notice by Auditor
4	CA 1956	23C	Appointment of Cost Auditors
5	CA 1956	23D	Information by Cost Auditor to Central Government
6	CA 1956	23AC	Filing Balance Sheet and othe documents with the Registrar
7	CA 1956	23AC-XBRL	Form for filing XBRL document in respe of Balance Sheet and other documents wit the Registrar.
8	CA 1956	Form 66	Form for submission of Complianc Certificate
9	CA 1956	I-XBRL	Form for filing XBRL document in respect of Cost Audit Report and other document with the Central Government
10	CA 1956	A-XBRL	Form for filing XBRL document in respect of compliance report and other document with the Central Government
11	CA 2013	INC-4	Intimation for Change in Member/Nomine
12	CA 2013	INC-5	One Person Company - Intimation of exceeding threshold
13	CA 2013	INC-6	One Person Company - Application for Conversion
14	CA 2013	INC-12	Application for grant of License und section 8
15	CA 2013	INC-20	Intimation to Registrar o revocation/surrender of license issued ur section 8
16	CA 2013	INC-20A	Declaration for Commencement of Business
17	CA 2013	INC-22	Notice of Situation or Change of situation Registered Office of the Company

LIST OF FORMS-CFSS,2020 & LLP MODIFIED SETTLEMENT SCHEME 2020

18	CA 2013	INC-22A(ACTIVE)	Active Company Tagging Identities a Verification (ACTIVE).
19	CA 2013	INC-27	Conversion of Public Company into Private Company or Private Company into Public Company
20	CA 2013	INC-28	Notice of Order of the Court or Tribunal o any other competent authority
21	CA 2013	PAS-3	Return of allotment
22	CA 2013	SH-11	Return in respect of Buy-Back of securities
23	CA 2013	DPT-3	Return of Deposits
24	CA 2013	DPT-4	Statement regarding deposits existing on commencement of the Act
25	CA 2013	MGT-6	Return to the Registrar in respect declaration under section 89 received by company
26	CA 2013	MGT-7	Annual Return
27	CA 2013	MGT-10	Changes in shareholding position promoters and top ten shareholders
28	CA 2013	MGT-14	Filing of Resolutions and agreements to Registrar under section 117
29	CA 2013	MGT-15	Form for filing Report on Annual General Meeting
30	CA 2013	AOC-4	Form for filing Financial Statement and othe documents with the Registrar
31	CA 2013	AOC-4 CFS	Form for filing Consolidated Financial Statements and other documents with Registrar
32	CA 2013	AOC-4(XBRL)	Form for filing XBRL document in respec of Financial Statement and other documer with the Registrar
33	CA 2013	AOC-4 (NBFC) (IND-AS)	Form for filing Financial Statement and othe documents with the Registrar for NBFCs
34	CA 2013	AOC-4 CFS (NBFC) (IND-AS)	Form for filing Consolidated Financial Statements and other documents with Registrar for NBFCs

LIST OF FORMS-CFSS,2020 & LLP MODIFIED SETTLEMENT SCHEME 2020

35	CA 2013	AOC-5	Notice of address at which books of acco are maintained
36	CA 2013	ADT-1	Information to the Registrar by company appointment of auditor
37	CA 2013	ADT-2	Application for removal of auditor(s) fro his/their office before expiry of term
38	CA 2013	ADT-3	Notice of Resignation by the Auditor
39	CA 2013	DIR-3C	Intimation of Director Identification Numbe by the company to the Registrar
40	CA 2013	DIR-3 KYC/Web form	Application for KYC of Directors
41	CA 2013	DIR-11	Notice of resignation of a Director to the Registrar
42	CA 2013	DIR-12	Particulars of appointment of Directors and the Key Managerial Personnel and th changes among them
43	CA 2013	MR-1	Return of appointment of Key Managerial Personnel
44	CA 2013	MR-2	Form of Application to the Centra Government for approval of appointment reappointment and remuneration or incre in remuneration or waiver for excess or o payment to managing director or whole tim director or manager and commission remuneration to Directors
45	CA 2013	FC-1	Information to be filed by Foreign Company
46	CA 2013	FC-2	Return of alteration in the documents fil for registration by Foreign Company
47	CA 2013	FC-3	Annual accounts along with the list of principal places of business in Inc established by Foreign Company
48	CA 2013	FC-4	Annual Return of a Foreign Company
49	CA 2013	NDH-1	Return of Statutory Compliances
50	CA 2013	NDH-2	Application for extension of time

LIST OF FORMS-CFSS,2020 & LLP MODIFIED SETTLEMENT SCHEME 2020

51	CA 2013	NDH-3	Return of Nidhi Company for the half ye ended
52	CA 2013	NDH-4	Application for declaration as Nidh Company and for updation of status Nidhis.
53	CA 2013	MSC-1	Application to ROC for obtaining th status of dormant company
54	CA 2013	MSC-3	Return of dormant companies
55	CA 2013	CRA-2	Form of Intimation of appointment of Cost Auditor by the company to Centr Government
56	CA 2013	CRA-4	Form for filing Cost Audit Report with th Central Government
57	CA 2013	BEN-2	Return to the Registrar in respect declaration under section 90
58	CA 2013	GNL-2	Form for submission of documents with t Registrar
59	CA 2013	GNL-3	Particulars of person(s) or key manage personnel charged or specified for t purpose of sub-clause (iii) or (iv) of clause 60 of section 2
60	CA 2013	IEPF-1	Statement of amounts credited to the Inve Education and Protection Fund
61	CA 2013	IEPF-2	Statement of unclaimed or unpaid amoun
62	CA 2013	IEPF-3	Statement of shares and unclaimed or unpai dividend not transferred to the Inves Education and Protection Fund
63	CA 2013	IEPF-4	Statement of shares transferred to Investor Education and Protection Fund
64	CA 2013	IEPF-5 e-verification report	Application to the authority for claiming unpaid amounts and shares out of Inve Education and Protection Fund (IEPF-5) e-verification report
65	CA 2013	IEPF-6	Statement of unclaimed or unpaid amount be transferred to the Investor Education Protection Fund
66	CA 2013	IEPF-7	Statement of amounts credited to IEPF account of shares transferred to the fund

LIST OF FORMS-CFSS,2020 & LLP MODIFIED SETTLEMENT SCHEME 2020

67	LLP	FORM 3	Information with regard to Limited Liability Partnership agreement and changes, if a made therein
68	LLP	FORM 4	Notice of appointment, cessation, change name/ address/designation of a designa partner or partner and consent to become partner/designated partner
69	LLP	FORM 5	Notice for change of name
70	LLP	FORM 8	Statement of Account & Solvency
71	LLP	FORM 11	Annual Return of Limited Liability Partnership (LLP)
72	LLP	FORM 12	Form for intimating other address for serv of documents
73	LLP	FORM 15	Notice for change of place of register office.
74	LLP	FORM 22	Notice of intimation of Order of Cour Tribunal/CLB/ CentralGovernment to th Registrar
75	LLP	FORM 23	Application for direction to Limited Liability Partnership (LLP) to change its name to Registrar
76	LLP	Form 27 LLP	Form for registration of particulars b Foreign Limited Liability Partnershi (FLLP)
77	LLP	Form 29 LLP	Notice of (A) alteration in the certificate incorporation or registration; (B) alteratic in names and addresses of any of the per authorised to accept service on behalf c foreign limited liability partnership (FLLP (C) alteration in the principal place c business in India of FLLP (D) cessation have a place of business in India
78	LLP	FORM 31	Application for compounding of an offen under the Act

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 8th September, 2020

INCOME TAX

S.O. 3035(E).—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section(4)of section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, *vide* notification of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion), number S.O.354(E), dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s Softzone Tech Park Ltd. situated at Survey No.80/1, 81/1, 81/2, Bellandur village, Varthur Hobli, Bangalore – 560037 is developing an Industrial Park at Survey No.80/1, 81/1, 81/2, Bellandur village, Varthur Hobli, Bangalore – 560037;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No.15/23/2006-IP&ID dated 25th July, 2006;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s Softzone Tech Park Ltd, as an industrial park for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the annexure of the notification.

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s Softzone Tech Park Ltd.

(i)	Name of the Industrial Park :	M/s Softzone Tech Park Ltd.
(ii)	Proposed location :	Survey No.80/1, 81/1, 81/2, Bellandur Village, Varthur Hobli, Banglore – 560037.
(iii)	Area of Industrial Park :	81,960.70 SQM
(iv)	Percentage of allocable area : Earmarked for industrial use	95.50 per cent
(v)	Percentage of allocable area : Earmarked for commercial use	4.50 per cent

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50 per cent of the total project cost. In the case of an Industrial park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60 per cent of the total project cost.
3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.
4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st day of April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for purpose of one and more State or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.
6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1(vii) of the Ministry of Commerce and Industry letter No.15/23/2006-IP&ID dated 25th July, 2006, are located in the Industrial Park.
7. M/s Softzone Tech Park Ltd., shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 are to be availed.
8. The approval will be invalid and M/s Softzone Tech Park Ltd. shall be solely responsible for any repercussions of such invalidity, if

   (i) The application on the basis of which the approval is accorded by the Central Government contains wrong information or misinformation or some material information has not been provided in it;

   (ii) It is for the location of the Industrial Park for which approval has already been accorded in the name of another undertaking.
9. In case M/s SoftZone Tech Park Ltd., Bangalore transfers the operation and maintenance of the industrial park (i.e. transferor undertaking) to another undertaking (i.e. the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.
10. The conditions mentioned in this notification as well as those included in the Industrial park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s Softzone Tech Park Ltd. fails to comply with any of the conditions.
11. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park. [Notification No. 72 /2020/F. No.178/111/2009-ITA-1] GULZAR AHMAD WANI, Under Secy.

Explanatory Memorandum

This notification has been published in compliance with the Order of the Hon'ble High Court of Karnataka at Bengaluru in the matter of M/s Softzone Tech Park Ltd. vs. CBDT and Union of India [W.P. No.11284/2014 (T-RES) dated 26th Day of November, 2019. It is certified that by giving retrospective effect to this notification no person is being adversely affected.

NOTIFICATION

New Delhi, the 25th September, 2020

INCOME TAX

S.O. 3309(E).—In exercise of powers conferred by sub-sections (1) and (2) of section 120 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Act) and to give effect to the Faceless Appeal Scheme, 2020 (hereinafter referred to as the Scheme) made under sub-section (6B) of section 250 of the Act and published *vide* notification No. 76 of 2020 of Government of India in the Ministry of Finance, Department of Revenue, number S.O. 3296(E), dated the 25th September, 2020 in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) read with notification issued under sub-section (6C) of section 250 of the Act and published *vide* number 77 of 2020 of Government of India in the Ministry of Finance, Department of Revenue, number S.O. 3297(E), dated the 25th September, 2020 in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), the Central Board of Direct Taxes (hereinafter referred to as the Board) hereby directs that the Income-tax authorities of the Regional Faceless Appeal Centres (hereinafter referred to as the RFAC) specified in column (2) of the Schedule below, having their headquarters at the places mentioned in column (3) of the said Schedule, shall exercise the powers and perform functions, in order to facilitate the conduct of Faceless Appeal Proceedings, in respect of such territorial areas or persons or class of persons or incomes or class of incomes or cases or class of cases as specified by the Board in para 3 of the Scheme, with respect to appeals filed under section 246A or 248 of the Act, pending or instituted on or after 25.09.2020, namely :-

SCHEDULE

S.No.	Income -tax Authority	Headquarters
(1)	(2)	(3)
1	Chief Commissioner of Income -tax (RFAC), Delhi	Delhi
2	Income-tax Officer (RFAC)(HQ), O/o Chief Commissioner of Income-tax (RFAC), Delhi.	Delhi
3	Commissioner of Income -tax (Appeal Unit) -1, Delhi	Delhi
4	Commissioner of Income -tax (Appeal Unit) -2, Delhi	Delhi
5	Commissioner of Income -tax (Appeal Unit) -3, Delhi	Delhi
6	Commissioner of Income -tax (Appeal Unit) -4, Delhi	Delhi
7	Commissioner of Income -tax (Appeal Unit) -5, Delhi	Delhi
8	Commissioner of Income -tax (Appeal Unit) -6, Delhi	Delhi
9	Commissioner of Income -tax (Appeal Unit) -7, Delhi	Delhi
10	Commissioner of Income -tax (Appeal Unit) -8, Delhi	Delhi
11	Commissioner of Income -tax (Appeal Unit) -9, Delhi	Delhi
12	Commissioner of Income -tax (Appeal Unit) -10, Delhi	Delhi
13	Commissioner of Income -tax (Appeal Unit) -11, Delhi	Delhi
14	Commissioner of Income -tax (Appeal Unit) -12, Delhi	Delhi
15	Commissioner of Income -tax (Appeal Unit) -13, Delhi	Delhi
16	Commissioner of Income -tax (Appeal Unit) -14, Delhi	Delhi
17	Commissioner of Income -tax (Appeal Unit) -15, Delhi	Delhi
18	Commissioner of Income -tax (Appeal Unit) -16, Delhi	Delhi
19	Commissioner of Income -tax (Appeal Unit) -17, Delhi	Delhi
20	Commissioner of Income -tax (Appeal Unit) -18, Delhi	Delhi
21	Commissioner of Income -tax (Appeal Unit) -19, Delhi	Delhi
22	Commissioner of Income -tax (Appeal Unit) -20, Delhi	Delhi
23	Commissioner of Income -tax (Appeal Unit) -21, Delhi	Delhi
24	Commissioner of Income -tax (Appeal Unit) -22, Delhi	Delhi
25	Commissioner of Income -tax (Appeal Unit) -23, Delhi	Delhi
26	Commissioner of Income tax (Appeal Unit) -24, Delhi	Delhi

SCHEDULE

S.No.	Income -tax Authority	Headquarters
27	Commissioner of Income -tax (Appeal Unit) -25, Delhi	Delhi
28	Commissioner of Income -tax (Appeal Unit) -26, Delhi	Delhi
29	Commissioner of Income -tax (Appeal Unit) -27, Delhi	Delhi
30	Commissioner of Income -tax (Appeal Unit) -28, Delhi	Delhi
31	Commissioner of Income -tax (Appeal Unit) -29, Delhi	Delhi
32	Commissioner of Income -tax (Appeal Unit) -30, Delhi	Delhi
33	Commissioner of Income -tax (Appeal Unit) -31, Delhi	Delhi
34	Commissioner of Income -tax (Appeal Unit) -1, Amritsar	Amritsar
35	Commissioner of Income -tax (Appeal Unit) -2, Amritsar	Amritsar
36	Commissioner of Income -tax (Appeal Unit) -1, Bhatinda	Bhatinda
37	Commissioner of Income -tax (Appeal Unit) -1, Jammu	Jammu
38	Commissioner of Income -tax (Appeal Unit) -1, Srinagar	Srinagar
39	Commissioner of Income -tax (Appeal Unit) -1, Palampur	Palampur
40	Commissioner of Income -tax (Appeal Unit) -1, Shimla	Solan
41	Commissioner of Income -tax (Appeal Unit) -1, Faridabad	Faridabad
42	Commissioner of Income -tax (Appeal Unit) -1, Gurgaon	Gurgaon
43	Commissioner of Income -tax (Appeal Unit) -2, Gurgaon	Gurgaon
44	Commissioner of Income -tax (Appeal Unit) -1, Hisar	Hisar
45	Commissioner of Income -tax (Appeal Unit) -1, Karnal	Karnal
46	Commissioner of Income -tax (Appeal Unit) -1, Panchkula	Panchkula
47	Commissioner of Income -tax (Appeal Unit) -1, Rohtak	Rohtak
48	Commissioner of Income -tax (Appeal Unit) -1, Jalandhar	Jalandhar
49	Commissioner of Income -tax (Appeal Unit) -2, Jalandhar	Jalandhar
50	Commissioner of Income -tax (Appeal Unit) -1, Ludhiana	Ludhiana
51	Commissioner of Income -tax (Appeal Unit) -2, Ludhiana	Ludhiana
52	Commissioner of Income -tax (Appeal Unit) -3, Ludhiana	Ludhiana
53	Commissioner of Income -tax (Appeal Unit) -4, Ludhiana	Ludhiana
54	Commissioner of Income -tax (Appeal Unit) -1, Patiala	Patiala
55	Commissioner of Income -tax (Appeal Unit) -1, Chandigarh	Chandigarh
56	Commissioner of Income -tax (Appeal Unit) -2, Chandigarh	Chandigarh
57	Commissioner of Income -tax (Appeal Unit) -1, Haldwani	Haldwani
58	Commissioner of Income -tax (Appeal Unit) -1, Lucknow	Lucknow
59	Commissioner of Income -tax (Appeal Unit) -2, Lucknow	Lucknow
60	Commissioner of Income -tax (Appeal Unit) -1, Bareilly	Bareilly
61	Commissioner of Income -tax (Appeal Unit) -1, Moradabad	Moradabad
62	Commissioner of Income -tax (Appeal Unit) -1, Allahabad	Allahabad
63	Commissioner of Income -tax (Appeal Unit) -1, Gorakhpur	Gorakhpur
64	Commissioner of Income -tax (Appeal Unit) -1, Varanasi	Varanasi
65	Commissioner of Income -tax (Appeal Unit) -1, Agra	Agra
66	Commissioner of Income -tax (Appeal Unit) -2, Agra	Agra
67	Commissioner of Income -tax (Appeal Unit) -1, Kanpur	Kanpur
68	Commissioner of Income -tax (Appeal Unit) -2, Kanpur	Kanpur
69	Commissioner of Income -tax (Appeal Unit) -3, Kanpur	Kanpur
70	Commissioner of Income -tax (Appeal Unit) -1, Aligarh	Aligarh
71	Commissioner of Income -tax (Appeal Unit) -1, Ghaziabad	Ghaziabad

SCHEDULE

S.No.	Income -tax Authority	Headquarters
72	Commissioner of Income -tax (Appeal Unit) -1, Meerut	Meerut
73	Commissioner of Income -tax (Appeal Unit) -1, Muzaffarnagar	Muzaffarnagar
74	Commissioner of Income -tax (Appeal Unit) -1, Noida	Noida
75	Commissioner of Income -tax (Appeal Unit) -1, Dehradun	Dehradun
76	Chief Commissioner of Income -tax (RFAC), Mumbai	Mumbai
77	Income-tax Officer (RFAC)(HQ), O/o Chief Commissioner of Income-tax (RFAC), Mumbai	Mumbai
78	Commissioner of Income -tax (Appeal Unit) -1, Mumbai	Mumbai
79	Commissioner of Income -tax (Appeal Unit) -2, Mumbai	Mumbai
80	Commissioner of Income -tax (Appeal Unit) -3, Mumbai	Mumbai
81	Commissioner of Income -tax (Appeal Unit) -4, Mumbai	Mumbai
82	Commissioner of Income -tax (Appeal Unit) -5, Mumbai	Mumbai
83	Commissioner of Income -tax (Appeal Unit) -6, Mumbai	Mumbai
84	Commissioner of Income -tax (Appeal Unit) -7, Mumbai	Mumbai
85	Commissioner of Income -tax (Appeal Unit) -8, Mumbai	Mumbai
86	Commissioner of Income -tax (Appeal Unit) -9, Mumbai	Mumbai
87	Commissioner of Income -tax (Appeal Unit) -10, Mumbai	Mumbai
88	Commissioner of Income -tax (Appeal Unit) -11, Mumbai	Mumbai
89	Commissioner of Income -tax (Appeal Unit) -12, Mumbai	Mumbai
90	Commissioner of Income -tax (Appeal Unit) -13, Mumbai	Mumbai
91	Commissioner of Income -tax (Appeal Unit) -14, Mumbai	Mumbai
92	Commissioner of Income -tax (Appeal Unit) -15, Mumbai	Mumbai
93	Commissioner of Income -tax (Appeal Unit) -16, Mumbai	Mumbai
94	Commissioner of Income -tax (Appeal Unit) -17, Mumbai	Mumbai
95	Commissioner of Income -tax (Appeal Unit) -18, Mumbai	Mumbai
96	Commissioner of Income -tax (Appeal Unit) -19, Mumbai	Mumbai
97	Commissioner of Income -tax (Appeal Unit) -20, Mumbai	Mumbai
98	Commissioner of Income -tax (Appeal Unit) -21, Mumbai	Mumbai
99	Commissioner of Income -tax (Appeal Unit) -22, Mumbai	Mumbai
100	Commissioner of Income -tax (Appeal Unit) -23, Mumbai	Mumbai
101	Commissioner of Income -tax (Appeal Unit) -24, Mumbai	Mumbai
102	Commissioner of Income -tax (Appeal Unit) -25, Mumbai	Mumbai
103	Commissioner of Income -tax (Appeal Unit) -26, Mumbai	Mumbai
104	Commissioner of Income -tax (Appeal Unit) -27, Mumbai	Mumbai
105	Commissioner of Income -tax (Appeal Unit) -28, Mumbai	Mumbai
106	Commissioner of Income -tax (Appeal Unit) -29, Mumbai	Mumbai
107	Commissioner of Income -tax (Appeal Unit) -30, Mumbai	Mumbai
108	Commissioner of Income -tax (Appeal Unit) -31, Mumbai	Mumbai
109	Commissioner of Income -tax (Appeal Unit) -32, Mumbai	Mumbai
110	Commissioner of Income -tax (Appeal Unit) -33, Mumbai	Mumbai
111	Commissioner of Income -tax (Appeal Unit) -34, Mumbai	Mumbai
112	Commissioner of Income -tax (Appeal Unit) -35, Mumbai	Mumbai
113	Commissioner of Income -tax (Appeal Unit) -36, Mumbai	Mumbai
114	Commissioner of Income -tax (Appeal Unit) -37, Mumbai	Mumbai
115	Commissioner of Income -tax (Appeal Unit) -38, Mumbai	Mumbai
116	Commissioner of Income -tax (Appeal Unit) -39, Mumbai	Mumbai
117	Commissioner of Income -tax (Appeal Unit) -40, Mumbai	Mumbai

SCHEDULE

S.No.	Income -tax Authority	Headquarters
118	Commissioner of Income -tax (Appeal Unit) -41, Mumbai	Mumbai
119	Commissioner of Income -tax (Appeal Unit) -42, Mumbai	Mumbai
120	Commissioner of Income -tax (Appeal Unit) -43, Mumbai	Mumbai
121	Commissioner of Income -tax (Appeal Unit) -44, Mumbai	Mumbai
122	Commissioner of Income -tax (Appeal Unit) -45, Mumbai	Mumbai
123	Commissioner of Income -tax (Appeal Unit) -46, Mumbai	Mumbai
124	Commissioner of Income -tax (Appeal Unit) -1, Pune	Pune
125	Commissioner of Income -tax (Appeal Unit) -2, Pune	Pune
126	Commissioner of Income -tax (Appeal Unit) -3, Pune	Pune
127	Commissioner of Income -tax (Appeal Unit) -4, Pune	Pune
128	Commissioner of Income -tax (Appeal Unit) -5,Pune	Pune
129	Commissioner of Income -tax (Appeal Unit) -6, Pune	Pune
130	Commissioner of Income -tax (Appeal Unit) -7, Pune	Pune
131	Commissioner of Income -tax (Appeal Unit) -8, Pune	Pune
132	Commissioner of Income -tax (Appeal Unit) -9, Pune	Pune
133	Commissioner of Income -tax (Appeal Unit) -10, Pune	Pune
134	Commissioner of Income -tax (Appeal Unit) -1, Aurangabad	Aurangabad
135	Commissioner of Income -tax (Appeal Unit) -2, Aurangabad	Aurangabad
136	Commissioner of Income -tax (Appeal Unit) -1, Nashik	Nashik
137	Commissioner of Income -tax (Appeal Unit) -2, Nashik	Nashik
138	Commissioner of Income -tax (Appeal Unit) -3, Nashik	Nashik
139	Commissioner of Income -tax (Appeal Unit) -1, Thane	Thane
140	Commissioner of Income -tax (Appeal Unit) -2, Thane	Thane
141	Commissioner of Income -tax (Appeal Unit) -3, Thane	Thane
142	Commissioner of Income -tax (Appeal Unit) -1, Kolhapur	Kolhapur
143	Commissioner of Income -tax (Appeal Unit) -2, Kolhapur	Kolhapur
144	Commissioner of Income -tax (Appeal Unit) -1, Nagpur	Nagpur
145	Commissioner of Income -tax (Appeal Unit) -2, Nagpur	Nagpur
146	Commissioner of Income -tax (Appeal Unit) -1, Ahmedabad	Ahmedabad
147	Commissioner of Income -tax (Appeal Unit) -2, Ahmedabad	Ahmedabad
148	Commissioner of Income -tax (Appeal Unit) -3, Ahmedabad	Ahmedabad
149	Commissioner of Income -tax (Appeal Unit) -4, Ahmedabad	Ahmedabad
150	Commissioner of Income -tax (Appeal Unit) -5, Ahmedabad	Ahmedabad
151	Commissioner of Income -tax (Appeal Unit) -6, Ahmedabad	Ahmedabad
152	Commissioner of Income -tax (Appeal Unit) -7, Ahmedabad	Ahmedabad
153	Commissioner of Income -tax (Appeal Unit) -8, Ahmedabad	Ahmedabad
154	Commissioner of Income -tax (Appeal Unit) -9, Ahmedabad	Ahmedabad
155	Commissioner of Income -tax (Appeal Unit) -10, Ahmedabad	Ahmedabad
156	Commissioner of Income -tax (Appeal Unit) -1, Gandhinagar	Ahmedabad
157	Commissioner of Income -tax (Appeal Unit) -1, Jamnagar	Jamnagar
158	Commissioner of Income -tax (Appeal Unit) -1, Rajkot	Rajkot
159	Commissioner of Income -tax (Appeal Unit) -2 Rajkot	Rajkot
160	Commissioner of Income -tax (Appeal Unit) -3, Rajkot	Rajkot
161	Commissioner of Income -tax (Appeal Unit) -1, Vadodara	Vadodara
162	Commissioner of Income -tax (Appeal Unit) -2, Vadodara	Vadodara
163	Commissioner of Income -tax (Appeal Unit) -3, Vadodara	Vadodara
164	Commissioner of Income -tax (Appeal Unit) -4, Vadodara	Vadodara

SCHEDULE

S.No.	Income -tax Authority	Headquarters
165	Commissioner of Income -tax (Appeal Unit) -5, Vadodara	Vadodara
166	Commissioner of Income -tax (Appeal Unit) -1, Surat	Surat
167	Commissioner of Income -tax (Appeal Unit) -2, Surat	Surat
168	Commissioner of Income -tax (Appeal Unit) -3, Surat	Surat
169	Commissioner of Income -tax (Appeal Unit) -1, Valsad	Valsad
170	Commissioner of Income -tax (Appeal Unit) -1, Alwar	Alwar
171	Commissioner of Income -tax (Appeal Unit) -1, Jaipur	Jaipur
172	Commissioner of Income -tax (Appeal Unit) -2, Jaipur	Jaipur
173	Commissioner of Income -tax (Appeal Unit) -3, Jaipur	Jaipur
174	Commissioner of Income -tax (Appeal Unit) -1, Ajmer	Ajmer
175	Commissioner of Income -tax (Appeal Unit) -1, Kota	Kota
176	Commissioner of Income -tax (Appeal Unit) -1, Udaipur	Udaipur
177	Commissioner of Income -tax (Appeal Unit) -1, Bikaner	Bikaner
178	Commissioner of Income -tax (Appeal Unit) -1, Jodhpur	Jodhpur
179	Commissioner of Income -tax (Appeal Unit) -2, Jodhpur	Jodhpur
180	Chief Commissioner of Income -tax (RFAC), Chennai	Chennai
181	Income-tax Officer (RFAC)(HQ), O/o Chief Commissioner of Income-tax (RFAC), Chennai.	Chennai
182	Commissioner of Income -tax (Appeal Unit) -1, Chennai	Chennai
183	Commissioner of Income -tax (Appeal Unit) -2, Chennai	Chennai
184	Commissioner of Income -tax (Appeal Unit) -3, Chennai	Chennai
185	Commissioner of Income -tax (Appeal Unit) -4, Chennai	Chennai
186	Commissioner of Income -tax (Appeal Unit) -5, Chennai	Chennai
187	Commissioner of Income -tax (Appeal Unit) -6, Chennai	Chennai
188	Commissioner of Income -tax (Appeal Unit) -7, Chennai	Chennai
189	Commissioner of Income -tax (Appeal Unit) -8, Chennai	Chennai
190	Commissioner of Income -tax (Appeal Unit) -9, Chennai	Chennai
191	Commissioner of Income -tax (Appeal Unit) -10, Chennai	Chennai
192	Commissioner of Income -tax (Appeal Unit) -11, Chennai	Chennai
193	Commissioner of Income -tax (Appeal Unit) -12, Chennai	Chennai
194	Commissioner of Income -tax (Appeal Unit) -13, Chennai	Chennai
195	Commissioner of Income -tax (Appeal Unit) -14, Chennai	Chennai
196	Commissioner of Income -tax (Appeal Unit) -15, Chennai	Chennai
197	Commissioner of Income -tax (Appeal Unit) -16, Chennai	Chennai
198	Commissioner of Income -tax (Appeal Unit) -1, Puducherry	Chennai
199	Commissioner of Income -tax (Appeal Unit) -1, Coimbatore	Coimbatore
200	Commissioner of Income -tax (Appeal Unit) -2, Coimbatore	Coimbatore
201	Commissioner of Income -tax (Appeal Unit) -3, Coimbatore	Coimbatore
202	Commissioner of Income -tax (Appeal Unit) -1, Madurai	Madurai
203	Commissioner of Income -tax (Appeal Unit) -2, Madurai	Madurai
204	Commissioner of Income -tax (Appeal Unit) -1, Salem	Salem
205	Commissioner of Income -tax (Appeal Unit) -1, Trichy	Tiruchirappalli
206	Commissioner of Income -tax (Appeal Unit) -1, Hyderabad	Hyderabad
207	Commissioner of Income -tax (Appeal Unit) -2, Hyderabad	Hyderabad
208	Commissioner of Income -tax (Appeal Unit) -3, Hyderabad	Hyderabad

SCHEDULE

S.No.	Income -tax Authority	Headquarters
209	Commissioner of Income -tax (Appeal Unit) -4, Hyderabad	Hyderabad
210	Commissioner of Income -tax (Appeal Unit) -5, Hyderabad	Hyderabad
211	Commissioner of Income -tax (Appeal Unit) -6, Hyderabad	Hyderabad
212	Commissioner of Income -tax (Appeal Unit) -7, Hyderabad	Hyderabad
213	Commissioner of Income -tax (Appeal Unit) -8, Hyderabad	Hyderabad
214	Commissioner of Income -tax (Appeal Unit) -9, Hyderabad	Hyderabad
215	Commissioner of Income -tax (Appeal Unit) -1, Rajahmundry	Rajahmundry
216	Commissioner of Income -tax (Appeal Unit) -1, Visakhapatnam	Visakhapatnam
217	Commissioner of Income -tax (Appeal Unit) -2, Visakhapatnam	Visakhapatnam
218	Commissioner of Income -tax (A ppeal Unit)-1, Guntur	Guntur
219	Commissioner of Income -tax (Appeal Unit) -2, Guntur	Guntur
220	Commissioner of Income -tax (Appeal Unit) -1, Kurnool	Kurnool
221	Commissioner of Income -tax (Appeal Unit) -1, Tirupati	Tirupati
222	Commissioner of Income -tax (Appeal Unit) -1, Vijayawada	Vijayawada
223	Commissioner of Income -tax (Appeal Unit) -1, Bengaluru	Bengaluru
224	Commissioner of Income -tax (Appeal Unit) -2, Bengaluru	Bengaluru
225	Commissioner of Income -tax (Appeal Unit) -3, Bengaluru	Bengaluru
226	Commissioner of Income -tax (Appeal Unit) -4, Bengaluru	Bengaluru
227	Commissioner of Income -tax (Appeal Unit) -5, Bengaluru	Bengaluru
228	Commissioner of Income -tax (Appeal Unit) -6, Bengaluru	Bengaluru
229	Commissioner of Income -tax (Appeal Unit) -7, Bengaluru	Bengaluru
230	Commissioner of Income -tax (Appeal Unit) -8, Bengaluru	Bengaluru
231	Commissioner of Income -tax (Appeal Unit) -9, Benga luru	Bengaluru
232	Commissioner of Income -tax (Appeal Unit) -10, Bengaluru	Bengaluru
233	Commissioner of Income -tax (Appeal Unit) -11, Bengaluru	Bengaluru
234	Commissioner of Income -tax (Appeal Unit) -1, Davanagere	Davanagere
235	Commissioner of Income -tax (Appeal Unit) -1, Gulbarga	Gulbarga
236	Commissioner of Income -tax (Appeal Unit) -1, Mysore	Mysore
237	Commissioner of Income -tax (Appeal Unit) -1, Belgaum	Belgaum
238	Commissioner of Income -tax (Appeal Unit) -1, Hubli	Hubli
239	Commissioner of Income -tax (Appeal Unit) -1, Mangalore	Mangalore
240	Commissioner of Income -tax (Appeal Unit) -1, Panaji	Panaji
241	Commissioner of Income -tax (Appeal Unit) -1, Kochi	Kochi
242	Commissioner of Income -tax (Appeal Unit) -2, Kochi	Kochi
243	Commissioner of Income -tax (Appeal Unit) -1, Kozhikode	Kozhikode
244	Commissioner of Income -tax (Appeal Unit) -1, Thrissur	Thrissur
245	Commissioner of Income -tax (Appeal Unit) -1, Kottayam	Kottayam
246	Commissioner of Income -tax (Appeal Unit) -1, Thiruvananthapuram	Thiruvananthapuram
247	Chief Commissioner of Income -tax (RFAC), Kolkata	Kolkata
248	Income-tax Officer (RFAC)(HQ), O/o Chief Commissioner of Income-tax (RFAC), Kolkata.	Kolkata
249	Commissioner of Income -tax (Appeal Unit) -1, Kolkata	Kolkata
250	Commissioner of Income -tax (Appeal Unit) -2, Kolkata	Kolkata
251	Commissioner of Income -tax (Appeal Unit) -3, Kolkata	Kolkata
252	Commissioner of Income -tax (Appeal Unit) -4, Kolkata	Kolkata
253	Commissioner of Income -tax (Appeal Unit) -5, Kolkata	Kolkata

SCHEDULE

S.No.	Income -tax Authority	Headquarters
254	Commissioner of Income -tax (Appeal Unit) -6, Kolkata	Kolkata
255	Commissioner of Income -tax (Appeal Unit) -7, Kolkata	Kolkata
256	Commissioner of Income -tax (Appeal Unit) -8, Kolkata	Kolkata
257	Commissioner of Income -tax (Appeal Unit) -9, Kolkata	Kolkata
258	Commissioner of Income -tax (Appeal Unit) -10, Kolkata	Kolkata
259	Commissioner of Income -tax (Appeal Unit) -11, Kolkata	Kolkata
260	Commissioner of Income -tax (Appeal Unit) -12, Kolkata	Kolkata
261	Commissioner of Income -tax (Appeal Unit) -13, Kolkata	Kolkata
262	Commissioner of Income -tax (Appeal Unit) -14, Kolkata	Kolkata
263	Commissioner of Income -tax (Appeal Unit) -15, Kolkata	Kolkata
264	Commissioner of Income -tax (Appeal Unit) -16, Kolkata	Kolkata
265	Commissioner of Income -tax (Appeal Unit) -17, Kolkata	Kolkata
266	Commissioner of Income -tax (Appeal Unit) -18, Kolkata	Kolkata
267	Commissioner of Income -tax (Appeal Unit) -19, Kolkata	Kolkata
268	Commissioner of Income -tax (Appeal Unit) -20, Kolkata	Kolkata
269	Commissioner of Income -tax (Appeal Unit) -21, Kolkata	Kolkata
270	Commissioner of Income -tax (Appeal Unit) -22, Kolkata	Kolkata
271	Commissioner of Income -tax (Appeal Unit) -1, Siliguri	Siliguri
272	Commissioner of Income -tax (Appeal Unit) -1, Jalpaiguri	Jalpaiguri
273	Commissioner of Income -tax (Appeal Unit) -1, Burdwan	Burdwan
274	Commissioner of Income -tax (Appeal Unit) -1, Durgapur	Durgapur
275	Commissioner of Income -tax (Appeal Unit) -1, Asansol	Asansol
276	Commissioner of Income -tax (Appeal Unit) -1, Bhagalpur	Bhagalpur
277	Commissioner of Income -tax (Appeal Unit) -1, Patna	Patna
278	Commissioner of Income -tax (Appeal Unit) -2, Patna	Patna
279	Commissioner of Income -tax (Appeal Unit) -1, Dhanbad	Dhanbad
280	Commissioner of Income -tax (Appeal Unit) -1, Hazaribagh	Hazaribagh
281	Commissioner of Income -tax (Appeal Unit) -1, Jamshedpur	Jamshedpur
282	Commissioner of Income -tax (Appeal Unit) -1, Ranchi	Ranchi
283	Commissioner of Income -tax (Appeal Unit) -1, Guwahati	Guwahati
284	Commissioner of Income -tax (Appeal Unit) -2, Guwahati	Guwahati
285	Commissioner of Income -tax (Appeal Unit) -1, Jorhat	Jorhat
286	Commissioner of Income -tax (Appeal Unit) -1, Dibrugarh	Dibrugarh
287	Commissioner of Income -tax (Appeal Unit) -1, Shillong	Shillong
288	Commissioner of Income -tax (Appeal Unit) -1, Bhubaneshwar	Bhubaneswar
289	Commissioner of Income -tax (Appeal Unit) -1, Cuttack	Cuttack
290	Commissioner of Income -tax (Appeal Unit) -1, Sambalpur	Sambalpur
291	Commissioner of Income -tax (Appeal Unit) -1, Bilaspur	Bilaspur
292	Commissioner of Income -tax (Appeal Unit) -1, Raipur	Raipur
293	Commissioner of Income -tax (Appeal Unit) -2, Raipur	Raipur
294	Commissioner of Income -tax (Appeal Unit) -1, Indore	Indore
295	Commissioner of Income -tax (Appeal Unit) -2, Indore	Indore
296	Commissioner of Income -tax (Appeal Unit) -3, Indore	Indore
297	Commissioner of Income -tax (Appeal Unit) -1, Ujjain	Ujjain
298	Commissioner of Income -tax (Appeal Unit) -1, Bhopal	Bhopal
299	Commissioner of Income -tax (Appeal Unit) -2, Bhopal	Bhopal
300	Commissioner of Income -tax (Appeal Unit) -1, Gwalior	Gwalior
301	Commissioner of Income -tax (Appeal Unit) -1, Jabalpur	Jabalpur

2. This notification shall come into force with effect from the 25th day of September, 2020.

[Notification No. 81/2020/F.No.279/Misc./66/2014SO-ITJ(Pt.)]

ANJULA JAIN, Director

Circular No. 16 /2020

F.No.370142/35/2019-TPL-Pt
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
****

Dated: 30th August, 2020

Subject: Imposition of charge on the prescribed electronic modes under section 269SU of the Income-tax Act, 1961 – reg.

In furtherance to the declared policy objective of the Government to encourage digital transactions and move towards a less-cash economy, the Finance (No. 2) Act 2019 inserted a new provision namely section 269SU in the Income-tax Act, 1961 (**"the IT Act"**), which provides that every person having a business turnover of more than Rs. 50 crores during the immediately preceding previous year shall mandatorily provide facilities for accepting payments through prescribed electronic modes. Further, a new provision namely section 10A was also inserted in the Payment and Settlement Systems Act 2007 (**"the PSS Act"**), which provides that no Bank or system provider shall impose any charge on a payer making payment, or a beneficiary receiving payment, through electronic modes prescribed under section 269SU of their IT Act. Subsequently vide notification no. 105/2019 dated 30.12.2019 (i) Debit Card powered by RuPay; (ii) Unified Payments Interface (UPI) (BHIM-UPI); and (iii) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code) were notified as prescribed electronic modes under section 269 SU of the IT Act.

2. A circular no. 32/2019 dated 30.12.2019 was issued by the Board to clarify that based on section 10A of the PSS Act, any charge including the MDR (Merchant Discount Rate) shall not be applicable on or after 01st January, 2020 on payment made through prescribed electronic modes. However, representations have been received that some banks are imposing and collecting charges on transactions carried out through UPI. A certain number of transactions are allowed free of charge beyond which every transaction bears a charge. Such practice on part of banks is a breach of section 10A of the PSS Act as well as section 269SU of the IT Act. Such breach attracts penal provisions under section 271DB of the IT Act as well as section 26 of the PSS Act.

3. Banks are, therefore, advised to immediately refund the charges collected, if any, on or after 1st January, 2020 on transactions carried out using the electronic modes prescribed under section 269SU of the IT Act and not to impose charges on any future transactions carried through the said prescribed modes.

Goyal 30.08.2020

(Ankur Goyal)
Under Secretary to the Govt. of India

Copy to:
1. PS to FM/ OSD to FM/ PS to MoS(F)/ OSD to MoS(F)
2. PPS to Secretary (Revenue)
3. Chairman, CBDT & All Members, CBDT
4. **All Pr. DGsIT/ Pr. CCsIT/DGsIT/CCsIT with a request to ensure compliance of the provisions of section 269SU of the IT ACT read with section 10A of the PSS Act.**
5. All Joint Secretaries/ CsIT/ Directors/ Deputy Secretaries/ Under Secretaries of CBDT
6. The C&AG of India
7. The JS & Legal Adviser, Ministry of Law & Justice, New Delhi
8. CIT (M&TP), Official Spokesperson of CBDT
9. O/o Pr. DGIT (Systems) for uploading on official website
10. JCIT (Database Cell) for uploading on www.irsofficersonline.gov.in

Circular No. 17 of 2020

F. No.370133/22/2020-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)
****

Dated: 29th September, 2020

Sub.: Guidelines under section 194-O (4) and section 206C (1-I) of the Income-tax Act, 1961 – reg.

Finance Act, 2020 inserted a new section 194-O in the Income-tax Act 1961 (hereinafter referred to as "the Act") which mandates that with effect from 1st day of October, 2020, an e-commerce operator shall deduct income-tax at the rate of one per cent (subject to the provisions of proposed section 197B of the Act) of the gross amount of sale of goods or provision of service or both, facilitated through its digital or electronic facility or platform. However, exemption from the said deduction has been provided in case of certain individuals or Hindu undivided family fulfilling specified conditions. This deduction is required to be made at the time of credit of amount of such sale or service or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant, whichever is earlier.

2. Finance Act, 2020 also inserted sub-section (1H) in section 206C of the Act which mandates that with effect from 1st day of October, 2020 a seller receiving an amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year to collect tax from the buyer a sum equal to 0.1 per cent (subject to the provisions of proposed sub-section (10A) of the section 206C of the Act) of the sale consideration exceeding fifty lakh rupees as income-tax. The collection is required to be made at the time of receipt of amount of sales consideration.

3. Sub-section (4) of section 194-O and sub-section (1-I) of section 206C of the Act empowers the Board (with the approval of the Central Government) to issue guidelines for the purpose of removing difficulties. Various representations have been received by the Board for issuing guidelines for removing certain difficulties. In exercise of power contained under sub-section (4) of section 194-O of the Act and sub-section (1-I) of section 206C of the Act, the Board, with the approval of the Central Government, hereby issues the following guidelines.

4. Guidelines

4.1 <u>Applicability on transactions carried through various Exchanges</u>:

4.1.1 It has been represented that there are practical difficulties in implementing the provisions of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) contained in section 194-O and sub-section (1H) of section 206C of the Act in case of certain exchanges and clearing corporations. It has been stated that sometime in these transactions there is no one to one contract between the buyers and the sellers.

4.1.2 In order to remove such difficulties, it is provided that the provisions of section 194-O, and sub-section (1H) of section 206C, of the Act shall not be applicable in relation to,-

(i) transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;

(ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC; and

For this purpose,-

(i) "recognized clearing corporation" shall have the meaning assigned to it in clause (i) of the *Explanation* to clause (23EE) of section 10 of the Act;
(ii) "recognized stock exchange" shall have the meaning assigned to it in clause (ii) of the *Explanation 1* to sub-section (5) of section 43 of the Act; and
(iii) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005.

4.2 Applicability on payment gateway:

4.2.1 In e-commerce transactions, the payments are generally facilitated by payment gateways. It is represented that in these transactions, there may be applicability of section 194-O twice i.e. once on e-main commerce operator who is facilitating sell of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service. To illustrate a buyer buys goods worth one lakh rupees on e-commerce website "XYZ". He makes payment of one lakh rupees through digital platform of "ABC". On these facts liability to deduct tax under section 194-O may fall on both "XYZ" and "ABC".

4.2.2 In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-O of the Act on a transaction, if the tax has been deducted by the e-commerce operator under section 194-O of the Act, on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 194-O on one lakh rupees, "ABC" will not be required to deduct tax under section 194-O of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

4.3 Applicability of on insurance agent or insurance aggregator:

4.3.1 It has been represented that insurance agents or insurance aggregators in many cases have no involvement in transactions between insurance company and the buyer for subsequent years. It has been represented that in subsequent years, the liability to deduct tax may arise on the insurance agents or insurance aggregators even if the transactions have been completed directly with the insurance company. This may result into hardship for the insurance agents/aggregators.

4.3.2 In order to remove difficulty it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-O of the Act for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.

4.4 Calculation of threshold for the financial year 2020-21.

4.4.1. Since both section 194-O, and sub-section (1H) of section 206C, of the Act would come into effect from 1st October, 2020, it was requested to clarify how the various thresholds specified under these

sections shall be computed and whether the tax is required to be deducted/collected in respect of amounts received before 1st October, 2020.

4.4.2 it hereby clarified that,-

(i) Since the threshold of five lakh rupees for an individual/ Hindu undivided family (being e-commerce participant who has furnished his PAN/Aadhaar) is with respect to the previous year, calculation of amount of sale or services or both for triggering deduction under section 194-O of the Act shall be counted from 1st April, 2020. Hence, if the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to 30th Sept 2020) in relation to such an individual/ Hindu undivided family exceeds five lakh rupees, the provision of section 194-O shall apply on any sum credited or paid on or after 1st October, 2020.

(ii) Since sub-section (1H) of section 206C of the Act applies on receipt of sale consideration, the provision of this sub-section shall not apply on any sale consideration received before 1st October 2020. Consequently it would apply on all sale consideration (including advance received for sale) received on or after 1st October 2020 even if the sale was carried out before 1st October 2020.

(iii) Since the threshold of fifty lakh rupees is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under sub-section (1H) of section 206C shall be computed from 1st April, 2020. Hence, if a person being seller has already received fifty lakh rupees or more up to 30th September 2020 from a buyer, the TCS under sub-section (1H) of section 206C shall apply on all receipt of sale consideration during the previous year, on or after 1st October 2020, from such buyer.

4.5 Applicability to sale of motor vehicle:

4.5.1 The provisions of sub-section (1F) of section 206C of the Act apply to sale of motor vehicle of the value exceeding ten lakh rupees. Sub-section (1H) of section 206C of the Act exclude from its applicability goods covered under sub-section (1F). It has been requested to clarify that whether all motor vehicles are excluded from the applicability of sub-section (1H) of section 206C of the Act.

4.5.2 It this regard it may be noted that the scope of sub-sections (1H) and (1F) are different. While sub-section (1F) is based on single sale of motor vehicle, sub-section (1H) is for receipt above 50 lakh rupee during the previous year against aggregate sale of good. While sub-section (1F) is for sale to consumer only and not to dealers, sub-section (1H) is for all sale above the threshold. Hence, in order to remove difficulty it is clarified that,-

(i) Receipt of sale consideration from a dealer would be subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS under sub-section (1F) of section 206C of the Act.

(ii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of ten lakh rupees or less to a buyer would be subjected to TCS under sub-section (1H) of section 206C of the Act, if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year.

(iii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh rupees would not be subjected to TCS under sub-section (1H) of section 206C of the Act if such sales are subjected to TCS under sub-section (1F) of section 206C of the Act,

4.6 Adjustment for sale return, discount or indirect taxes

4.6.1 It is requested to clarify that whether adjustment is required to be made for sales return, discount or indirect taxes including GST for the purpose of collection of tax under sub-section (1H) of section 206C of the Act. It is hereby clarified that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under sub-section (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration.

4.7 Fuel supplied to non-resident airlines

4.7.1 It is requested to clarify if the provisions of sub-section (1H) of section 206C of the Act shall apply on fuel supplied to non-resident airlines at airports in India. To remove difficulties it is provided that the provisions of sub-section (1H) of section 206C of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

Ankit Jain 29.09.2020

(Ankit Jain)
Under Secretary to the Govt. of India

Copy to:

1. PS to FM/ OSD to FM/ PS to MoS(F)/ OSD to MoS(F)
2. PPS to Secretary (Revenue)
3. Chairman, CBDT & All Members, CBDT
4. All Pr. DGsIT/ Pr. CCsIT
5. All Joint Secretaries/ CsIT/ Directors/ Deputy Secretaries/ Under Secretaries of CBDT
6. The C&AG of India
7. The JS & Legal Adviser, Ministry of Law & Justice, New Delhi
8. CIT (M&TP), Official Spokesperson of CBDT
9. O/o Pr. DGIT (Systems) for uploading on official website
10. JCIT (Database Cell) for uploading on www.irsofficersonline.gov.in

General Circular NO.31/2020

F. No. 17/61/2016-CL-V-Pt.I
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi
Dated: 28th September, 2020

To
The DGCoA,
All Regional Directors,
All Registrar of Companies,
All Stakeholders.

Subject: Extension of LLP Settlement Scheme, 2020

Sir/Madam,

In continuation to this Ministry's General Circular No.13/2020 dated 30.03.2020, in view of large scale disruption caused by the COVID-19 pandemic and after due examination, it has been decided to extend aforesaid scheme till 31st December, 2020. All other requirements provided in the said circular shall remain unchanged.

2. This issues with the approval of the competent authority.

Yours faithfully,

(KMS Narayanan)
Assistant Director (policy)

Copy forwarded for information to:-1. e-governance section and web contents officer to place the circular on MCA website and 2. Guard file.

GST Corner

Daya Shankar Agarwala

GST Orders

Administrative instructions for recovery of interest on net cash tax liability w.e.f. 01.07.2017 [F. No. CBEC- 20/01/08/2019-GST Dated 18.09.2020]

The GST Council, in its 39th meeting, held on 14th March, 2020 recommended interest to be charged on the net cash tax liability w.e.f. 01.07.2017 and accordingly, recommended the amendment of section 50 of the CGST Act retrospectively w.e.f. 01.07.2017.

Post issuance of notification 63/2020 - Central Tax dated the 25th August, 2020, there were apprehensions raised by taxpayers that the said notification is issued contrary to the Council's recommendation to charge interest on net cash liability w.e.f. 01.07.2017. Consequently, a press release, dated 26.08.2020 was issued to clarify the position. Further, in order to implement the decision of the Council in its true spirit, and at the same time working within the present legal framework, it has been decided to address the issue through administrative arrangements, as under:

a) For the period 01.07.2017 to 31.08.2020, field formations in your jurisdiction may be instructed to recover interest only on the net cash tax liability (i.e. that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger); and

b) Wherever SCNs have been issued on gross tax payable, the same may be kept in Call Book till the retrospective amendment in section 50 of the CGST Act is carried out.

GST Notifications

1. Amendment in E-Invoice provisions

Any registered person, other than a Special Economic Zone unit and those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of the said rules, whose aggregate turnover **in any preceding financial year from 2017-18 onwards**[1] exceeds five hundred crore rupees, as a class of registered person who shall prepare invoice and other prescribed documents, in terms of sub-rule (4) of rule 48 of the said rules in respect of supply of goods or services or both to a registered person **or for exports**[2].

[N. No. 70/2020-Central Tax dated 30.09.2020]

2. Extension of due date for furnishing of Form GSTR-9 and 9C for F.Y. 2018-19 till 31st October, 2020

The time limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said rules, electronically through the common portal, for the financial year 2018-2019 extended from 30th September, 2020 to 31st October, 2020.

[N. No. 69/2020-Central Tax dated 30.09.2020]

3. Reduction of late fee for not furnishing Final Return in GSTR-10

The late fee payable under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees for the registered persons who fail to furnish the return in FORM GSTR-10 by the due date but furnishes the said return between the period from 22nd day of September, 2020 to 31st day of December, 2020.

[N. No. 68/2020-Central Tax dated 21.09.2020]

4. Reduction/Waiver of late fee for not furnishing GSTR-4 (Quarterly return for composition taxpayer) for F.Y. 2017-18 and 2018-19

The late fee payable under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who failed to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March, 2019 by the due date but furnishes the said return between the period from 22nd day of September, 2020 to 31st day of October, 2020.

[N. No. 67/2020-Central Tax dated 21.09.2020]

5. Extension of due date of compliance u/s 31(7) in respect of goods being sent or taken out of India on approval for sale or return

Where, any time limit for completion or compliance of any action, by any person, has been specified in, or prescribed or notified under sub-section (7) of section 31 of the said Act in respect of goods being sent or taken out of India on approval for sale or return, which falls during the period from the 20th day of March, 2020 to the 30th day of October, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall stand extended up to the 31st day of October, 2020.

[N. No. 66/2020-Central Tax dated 21.09.2020]

6. Extension of due date of compliance u/s 171

Where, any time limit for completion or compliance of any action, by any authority, has been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020, and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action, shall be extended up to the 30th day of November, 2020.

[N. No. 65/2020-Central Tax dated 01.09.2020]

GST Case Laws

Sl. No.	Description
A	Advance Ruling application
B	Alternate Remedy
C	Anti-Profiteering
D	Appeal
E	Assessment
F	Bail
G	Classification Disputes
H	Communication
I	Detention, Seizure and Release of goods/Conveyance
J	Input Tax Credit
K	Interest
L	Jurisdiction
M	Levy
N	Principle of Natural Justice
O	Recovery
P	Revocation of Cancellation of Registration
Q	Refund
R	Returns
S	Search & Seizure
T	Transitional Provisions
U	Tribunal
V	Valuation

A. Advance Ruling application

Maintainability of application for advance ruling- initiation of investigation prior to filing of the instant application- Classification of goods - rate of tax - flavoured Milk - taxable at the rate of 5% under Schedule-IV of GST Act or not

M/S. TIRUMALA MILK PRODUCTS PVT. LTD. [2020 (9) TMI 353 - AUTHORITY FOR ADVANCE RULING, KARNATAKA, Dated:- 2-9-2020, KAR ADRG 43/2020]

Held: The first proviso to Section 98(2) of the CGST Act 2017 does not specify as to with whom the issue pertaining to the question raised has to be pending, but merely specifies that it has to be pending or decided under the provisions of this Act. Hence the argument of the applicant that the issue must be pending before the jurisdictional officer is not tenable under the law.

In the instant case, Directorate of GST Intelligence, Bangalore Zonal Unit have initiated the investigation against the applicant, with regard to mis-classification of "flavoured milk", which is under progress. DGSTI has recorded the statements of the authorised representatives of the applicant and the applicant has also paid ₹ 2.97 Lacs towards pre-deposit. Further it is an admitted fact that the initiation of investigation was done prior to filing of the instant application, by issuing summons. The application is rejected as "inadmissible", in terms of first proviso to Section 98(2) of the CGST Act 2017

B. Alternate Remedy

Maintainability of petition –availability of alternative remedy - appealable order or not.

OCL IRON AND STEEL LTD. [2020 (9) TMI 980 - ORISSA HIGH COURT, Dated:- 16-9-2020, W.P.(C) No. 21267 of 2020]

Held: The present writ petition is disposed of with the direction that the petitioner shall file an appeal against the impugned assessment orders within a period of 15 days from today before the appellate authority under Section 107 of the CGST Act, 2017. In the event the appeal is filed, the appellate authority shall dispose of the same on merits and in accordance with law, as expeditiously as possible, preferably within a period of eight weeks. Simultaneously, if the petitioner files an application before the competent authority within the period as stated above for revocation of cancellation of registration as per the procedure prescribed under Section 30 of the CGST Act, 2017 read with Rule 23 of the CGST Rules, 2017, the competent authority shall decide the same on merits.

KRISHNA INTERNATIONAL [2020 (9) TMI 631 - DELHI HIGH COURT, Dated:- 11-9-2020, W.P.(C) 6231/2020]

Held: As there is an alternative remedy available to this petitioner, we are not inclined to entertain the prayer qua order dated 17th June, 2020. The petitioner is at liberty to prefer an appeal in accordance with law before the appropriate forum.

Refund claim – Held: Respondent-authorities are directed to decide the refund application of ₹ 7,68,938/-dated 23rd January, 2020 preferred by this petitioner in accordance with law, rules, regulations and Government policies applicable to the facts of the case within a period of three weeks from today, after giving adequate opportunity of being heard to the concerned party.

Revocation of cancelled petitioner's registration - CGST Act - It is the contention of the petitioner that it has been regularly filing its monthly returns disclosing the trading transactions and also paying the GST tax liability within the due dates.

M.S. RETAIL PRIVATE LIMITED [2020 (9) TMI 499 - KARNATAKA HIGH COURT, Dated:- 7-9-2020, W.P. NO.9041 OF 2020 (T-RES)]

Held: It is not in dispute that the show cause notices, the order of cancellation and the order rejecting the application for revocation of cancellation are passed by proper officer. The show cause notice dated 18.03.2020 and the order of cancellation of registration dated 06.06.2020 have already been challenged before this Court in W.P.No.8167/2020 and cannot be challenged in the present writ petition. Pursuant to the order passed in W.P.No.8167/2020, respondent no.4 has issued the notice dated 03.07.2020 to the petitioner. There is no jurisdictional error in the said notice. The petitioner has made his representation on 06.07.2020 and has been given a personal hearing by respondent no.4 and thereafter, he has passed the order dated 10.07.2020. Thus, the said order is a speaking order and it records the reasons for rejecting the application of the petitioner for revocation of cancellation of registration.

The intimation to the petitioner dated 21.07.2020 is pursuant to the order dated 10.07.2020 and it has to be construed as an intimation of the decision taken on 10.07.2020 by respondent no.4, though the reason assigned in the said intimation and the manner in which the same is styled may be erroneous. Even otherwise, the order dated 10.07.2020 is a reasoned order and the same cannot be held as without jurisdiction and in violation of any principles of natural justice. If the petitioner is aggrieved by the said order, it ought to have filed an appeal under Section 107 of the CGST Act. The petitioner cannot challenge the same by way of a writ petition.

The petitioner has filed the writ petition because it initially challenged certain provisions of the CGST Act and the CGST Rules which could not have been done by way of an appeal. However, for the reasons best known to the petitioner, it has given up the said prayer and has confined its arguments to erroneous exercise of jurisdiction by the respondents which this Court finds untenable for the aforementioned reasons. However, the Court is of the opinion that the petitioner cannot be bereft of its right of appeal as contemplated under the CGST Act.Petition dismissed.

Maintainability of petition - availability of statutory appeal under Section 107 of the Act - Provisional release of the goods and conveyance under Section 67(6) of the Act - perishable goods

PROPRIETOR KANUJI SHAMBHUJI THAKOR VERSUS STATE OF GUJARAT [2020 (9) TMI 680 - GUJARAT HIGH COURT, Dated:- 4-9-2020, R/Special Civil Application No. 10603 of 2020]

Held: Such application could have been preferred only after filing of the appeal under Section 107 of the Act. Be that as it may, if an appeal is filed, the authority concerned shall immediately take up the application filed by the writ applicant for provisional release of goods and conveyance under Section 67(6) of the Act and pass appropriate order in accordance with law, within a period of 8 days thereafter.

Maintainability of petition - availability of alternative remedy of appeal - refund of unutilized ITC - inverted duty structure - Circular No.59/33/2018-GST dated 04.09.2018

PARADEEP PHOSPHATES LTD. [2020 (9) TMI 978 - ORISSA HIGH COURT, Dated:-3-9-2020, W.P.(C) No.16904 of 2020]

Held: The petitioner has not made out any ground for interference with the order in a writ petition which he cannot raise before the Appellate Authority. This Court without interfering with the impugned order disposes of this writ petition granting liberty to the petitioner-Company to assail the legality and validity of the order under Section 107 of the Act.

Jurisdiction - Contention that order has been passed without considering the reply and no notice issued for penalty - submission of petitioner is that the order is beyond jurisdiction, inasmuch as, the proceedings are culminated in the impugned order dated 03.07.2020, arose out of Section 129 of the U.P. Goods and Services Tax Act, 2017

SKIPPER LIMITED [2020 (9) TMI 212 - ALLAHABAD HIGH COURT, Dated:- 2-9-2020, Writ Tax No. - 414 of 2020]

Held: The pith and substance of the order impugned is in the nature of an order assessing the tax liability of the petitioner and determining the consequent penalty. All other arguments are in the nature of grounds, on the foot of which challenge may be laid to the impugned order.

We do not propose to go into the merits of the submissions, at this stage, since an alternative and efficacious remedy is available to the petitioner under Section 107 of the G.S.T. Act.The writ petition is dismissed on the ground of alternative remedy.

Maintainability of appeal - learned Single Judge has only relegated the appellant to appear before the Assessing Officer and submit their application and the Assessing Officer was directed to forward such application to the Nodal Officer, who in turn would forward it to the concerned Grievance Committee

KROME LED LIGHTING TECHNOLOGIES PVT LTD. [2020 (9) TMI 880 - MADRAS HIGH COURT, Dated:- 1-9-2020, W.A.No.693 of 2020]

Held: Since the learned Single Judge has only directed the appellant to raise their grievance before the Nodal Officer/Nodal Committee, there is nothing to interfere with the said order by the Division Bench in the present intra court appeal. The case of the Assessee is admittedly pending before the learned Commissioner of Appeals as of now. Therefore, any observation on the merits of the case is likely to prejudice the case of the parties before us, either the assessee or the Revenue. Therefore, we decline to make any observation on the merits of the case.

This writ appeal is disposed off by relegating the appellant before the learned Commissioner of Appeals, where the appeal is pending and we expect, the said Authority to decide the appeal in accordance with law, after giving an opportunity of hearing to both the sides, as expeditiously as possible.

C. Anti-Profiteering

Profiteering - service of notice - grievance of the petitioner is that the notice dated 7th February, 2020 issued by the respondent No.2 DG to the petitioner is not in compliance with Rule 129(3)(a) & (b) of the Central Goods and Services Tax Rules, 2017.

NIRMA LTD. VERSUS NATIONAL ANTI-PROFITEERING AUTHORITY (GST) & ORS. [2020 (9) TMI 982 - DELHI HIGH COURT, Dated:- 22-9-2020, W.P.(C) 6758/2020]

Held: The contention of the counsel for the respondents does not appear to be correct inasmuch as Rule 129(1) as well as Rule 129(2) use the word 'investigation' and Rule 129(3) provides that, before initiation of investigation, notice containing the particulars described in Rule 129(3) has to be issued.

Profiteering - Vires of Section 171 of CGST Act and Chapter XV of the CGST Rules -vires of Rule 123, 129 and 133(3) of the CGST Rules - violation of Articles 14, 19(1)(g), 50, 256 and 300A of the Constitution of India

GAURAV SHARMA FOOD INDUSTRIES VERSUS UNION OF INDIA & ORS. [2020 (9) TMI 830 - DELHI HIGH COURT, Dated:- 18-9-2020, W.P.(C) 6671/2020]

Held: Keeping in view the orders passed by this Court in *Phillips India Limited Vs. Union of India &Ors. (W.P.(C) No.3737/2020) as well as M/s Samsonite South Asia Pvt. Ltd. Vs. Union of India &Ors. (W.P.(C) No.4131/2020 and M/s PatanjaliAyurved Ltd. Vs. Union of India &Ors. (W.P.(C) No.4375/2020), [2020 (7) TMI 614 - DELHI HIGH COURT]*, this Court directs the petitioner to deposit the principal profiteered amount (i.e. ₹ 7,53,854/- and ₹ 35,898/-) in six equated monthly installments commencing 30th September, 2020 - However, the interest amount directed to be paid by the respondents as well as penalty proceedings are stayed till further orders.List on 03rd November, 2020.

Profiteering - foot wear (Shoes) - allegation that the Respondent had not passed on the benefit of rate reduction when the rate of GST was reduced from 18% to 5%- contravention of provisions of Section 171 (1) of the CGST Act, 2017–Respondent has paid the entire profiteered amount in the Consumer Welfare Funds of the Central and the State Governments along with interest- SCN issued for penalty u/s 122(1)(i) for incorrect or false invoice

PINKY SALES [2020 (9) TMI 775 - NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 10-9-2020, Case No. 62/2020]

Held: The Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.

Profiteering - supply of Services by way of admission to exhibition of cinematograph films - allegation that the benefit of reduction in the rate of GST not passed on by way of commensurate reduction in price - contravention of provisions of section 171 of CGST Act - penalty

SHIVA PARVATHI THEATRE [2020 (9) TMI 498 - NATIONAL ANTI-PROFITEERING AUTHORITYDated:- 8-9-2020, Case No. 61/2020]

INOX LEISURE LTD [2020 (9) TMI 497 - NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 8-9-2020, Case No. 60/2020]

PVR LTD [2020 (8) TMI 772 - NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 24-8-2020, Case No. 53/2020]

Held: The Respondent has resorted to profiteering by way of either increasing the base prices of the service while maintaining the same selling prices or by way of not reducing the selling prices of the service commensurately, despite a reduction in GST rate on "Services by way of admission to exhibition of cinematograph films where price of admission ticket is one hundred rupees or less" from 18% to 12% w.e.f. 01.01.2019 to 30.06.2019. Since the recipients, in this case, are not identifiable, the Respondent is directed to deposit the amount of profiteering in the Consumer Welfare Fund (CWF) OF THE Central and State Governments along with interest. In the last two cases, respondents have deposited the profiteered amount with interest themselves.

Profiteering - purchase of apartment - allegation that the benefit of Input Tax Credit (ITC) not passed on - contravention of section 171 of CGST Act - penalty

SHAPOORJI PALONJI, LEGAL NAME: RELATIONSHIP PROPERTIES PVT. LTD. [2020 (9) TMI 160 - NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 31-8-2020, Case No. 59/2020]

SUN INFRA SERVICES PVT. LTD., [2020 (9) TMI 159 - NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 27-8-2020, Case No. 58/2020]

S3 BUILDWELL LLP [2020 (9) TMI 99 - NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 27-8-2020, Case No. 57/2020]

NANI RESORTS AND FLORICULTURE PVT. LTD. [2020 (9) TMI 98 - NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 27-8-2020, Case No. 56/2020]

SHREE INFRA [2020 (9) TMI 40 - NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 25-8-2020, Case No. 55/2020]

MAN REALTY LTD.[2020 (9) TMI 39 - NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 24-8-2020, Case No. 52/2020]

Held: The Respondent has benefited from the additional ITC which he was required to pass on to the buyers of the flats by commensurately reducing the prices of the flats which he has not done and hence he has violated the provisions of Section 171 (1) of the CGST Act, 2017. Since the buyers are identifiable, the Respondent is directed to pass on the

profiteered amount to the flat buyers along with the interest © 18% per annum from the dates from which the above amounts were collected by him from them till the payment is made, within a period of 3 months from the date of passing of this order.

Profiteering - Sanitary Napkins - allegation that the reduction of rate of GST not passed on by way of commensurate reduction in prices - Contravention of section 171 of CGST Act - Penalty

BHUTANI INTERNATIONAL MEDICOS [2020 (9) TMI 38 - NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 24-8-2020, Case No. 51/2020]

Held: It has been revealed that the Respondent has not passed on the benefit of reduction in GST rate from 12% to Nil on the above product w.e.f. 27.07.2018 to 30.09.2018 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.

Profiteering - Maggi Noodles Pack having MRP ₹ 5/- - allegation that the benefit of reduction in the rate of GST not passed on by way of commensurate reduction in price - contravention of section 171 of CGST Act - penalty

KUNJ LUB MARKETING PVT. LTD. [2020 (9) TMI 37-NATIONAL ANTI-PROFITEERING AUTHORITY, Dated:- 24-8-2020, Case No. 50/2020]

Held: It has been revealed that the Respondent has not passed on the benefit of reduction in the GST rate from 18% to 12% on the above product w.e.f 15.11.2017 to 28.02.2018 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.

Penalty in all above cases of profiteering:

Held: From the perusal of Section 122 (1) (i), it is clear that the violation of the provisions of Section 171 (1) is not covered under it as it does not provide penalty for not passing on the benefits of tax reduction and hence the above penalty cannot be imposed for violation of the anti-profiteering provisions made under Section 171 of the CGST Act.

Since no penalty provisions were in existence during the relevant period when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. Accordingly, the notice issued to the Respondent for imposition of penalty under Section 122 (1) (i) is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.

D. Appeal

Maintainability of appeal - requirement of pre-deposit - he petitioner is ready and willing to deposit an additional 20% of the remaining amount of tax in dispute in compliance of the requirements under Section 112 (8) of the Act.

NANJUNDAPPA TRADING COMPANY AND ANOTHER [2020 (9) TMI 1026 - ALLAHABAD HIGH COURT, Dated:- 23-9-2020, Writ Tax No. - 487 of 2020]

Held: The petitioner shall deposit 20% of the remaining amount of tax in dispute in accordance with Section 112 (8) of the Act within three weeks from today and in which event, the recovery proceedings for the balance amount shall remain stayed till disposal of the instant petition.

List for hearing in the second week of February, 2020 before the appropriate Court.

Permission to file/upload statutory appeal on the GST web portal under section 107 of the GST Act, 2017 - pre-requisite amount not deposited

SANYOG CONSTRUCTION PRIVATE LIMITED [2020 (9) TMI 165 - PATNA HIGH COURT, Dated:- 27-8-2020, Civil Writ Jurisdiction Case No.7195 of 2020]

Held: Sri Vikash Kumar, learned Standing Counsel-XI appearing for the State, states that if the petitioner deposits the amount towards tax, interest, fine, fee and penalty as admitted by him and also a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order, the concerned authority will allow access to the petitioner for uploading the statutory appeal on the GST Web Portal as is required under Section 107 of the Central Goods and Services Tax Act, 2017/ Bihar Goods and Services Tax Act, 2017.

If the petitioner complies the undertaking as given before this Court within a period of four weeks from today, we direct the appellate authority to hear the appeal through virtual mode on account of circumstances arising from the current Pandemic Covid-19 and decide it expeditiously, preferably within a period of three months from the date of its filing.

E. Assessment

Validity of assessment order - proceedings under Section 74 of the CGST Act

SRI SAI INDUSTRIES 2020 (9) TMI 1059 - PATNA HIGH COURTDated:- 21-9-2020, Civil Writ Jurisdiction Case No. 7808 of 2020]

Held: Learned counsel for the State states that there were prior proceedings which led to the issuance of impugned demand notice dated 29.06.2020 (Annexure-P/2) - If that be so, we are not inclined to examine the statement made by the petitioner, factual in nature. The petitioner has equally efficacious remedy in law under the CGST Act.

Validity of assessment orders - Section 62 of the GST Act

JAY GOGA TRADERS [2020 (9) TMI 682 - GUJARAT HIGH COURT, Dated:- 9-9-2020, R/SPECIAL CIVIL APPLICATION NO. 11029 of 2020]

WILD TREE RESORTS BY THE LEGEND PRIVATE LTD. [2020 (9) TMI 681 - KERALA HIGH COURT, Dated:- 7-9-2020, WP(C).No.18132 OF 2020(N)]

Held : Inasmuch as, admittedly, the said returns were filed more than 30 days after the receipt of the orders by the petitioner, the petitioner cannot be heard to contend that Ext.P2 series of orders ought to be set aside in terms of Section 62 of the GST Act.

Accordingly, without prejudice to the right of the petitioner to impugn Ext.P2 series of assessment orders before the appellate authority under the GST Act, the writ petition in its challenge against the said orders is dismissed. Recovery steps for recovery of the amounts confirmed against the petitioner by EXt.P2 Series of assessment orders shall, however, be kept in abeyance for a period of three weeks from the date of receipt of a copy of this judgment, so as to enable the petitioner to avail his appellate remedy in the meanwhile.

F. BAIL

Grant of Bail - power to re-arrest if the amount of tax evaded goes up during the investigation - Accused is already on bail in the same case - availment of ineligible ITC to the tune of ₹ 24 Crore - pre-trial detention - custodial interrogation

CUSTOMS VERSUS PARAG GARG [2020 (9) TMI 1025 - PATIALA HOUSE COURT, Dated:- 24-9-2020]

Held: The approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evident.Even if any new case is made out after release of the accused on bail ipsofacto, the Court or the police/department will not get a right to take the accused to the custody unless the bail originally granted is cancelled for any substantial reasons. There must be overwhelming circumstances which are necessary for cancellation of bail.

In the criminal jurisprudence prevailing in all common law countries, every person is presumed to be innocent until proved to the contrary. The consequence that logically follows is that an accused ought not to be detained or imprisoned, that the personal liberty even of an accused should not be interfered with, until he is convicted by due process of law. Several offences are notified as being bailable and even in the remainder, that is non-bailable offences, the accused can be enlarged on bail by orders of the Court. Bail is the rule; Jail is the exception - The presumption of the innocence of an accused can easily be defeated if the investigation is not constrained by time, is open-ended and protracted. It is for this reason that the legislature has wisely provided that the investigation of an accused should reach its culmination by the filing of a Chargesheet within sixty days, or ninety days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years.

No doubt the department has moved an application for examination of accused in terms of section 70 of CGST Act which was allowed. The said examination is never meant to be a custodial interrogation and therefore such averments are rejected.

Accused ParagGarg is entitled to bail as not only he was arrested in pursuance to an ongoing further investigation conducted by DGGI but also the fact that accused has prima facie shown that he has secured around 40% of the alleged tax evasion amount. The adjudication proceedings are yet to commence by the department as their investigation is not concluded and the complaint is not likely to be filed very soon.

Bail application allowed subject to certain conditions.

Pre-arrest Bail Application - allegation of monthly amount were being paid as bribe to the officers and officials of taxation department. - alleged tax evasion in connivance with the officers/ officials of Excise and Taxation Department. - It is alleged that the tax was being evaded by ensuring that there is no checking or verification of the documents or the goods while being transported to and from State of Punjab - Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and Sections 7, 7(a) and 8 of the Prevention of Corruption Act, 1988.

RAVI NANDAN VERSUS STATE OF PUNJAB [2020 (10) TMI 44 - PUNJAB AND HARYANA HIGH COURT, Dated:- 22-9-2020, CRM-M-28797-2020]

SUSHIL KUMAR VERSUS STATE OF PUNJAB [2020 (9) TMI 983 - PUNJAB AND HARYANA HIGH COURT, Dated:- 22-9-2020, CRM-M-28841-2020]

Held: With the introduction of GST regime, one of the object worked upon was free movement of goods, by removal of barriers and Information Collection Centres. The responsibility was shifted upon the Excise and Taxation Officers/ officials and more so on the mobile wing of the department. Under the GST, there is an inter-connected chain of sellers and purchasers as the purchaser gets the credit of tax paid or suffered by seller. The chain can be within the State or PAN-India. One link in the chain being in-genuine, doctored or non-existent, would impact the entire chain.

The nature of allegation in present case of evasion of GST requires a deeper probe. There are far reaching ramifications which may vary from allowing of input credit/ MODVAT of tax not paid to the Government to an eventuality that the credit of tax paid on some other product is used for something else. Not only this, someone later in chain in spite of being bona fide purchaser not aware of the earlier misdeed in the chain yet will have to suffer the consequences.

The allegation in the present case are very serious - There is alleged connivance of the transporters, passers and the officials to facilitate the evasion of tax. The investigation is going on, it appears that the officials were being paid bribe on monthly basis.

There is no quibble that the liberty of a person is of utmost importance. But when personal liberty is pitted against a sovereign function i.e. collection of tax which is life blood of the economy, the latter would prevail. Present is a case where arrest is imperative for fair and full investigation. The petitioner being an ex-officer of the department can influence the witness or temper with the evidence - Considering the complexity of the issue, the tax impact on chain of sellers and purchasers, the material as on date with the investigating agency, the multi- dimensional aspects involved which needs a deeper probe, no case is made out for grant of pre-arrest bail.

Petition dismissed.

Grant of anticipatory bail - arrest of Superintendent working in the office of Commissioner of CGST, Rohtak - Demanding bribe - Evasion of GST - Section 120-B IPC and Section 7 of the Prevention of Corruption Act, 1988

GURVINDER SINGH SOHAL vs. CBI [2020 (9) TMI 884 - PUNJAB AND HARYANA HIGH COURT, Dated:- 17-9-2020, CRM-M-27988-2020]

Held: The argument raised by the counsel for the petitioner that the petitioner has been falsely implicated on account of a raid conducted by him for checking the difference of 6% GST to be paid by the complainant is a matter of evidence - It is undisputed fact that co-accused KuldeepHooda was arrested on the next day, i.e. 15.8.2020 and a huge unaccounted amount of ₹ 64 lacs was recovered from his house.Therefore looking into the serious allegations against the petitioner, which suggest his active involvement in the case, custodial investigation of the petitioner is required - Petition dismissed.

Grant of Anticipatory Bail - It is submitted by the learned counsel for the petitioner not only the bail application is allowed without issuing any notice to the Department but the Court which granted anticipatory bail had no jurisdiction to grant the same as such application could have been listed either before the learned CMM or before the learned ASJ, Patiala House Courts, New Delhi.

DIRECTORATE GENERAL OF GST INTELLIGENCE VERSUS PRAKASH CHAND GOLCHA [2020 (9) TMI 882 - DELHI HIGH COURT, Dated:- 16-9-2020, CRL.M.C. 1813/2020]

Held: Issue notice to the respondents through all modes including email returnable on 20.10.2020.

Grant of Anticipatory Bail - notice to the Department not issued - evasion of GST

DIRECTORATE GENERAL OF GST INTELLIGENCE VERSUS HARISH KUMAR BAID [2020 (9) TMI 735 - DELHI HIGH COURT, Dated:- 16-9-2020, CRL.M.C. 1817/2020]

Held: Issue notice to the respondents through all modes including email returnable on 20.10.2020.

Bail application - input tax credit - only difference between the case of the petitioner and co-accused is of the quantum involved

SAURABH CHHAJER vs. STATE OF RAJASTHAN [2020 (9) TMI 881 - RAJASTHAN HIGH COURT, Dated:- 15-9-2020, S.B. Criminal Miscellaneous Fourth Bail Application No. 9338/2020]

Held: Taking note of the fact that maximum sentence involved is five years and petitioner has remained in custody for a period of 19 months and also taking note of the fact that matter is still at the stage of pre-charge evidence and co-accused has been enlarged on bail by this Court, it is deemed proper to allow the fourth bail application.

This fourth bail application is accordingly allowed and it is directed that accused petitioner shall be released on bail provided he furnishes a personal bond in the sum of ₹ 10,00,000/- together with two sureties in the sum of ₹ 5,00,000/- each to the satisfaction of the learned trial court with the stipulation that he shall appear before that Court and any court to which the matter is transferred, on all subsequent dates of hearing and as and when called upon to do so.

Grant of Bail –Pre-trial detention of accused - abatement as provided under section 132 (1) (k) & (I) of CGST Act - operating of various firms

COMMISSIONER, CGST, DELHI WEST VERSUS AMIT KUMAR JAIN [2020 (9) TMI 426 -PATIALA HOUSE COURT, Dated:- 9-9-2020]

Held: It must be kept in mind that the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence should not to be treated as the only ground for refusal of bail.But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consequences are bound to follow - Further discretionary jurisdiction of courts u/s 437 CrPC should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society.

In view of the allegations of creating fake firms and claiming such fraudulent input tax credit and routing them through various fake firms shows the propensity and wherewithal of accused in committing such crimes. I am satisfied if released on bail at this stage, the accused Amit Kumar Jain most likely will make an attempt to influence the proprietors / partners of the firms involved. The plea that accused has no previous criminal antecedents is humbly rejected as it may also point out that similar crime of accused if any, committed previously remained undetected. The pre-trial detention of accused Amit Kumar Jain is necessary at this stage as if released on bail, he will not only try to won over the public witness but may make an attempt to erase the money trail of the alleged crime, hence no ground for bail is made out at this stage.Bail application dismissed.

Revenue appeal against grant of Anticipatory Bail by the session court - Restraint on the petitioner (revenue) from infringing the fundamental right of life and liberty

DIRECTORATE GENERAL OF GST INTELLIGENCE, INDORE REGIONAL UNIT, MADHYA PRADESH VERSUS MUKESH GARG [2020 (9) TMI 205 - DELHI HIGH COURT, Dated:- 27-8-2020, CRL.M.C. 1692/2020]

Held: At the outset, MrRohtagi, learned senior counsel appearing for the respondent, fairly stated that the remedy availed by the respondent for filing anticipatory bail in the given circumstances was erroneous.Considering the peculiar circumstances of this case and the concession made by MrRohtagi, this Court considers it apposite to set aside the impugned order dated 13.08.2020. It is so directed.In addition, it is also directed that in the event, the petitioner or any of its officers propose to take any coercive action against the respondent, the petitioner shall serve a weeks prior notice.Petition allowed.

Grant of Bail - condition to deposit entire demand of GST with interest for Bail - creation of fictitious firms and tax invoice - GST evasion - petitioner unable to pay outstanding amount for fulfilling conditions envisaged under Section 438 Cr.P.C. -presumption of innocence or not

RANJIT SINGH VERSUS STATE OF HARYANA [2020 (9) TMI 76 - PUNJAB AND HARYANA HIGH COURT, Dated:- 21-8-2020, CRM-M-14856-2020]

Held: This Court is of the opinion that the condition is onerous and is liable to be set aside.This Court is of the opinion that since the maximum punishment which can be awarded is upto 5 years and the petitioner has almost undergone a period of one year having been arrested on 06.09.2019. The onerous conditions would thus violate Article 21 of the Constitution of India as the liberty of the petitioner is being deprived - The factum of the investigation being complete and enquiry having been completed and the relevant documents being in possession of the prosecution, the petitioner thus cannot be detained during the trial only on account of the fact that a bail order in the form of a recovery proceedings has been passed against him to pay the outstanding worth almost ₹ 2 crores along with interest.

The condition of payment of ₹ 1,94,78,017/- along with interest is set aside. The bail bonds of ₹ 50 lakhs with one surety are reduced to ₹ 25 lakhs which shall be in the form of immoveable property, to the satisfaction of the Ilaqa/Duty Magistrate, Panipat. The order of the Addl. Sessions Judge dated 08.04.2020 (Annexure P-2) is, accordingly, modified, whereas the other conditions shall remain intact.

Petition allowed.

G. Classification disputes

Classification of services - GTA Services or not (SAC 996791) - sub-contractor - Appellant would be issuing the consignment note to M/s. Posco ISDC Pvt. Ltd.in addition to the consignment note, issued by M/s. Posco ISDC Pvt. Ltd. to their clients - GST under forward charge mechanism - N/N. 0/2017-Central Tax (Rate), dated 22.08.2017 - input tax credit - Procedurally, is it correct to have two GTA Service Providers and two consignment notes for the same movement of goods, one issued by the Appellant as a sub-contractor and the other by M/s. Posco ISDC Pvt. Ltd. as the main contractor? - challenge to AAR decision.

LIBERTY TRANSLINES [2020 (9) TMI 1104 - APPELLATE AUTHORITY FOR ADVANCE RULING, MAHARASHTRA, Dated:- 26-8-2020, MAH/AAAR/RS-SK/26/2020-21]

Held: On perusal of the aforementioned meaning of the GTA, it is clearly seen that issuance of the consignment note is an essential condition for any person to act as GTA -On perusal of the CGST Act, 2017, it is revealed that the term consignment note is not defined anywhere in the CGST Act, 2017. However, the mention of the same was made under the explanation to Rule 4B of the Service Tax Rules, 1994.

In the subject case, the Appellant is not receiving goods directly from the consignor or consignee of the goods, but from M/s. Posco ISDC Pvt. Ltd., who themselves are acting as GTA, where they are receiving the goods from the consignor/consignee, and issuing the consignment notes in respect thereof The Appellant is merely a Goods Transport operator here and not a GTA - Since, in the subject case, it is M/s. Posco ISDC Pvt. Ltd. who would be generating the E-way bill prior to the movement of goods by road, therefore, M/s. Posco ISDC Pvt. Ltd. would be the actual transporter. Now, once the identity of the transporter is revealed, which in the subject case is M/s. Posco ISDC Pvt. Ltd., the contention of the Appellant that they would also be acting as GTA in the proposed arrangement is not sustainable. In a single transaction of transportation of goods, as consignment note is an evidence of custody of goods taken from owner of the goods and the privity of contract exists between the owner of goods and the GTA, and thus, it is the GTA, which issues the consignment note.

The Appellant is simply hiring out their transport vehicles to M/s. Posco ISDC Pvt. Ltd. for a consideration, hence, their services would be classified under the Heading 9966 of Notification No. 11/2017-C.T.(Rate), dated 28.06.2017, bearing the description "rental services of transport vehicles".

Appellant's contention wherein it has been argued that when the whole work is sub-contracted, the classification of the service cannot change – Held: It is opined that the Appellant's contention is fallacious as it has been established above that the actual transporter in the subject case is M/s. Posco ISDC Pvt. Ltd, and not the Appellant, therefore, it would not be proper to say that the whole work in the subject case, which is transportation of the goods by road, acquired by M/s. Posco ISDC Pvt. Ltd. from their clients, have been sub-contracted to the Appellant. The Appellant is merely supporting M/s. Posco ISDC Pvt. Ltd. in their activity as the GTA by way of renting out their transport vehicle.

Appellant's contention that the Advance Ruling Order has imposed restrictions on them in doing business as the order passed by the Advance Ruling Authority does not permit them to charge 12% GST on the forward charge basis in terms of Notification No.20/2017-C.T.(Rate), dated 22.08.2017 – Held: It is observed that the ruling, passed by the MAAR, is in the context of the proposed arrangement

propounded by the Appellant for the purpose of seeking Advance Ruling in the matter, where the Maharashtra AAR held that the activities carried out by the Appellant in the subject transaction, as discussed above, are not those of GTA. The Advance Ruling order does not debar the Appellant from acting as GTA in other transactions, where they enter into transport contract with the consignor or consignee directly.

Order passed by AAR upheld.

Works contract service for the construction of dwelling units in the RREP

PRIMARC PROJECTS PVT. LTD. [2020 (9) TMI 1142 - AUTHORITY FOR ADVANCE RULING, WEST BENGAL, Dated:- 28-9-2020 , Case Number 10 of 2020, Order Number 09/WBAAR/2020-21]

Held: The works contract service for the construction of those dwelling units in the RREP that are affordable residential apartments in terms of clause 4(xvi) of the Rate Notification are taxable under Entry No. 3(v)(da) of the said notification, provided the applicant does not opt for paying tax at the rate specified in (ie) or (if) of Entry No. 3.

Validity of Notifications - N/N. 1/2017-Central Tax (Rate) dated 28.06.2017, N/N.1/2017Integrated Tax (Rate) dated 28.06.2017, N/N. 1/2017-State Tax (Rate) dated 30.06.2017-conflict with the recommendations made by Respondent No. 3 in its 15th Meeting held on 03.06.2017

MANUFACTURERS TRADERS ASSOCIATION & ANR.VERSUS UNION OF INDIA & ORS. [2020 (9) TMI 929 - DELHI HIGH COURT, Dated:- 15-9-2020, W.P.(C) 597/2019]

Held: This Court referred the matter to Respondent No. 3 in view of the seeming ambiguity in the minutes of the 15th GST Council Meeting, as portrayed by the learned counsel for the Petitioner. The Court prima facie comprehended that the affidavit filed on behalf of Respondent No. 3 was only a proposal of the Joint Secretary (TRU-1), CBEC that was not agreed to or approved by the Council. In these circumstances, in order to have certainty in the matter, the Court deemed that the best course of action would be to have the opinion of the GST Council. Now, the Council in its 38th meeting on 18.12.2019 has deliberated on the matter and has unequivocally confirmed that it had indeed recommended the GST rate of 12% for the fabrics falling under Chapters 56 to 59 of the Customs Tariff.

The learned counsel for the Petitioners is not satisfied and persists that the Respondent No. 3 has recommended tax at the rate of 5% for all fabrics. To buttress his contention, he relies upon the reply given by the Union Minister for Finance in response to a starred question raised on 18.07.2017 in the Rajya Sabha. We find the aforesaid contention to be unconvincing and meritless. A perusal of the response reveals that the Union Minister for Finance while responding to a question raised in connection with organized traders and unorganized sellers in textile sectors, stated that the GST rate structure for textile sector was discussed in detail in the GST Council Meeting held on 03.06.2017, and that the Council recommended the detailed rate structure for textile sector. The tabulation which form part of the response reflects the notified GST rates as 5%. This response of the Union Minister for Finance to a query, cannot prevail over the decision of the GST Council.

The rate of taxes is jointly decided by the centre and states on the recommendations of the Council. The Council has the power and prerogative to issue recommendations on issues in terms of Article 279A (4) of the Constitution. The composition of Respondent No. 3 and the constitutional scheme of taxation is a clear indication that the functioning of the GST Council is based on collaborative efforts that embody the spirit of cooperative federalism. The coming together of the stakeholders has given rise to a unified system of taxation for the entire country.

The impression of contradiction that appeared on comparison between the counter affidavit of Respondent No. 3 and the minutes of meeting has been resolved and conclusively settled. The matter has been deliberated by the body whose decision were called in question. - We cannot sit in appeal and postulate that the decision of the Council is not what they have unwaveringly held it to be - petition dismissed.

H. Communication

Validity of communications issued by the Additional Assistant Director DGGI

TAMIL NADU CO- OPERATIVE MILK PRODUCERS FEDERATION LIMITED, THE SALEM DISTRICT CO OPERATIVE MILK PRODUCERS UNION LIMITED [2020 (9) TMI 1056 - MADRAS HIGH COURT, Dated:- 22-9-2020, W.P. Nos.12646 and 12647 of 2020]

Held: The impugned communication only solicits certain particulars from the petitioner and any further action in continuance thereof will be taken in accordance with law after hearing the petitioner. This is recorded. There is thus no basis for the apprehension expressed by the petitioner to the effect that demands would be raised on the basis of the impugned communication itself.Petition dismissed.

I. Detention, Seizure and Release of goods/Conveyance

Detention of vehicle- E-way bill did not mention correct details

JAITRON COMMUNICATION PVT. LTD. [2020 (9) TMI 1141 - ALLAHABAD HIGH COURT, Dated:- 24-9-2020, Writ Tax No. - 231 of 2020]

Held: Admittedly, in the facts of the present case the petitioner did accept that the e-way bill with the vehicle did not contain correct description with regard to movement of goods. Another e-way bill (though not available with the vehicle, at the time of detention) has also been produced along with details of job work executed in favour of the petitioner. The tax invoice which has been relied upon for determining the liability of tax admittedly is of the year 2018 and it is not the case of the Department that such amount of tax was not paid at the time when the machine was purchased in the year 2018

itself. It is also not the case of the Department that this machine has been sold to anybody.

Perusal of the orders passed would clearly go to show that the claim set up by the assessee with regard to transportation of machine for performance of job work has not been examined on merits. There is also no consideration or finding in the orders passed by the authority which may suggest that this transportation of machine was for any other purpose. The proper Officer in terms of the scheme was expected to examine the specific defence set up by the petitioner and consequently determines the liability of tax payable by the petitioner. It is only after determining the liability to pay tax that the liability to pay penalty could be determined. This exercise does not appear to have been performed by the proper Officer in the manner expected by it in accordance with the Act. Petitioner's claim that no liability to pay tax had arisen till the time when the machine was being transported is also required to be examined. Such factual issues require proper determination at the level of the proper Officer, at the first instance.

The proper Officer is requested to examine such defence of the petitioner and thereafter determine the liability, if any, in accordance with law. It is made clear that this Court has not determined the liability of the petitioner on merits and all issues of fact are left open to be examined by the proper Officer, at the first instance - petition allowed by way of remand.

Release of confiscated goods alongwith Truck - detention on the ground that the goods were found without E-way bill - petitioner is ready and willing to deposit the tax and penalty and has also ready and willing to give bank guarantee for the amount for total value of confiscated conveyance as mentioned in Form GST MOV-10.

ARPIT PARCEL SERVICE VERSUS STATE OF GUJARAT [2020 (9) TMI 1058 - GUJARAT HIGH COURT, Dated:- 23-9-2020, R/SPECIAL CIVIL APPLICATION NO. 11388 of 2020]

Held: In the facts of this case, we direct the petitioner to deposit an amount of ₹ 39,512/- in cash towards tax and penalty and balance amount of ₹ 3,95,098/- shall be by way of bank guarantee of any nationalized bank. On deposit of amount of tax and penalty and furnishing of the bank guarantee of the balance amount, the respondent authority shall immediately release the goods as well as truck conveyance.

Territorial Jurisdiction- Detention of goods during stock transfer - recovery of GST and penalty- It is contended that the deviation pointed by the 3rd respondent in the detention order is unsustainable because the GST registration of the petitioner in the State of Telangana itself shows its principal place of business at Hayathnagar and additional place at Bongulur village, IbrahimpatnamMandal and therefore the 3rd respondent acted illegally in recovering tax and penalty from the petitioner by detaining the goods

SAME DEUTZFAHR INDIA P LTD VERSUS STATE OF TELANGANA [2020 (9) TMI 1057 - TELANGANA HIGH COURT, Dated:- 23-9-2020, Writ Petition No.13392 of 2020]

Held: Once it is clear that petitioner has additional place of business in the State of Telangana in Bongulur village, IbrahimpatnamMandal and the goods were being transported to that address from its Corporate office at Ranipet, Tamil Nadu State, it cannot be said that the petitioner was indulging in any illegal activity when the tax invoice shows that the supplier is the petitioner's Corporate office in Ranipet, Tamil Nadu State and that it was shipped to its Depot in Bongulur village in IbrahimpatnamMandal.

There was no occasion for the 3rd respondent to collect tax and penalty from the petitioner on the pretext that there is illegality in the transport of goods as it would merely amount to stock transfer and there is no element of sale of goods or services in it.

Respondents are directed to refund within four (04) weeks the sum of ₹ 6,70,448/- collected towards CGST and State GST and penalty from the petitioner with interest @ 9% p.a. from 05-03-2020 till date of payment to petitioner by the respondents. The 3rd respondent shall also pay costs of ₹ 1,500/- to the petitioner - Petition allowed.

Detention of goods - there exists valid tax invoice and e-way bill - Contention is that merely because certain loose invoices were also found, the liability cannot be converted into one under Section 129(1)(b) of the Act.

B.N. ENTERPRISES [2020 (9) TMI 984 - ALLAHABAD HIGH COURT, Dated:- 23-9-2020, Writ Tax No. - 299 of 2020]

Held: Matter requires consideration.In the event, petitioner deposits the disputed amount of tax and penalty in terms of Section 129(1)(a) and also furnishes security in respect of the remaining amount found due and payable under the order of Appellate Authority, the detained goods shall be released to the petitioner subject to final outcome of this petition.

Detention of Consignment of watches - detention on the ground that the consignment not accompanied by a valid e-way bill

BEST SELLERS (COCHIN) PRIVATE LIMITED [2020 (9) TMI 883 - KERALA HIGH COURT, Dated:- 17-9-2020, WP(C).No.18522 OF 2020(M)]

Held: It is seen that the transportation of the goods was accompanied by Ext.P4 tax invoice, where the supplier in Delhi had shown the actual price of the consignment of watches, which was ₹ 4,49,550/- and had given a discount of almost the entire amount save to the extent of ₹ 8.99, and had paid IGST at the rate of 18% on the actual value of the watches.

There are force in the contention of the learned counsel for the petitioner that inasmuch as the effective value of the goods that was transported was only ₹ 8.99 as evident from Ext.P4 invoice, and the provisions of the Act and Rules mandate that an e-way bill is required only for consignments whose value exceeds ₹ 50,000/-, the detention at the instance of the respondent cannot be said to be justified.

The respondent is directed to forthwith release the goods and the vehicle to the petitioner on the petitioner producing a copy of this judgment before the said authorities -petition allowed.

Demand of GST along with interest and penalty as well as encashment of 8 Bank Guarantee - detention of goods on the ground that e-way bills were faulty and undervalued and detention order passed

LM WIND POWER BLADES INDIA PVT. LTD. [2020 (9) TMI 930 - BOMBAY HIGH COURT, Dated:- 15-9-2020, WRIT PETITION NO.6968 OF 2019]

Held: Admittedly, there is IGST demand of ₹ 2,36,63,256.00 with equal amount of penalty imposed, together the total dues comes to ₹ 4,73,26,512.00 - As against this, petitioner had paid IGST of ₹ 2,36,63,256.00. At the stage of preferring the first appeals petitioner had deposited 10% of the IGST dues amounting to ₹ 23,66,326.00. Thereafter while filing the second appeals under section 112 of the CGST Act petitioner deposited ₹ 47,32,651.00 being 20% of the IGST dues. Thus, petitioner had deposited an amount of ₹ 70,98,977.00 in addition to IGST dues already deposited. In all petitioner has deposited ₹ 3,07,62,233.00.

The amount covered by the eight bank guarantees is ₹ 4,73,26,512.00. If both the figures are added i.e., the amount covered by the bank guarantees and the dues paid by the petitioner, the amount would be ₹ 7,80,88,745.00 (₹ 4,73,26,512.00 + ₹ 3,07,62,233.00) which amount is now with the respondents as against demand and penalty of ₹ 4,73,26,512.00. From the above, it is evident that an amount of ₹ 3,07,62,233.00 (₹ 7,80,88,745.00 ₹ 4,73,26,512.00) is lying in excess with the respondents. Even if the appeals filed by the petitioner under section 112 of the CGST Act are dismissed, petitioner would be required to pay a further amount of ₹ 1,65,64,279.00 only whereas respondents are holding onto an amount of ₹ 3,07,62,233.00 of the petitioner much in excess of the dues.

Subsection (9) clarifies that when the appellant pays the pre-deposit as per sub-section (8), recovery proceedings for the balance amount shall be deemed to be stayed till disposal of the appeal - That being the position and without entering into the controversy as to whether respondent No.4 received request of the petitioner for extension of the bank guarantees before encashment, we are of the view that having regard to the facts and circumstances of the case, the following directions will meet the ends of justice:-

a. Respondent Nos.3 and 4 shall refund the amount of ₹ 4,73,26,512.00 covered by the eight encashed bank guarantees with applicable statutory interest thereon to the petitioner within a period of four weeks from the date of receipt of a copy of this order;

b. Petitioner to furnish fresh bank guarantee(s)from nationalized bank to respondent No.4 for an amount of ₹ 1,65,64,279.00 covering the balance amount of penalty imposed on the petitioner within a period of four weeks from the date of receipt of a copy of this order.

Detention of goods - goods detained for the reason that goods have been unloaded at a place other than the recorded destination

THE PIT STOP VERSUS THE ASSISTANT STATE TAX OFFICER [2020 (9) TMI 683 - KERALA HIGH COURT, Dated:- 11-9-2020, WP(C).No.18698 OF 2020]

Held: The petitioner has not been served with a detention order so far, though the goods were detained from 09.09.2020. In the facts of the case, this Court is of the firm opinion that to meet the ends of justice, the petitioner get release of all goods and conveyance, on providing bank guarantee for the amount involved. The learned Government Pleader submits that the amount of tax and penalty together will come to ₹ 2,34,500/-.

The writ petition is therefore disposed of directing the respondent to release the goods and conveyance on the petitioner, providing bank guarantee for an amount of ₹ 2,34,500/-.

Detention and seizure of goods - Confiscation of goods - case of Revenue is that various irregularities were noticed by the authorities concerned at the time of seizure and detention of the goods and the conveyance

RADHA TRADELINKS PVT LTD VERSUS STATE OF GUJARAT [2020 (9) TMI 827 - GUJARAT HIGH COURT, Dated:- 10-9-2020, R/Special Civil Application No. 11067 of 2020]

Held: We are of the view that we should not interfere at the stage of adjudication of the confiscation proceedings under Section 130 of the Act. The adjudication proceedings shall proceed in accordance with law. However, we are inclined to grant some relief to the writ applicant so as to protect the goods getting damaged, but at the same time keeping in mind the interest of the State also. We direct the writ applicant to deposit an amount of ₹ 1,70,787/- towards tax and penalty with the authority concerned and also furnish a bank guarantee to the tune of ₹ 17,07,876/- of any Nationalized bank.

On deposit of ₹ 1,70,787/- towards tax and penalty along with the bank guarantee of ₹ 17,07,876/- of any Nationalized bank, the authority concerned shall release the goods and the vehicle at the earliest. The deposit of bank guarantee shall abide by the final outcome after adjudication.

Detention of goods - detention on the ground that there was no valid e-way bill covering the transportation of goods in terms of Section 138 of the GST Rules

USMAN M. VERSUS THE COMMISSIONER OF STATE GST, STATE GOODS AND SERVICE TAX OFFICER, ASSISTANT STATE TAX OFFICER [2020 (9) TMI 373 - KERALA HIGH COURT, Dated:- 7-9-2020, WP(C).No.18098 OF 2020(J)]

Held: Taking note of the fact that the transportation of the goods was not covered by a valid e-way bill, it is found that the detention cannot be seen as unjustified. Taking note of the

submission of the learned counsel for the petitioner that he is prepared to furnish a bank guarantee for the amounts demanded, the writ petition is disposed by directing the 3rd respondent to release the goods and the vehicle to the petitioner on the petitioner furnishing a bank guarantee for the amount demanded in Ext.P11. The learned Government Pleader shall communicate the gist of this order to the 3rd respondent for enabling an immediate clearance of the goods on the petitioner complying with the condition aforementioned.

Seizure/detention of goods/materials - seizure on the ground that e-Way bills tendered for the goods in movement stood expired when the vehicle entered within the territory of the State of Tripura and were intercepted in the Churaibari Check Post - Section 129(3) of the Central Goods and Services Tax Act, 2017

BALAJI STEEL ROLLING MILLS LTD AND ANR.VERSUS THE STATE OF TRIPURA AND ORS. [2020 (9) TMI 214 - TRIPURA HIGH COURT, Dated:- 3-9-2020, WP(C) 179 of 2020]

Held: Learned Advocate General has generously agreed and submitted that the court may pass the similar order directing the petitioner to deposit 25% of the tax and penalty along with the bond pledging payment and securing the rest of the demand, subject to the outcome of the appeal.

The respondents are directed to release the detained materials, on deposit of 25% of the disputed tax and penalty, by the petitioner, as demanded under Annexure-9 collectively and also on securing the total demand by a bond whereby the petitioner shall pledge for payment of for the rest of the demand subject to the outcome of the appeal - On deposit of 25% of the tax and penalty as aforementioned, and the bond the authority which detained those goods/materials shall release them within three days from the deposit of the said amount and the bond.

Time Limitation – Held: If the appeal is filed within 15 days from today, the period of limitation shall stand extended till the expiry of that period of 15 days.

J. Input Tax Credit

Input Tax Credit - mismatch in the Input Tax Credit claimed in GSTR-3B and that appearing in GSTR-2A during the period April, 2018 - March, 2019 - It is the petitioner's case that the conditions mentioned in Rule 86A of the CGST Rules, 2017 are not satisfied in the present case

GOYAL IRON AND STEEL TRADERS VERSUS ASSISTANT COMMISSIONER PALAM DIVISION CGST DELHI SOUTH & ORS. [2020 (9) TMI 1027 - DELHI HIGH COURT, Dated:- 23-9-2020, W.P.(C) 6799/2020]

Held: The present writ petition is directed to be treated as a representation to respondent no.1, who is directed to decide the same by way of a reasoned order within four weeks, in accordance with law, after giving an opportunity of hearing to the petitioner and/or its authorized representative.

Input tax credit of tax paid or deemed to have been paid - Whether the term "other civil structure" used in the definition of "Plant and Machinery" restricts the Land filling Pit from considering it as Plant & Machinery and thereby restricts ITC to be availed on it?`

MOTHER EARTH ENVIRON TECH PRIVATE LIMITED. [2020 (9) TMI 736 - AUTHORITY FOR ADVANCE RULING, KARNATAKA, Dated:- 11-9-2020, KAR ADRG 46/2020]

Held: Section 17(5)(d) of the CGST Act, 2017 denies availment of ITC on goods and services when supplied for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services are both are used in the furtherance of business. Here, two aspects are noteworthy. One is that such goods and services should be used for the construction of an immovable property and the other is that the activity is carried on his own account. Applicant does not deny that the land filling pit is an immovable property. However, the applicant contends that the activity is not carried on his own account but is intended for offering services.

The explanation given at the end of Section 17(5) of CGST Act, 2017 defines plant and machinery as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes Land, building or any other civil structure. We find that land filling pit is a combination- of earth work and other capital goods as given in the brief submitted by the applicant. It can't solely or in itself be identified as apparatus, equipment and machinery fixed to earth by foundation. It is also not a structural support for anything. Therefore, we do not agree with the applicant's view that the land filling pit falls under plant and machinery. However, the discussion would be incomplete without deciding the question of Civil Structure, i.e. whether the land filling pit is a civil structure or not.

Inasmuch as the said section is found to be valid by the Hon'ble High Court, we do not find any reason to go beyond the Statutory Provisions. However, since the appeal against the High Court order supra is pending before the Hon'ble Supreme Court, we refrain from commenting on the eligibility of the ITC in the instant case.

The Landfilling pit is not a *plant and machinery* but a *civil structure*.

GST Input credit - purchase of equipments, furniture etc. - purchase of reagents/ consumables for performing the tests as the reagents / consumables - Healthcare services or not - Clinical establishment or not - whether the diagnostic services being supplied by the applicant to the aforesaid hospital are covered under Entry no. 74 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017?

SRI SIDDALINGAPPA PALALOCHANA RAKSHIT, "BANGALORE MEDICAL SYSTEM" [2020 (9) TMI 337

- AUTHORITY FOR ADVANCE RULING, KARNATAKA, Dated:- 7-9-2020, KAR ADRG 44/2020]

Healthcare services – Held: In the instant case the services provided by the applicant are by way of diagnosis of an illness and hence the same are covered under "health care services".

Clinical establishment or not – Held: In the instant case the applicant established a medical diagnostic laboratory to carry out diagnostic or investigative services of diseases. Thus the applicant qualities to be a clinical establishment.

Exempt service or not – Held: The services provided by the applicant are covered under clause (a) of Entry no. 74 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and hence is exempt from tax under the CGST Act 2017. Similarly, they are also exempted from tax under the KGST Act, 2017 and also under the Integrated Goods and Services Tax Act, 2017. The applicant is involved in taxable as well as exempted supplies.

Therefore the applicant need to restrict the credit to the amount attributable to taxable supplies including zero rated supplies in the case of both capital goods as well as reagents/consumables or drugs. Further if the applicant claims depreciation on the tax component of capital goods and plant & machinery, under Income Tax Act 1961, the input tax credit on the said tax component shall not be allowed, in terms of Section 16(3) of the CGST Act 2017 - thus, the applicant is eligible for input tax credit on the tax paid on the purchases of goods, i.e. equipments, furniture, etc. which are purchased for this project and also on the reagents / consumables which are used for performing the test, subject to the restriction of the same in terms of Section 17 (2) of the CGST Act 2017.

Vires of Rule 86A of Central Goods and Services Tax Rules, 2017 - power to block the Input Tax Credit

KALPSUTRA GUJARAT VERSUS THE UNION OF INDIA [2020 (9) TMI 679 - GUJARAT HIGH COURT, Dated:- 4-9-2020, R/SPECIAL CIVIL APPLICATION NO. 10562 of 2020]

Held: Having gone through the material on record, for the present, we are inclined to issue notice to the respondents with respect to the reliefs prayed in the draft amendment and paras-8(B) and 8(C) of the main petition.Let notice be issued to the respondents returnable on 14th September 2020.

Input Tax Credit - GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen person for transportation of employees to & from workplace - levy of GST - nominal amount recovered by Applicants from employees for usage of employee bus transportation facility in non-air conditioned bus - restriction to the extent of cost borne by the Applicant (employer)

TATA MOTORS LIMITED [2020 (9) TMI 352 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA, Dated:- 25-8-2020, GST-ARA-23/2019-20/B-46]

Held: In the subject case, the supply of services received by the applicant is used in the course or furtherance of their business and therefore prima facie. they are eligible to take credit of GST charged by their suppliers - while we find that the applicant is eligible to take ITC under the provisions of the CGST Act, it is to be seen whether Section 17 (5) of the said Act debars the applicant from taking credit. As rightly pointed out by the jurisdictional officer, Section 17 (5) has been amended by CGST (Amendment) Act. 2018 (No. 31 of 2018) dated 29.08.2018 made effective from 01.02.2019 vide Notification No. 02/2019 - C.T.- 2019 dated 29.01.2019.

It is clear and apparent that Section 17 (5) had clearly debarred Input Tax Credit on motor vehicles or conveyances used in transport of passengers till the date of the amendment i.e. 01.12.2019. However with effect from 01.12.2019, Input Tax Credit has been allowed on leasing, renting or hiring of motor vehicles, for transportation of persons, having approved seating capacity of more than thirteen persons (including the driver) - in the subject case, since the applicant has specifically submitted and as agreed by the jurisdictional officer, that they are using motor vehicles having approved seating capacity of more than thirteen persons (including the driver), the applicant shall be eligible for Input Tax Credit in this case.

Whether GST is applicable on nominal amount recovered by Applicants from their employees for usage of employee bus transportation facility in non-air conditioned bus? – Held: Schedule III to the CGST Act which lists activities which shall be treated neither as a supply of goods nor a supply of services As per clause 1 of the said Schedule-III, Services by an employee to the employer in the course of or in relation to his employment shall he treated neither as a supply of goods nor a supply of services - Since the applicant is not supplying any services to its employees, in view of Schedule III mentioned above, we are of the opinion that GST is not applicable on the nominal amounts recovered by Applicants from their employees in the subject case.

If ITC is available to them, whether it will be restricted to the extent of cost borne by the Applicant? – Held: Reliance placed in Hon'ble High court of Bombay in the case of CCE, NAGPUR VERSUS ULTRATECH CEMENT LTD. [**2010 (10) TMI 13 - BOMBAY HIGH COURT**] has submitted that ITC is not admissible to Applicant on part of cost borne by employee and thus ITC will be restricted to the extent of cost borne by the Applicant.

K. Interest

Interest on ITC set off - petition has filed the returns for the financial year 2017-18, 20018-19 and 2019-20 at belated stage and availed Input Tax Credit at the time of filing GSTR-3B returns, as Works Contractor

PRASANNA KUMAR BISOI [2020 (8) TMI 775 - ORISSA HIGH COURT, Dated:- 21-8-2020, W.P.(C) NO.13190 OF 2020]

Held: This Court disposes of this Writ Petition with a direction to the Superintendent, Central GST and Central Excise,

Berhampur – opposite party No.3 to dispose of the representation filed by the petitioner on 06.05.2020 under Annexure:3 keeping in view the decision taken in the 39th meeting of GST Council, as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of this order. The decision taken, if any, be communicated to the petitioner.

L. Jurisdiction

Territorial Jurisdiction - transfer of the case - It is the prayer of the petitioners that the investigation with respect to them may be carried out by an officer at Kollam especially due to the COVID situation as also due to the voluminous documents which would have to be transported to Ernakulam

RAJIVE AND COMPANY [2020 (9) TMI 1060 - KERALA HIGH COURT, Dated:- 17-9-2020, Writ Appeal Nos.1185/2020, 1196/2020 & 1224/2020]

Held: The officer at Ernakulam has been authorised to look into the matter specifically on the grounds stated in the statement. We do not think that the location of the lawyer can at all be a reason for the department to carry out proceedings in a particular place.

There are no reason to interfere with the refusal of the Single Judge, to exercise jurisdiction under Article 226. For production of books of accounts a month's time shall be granted from today which can also be in the digital mode. As far as the supply of copies of documents seized and intended to be relied on, the learned Single Judge has made sufficient safety measures which though not challenged, we reiterate and re-affirm.Appeal dismissed.

Territorial Jurisdiction - case of petitioners is that the complaint against the two accused relates to matters outside the jurisdiction of the Gurugram court and, therefore, the proceedings should be transferred to a competent court at Delhi - petitioner next submits that all the referable 16 firms/companies, their Bank Accounts and Registered Offices are in Delhi and that is how, the Gurugram court gave a prima facie view on the jurisdictional aspect, in its order dated 20.03.2020.

GULSHAN DHINGRA & ANR. VERSUS DIRECTORATE GENERAL OF GOODS AND SERVICE TAX INTELLIGENCE (D.G.G.I) AND ORS.[2020 (9) TMI 782 - SC ORDER, Dated:- 16-9-2020, Transfer Petition(s)(Criminal) No(s). 272/2020]

Held: Let notice be issued, returnable in three weeks.

M. Levy

Levy of CGST and IGST - Duty Free Shops (DFS) at Airport - Refund of the Input Tax Credit - supply of goods and services effected by the petitioner in the arrival and departure Duty Free Shops (DFS) at Calicut International Airport in terms of the Concession Agreement - applicability of CGST Act, 2017, the IGST Act, 2017 and the Kerala SGST Act, 2017 and the rules thereunder - levy of CGST and IGST on the revenue sharing in terms of the Concession Agreement dated 22.04.2016.

CIAL DUTY FREE AND RETAIL SERVICES LTD (CDRSL) [2020 (9) TMI 981 - KERALA HIGH COURT, Dated:- 22-9-2020, WP(C).12274/2020, WP(C).6850/2018, WP(C).12278/2020, WP(C).12279/2020, WP(C).12280/2020, WP(C).12317/2020, WP(C).13237/2020]

Held: The question posed qua entitlement of refund of taxes in respect of goods and services provided at international airport would be applicable to outgoing international tourist i.e. departure area in view of the Circular dated 29.06.2020 as has been argued by the Revenue, would also not be required to be answered by this Court, as the aforementioned circular has also been discussed in the judgment rendered by the High Court of Bombay in the case of SANDEEP PATIL, FLEMINGO TRAVEL RETAIL LIMITED & ANR., VERSUS UNION OF INDIA AND OTHERS. [2019 (10) TMI 360 - BOMBAY HIGH COURT] - Once there is no dichotomy regarding the contents of letter and as well as the reference of circular in the judgment, then it is a fit case where same benefit is required to extend to the petitioner(s) herein as has been extended to similarly situated DFSs in the State of Karnataka as well as in the State of Maharashtra and other states referred by petitioners counsel and remained unrebutted.

It is a matter of record that the petitioner(s) sell goods to the international passengers i.e. departing passengers or passengers arriving into India (arriving passengers) like cigarettes, alcohol, perfumes, chocolates and cosmetics etc. The expressions 'import' and 'export' defined under Customs Act, 1962 have been identically defined in IGST Act, 2017 - Invoices issued by DFSs at the time of sale of goods to the outgoing passengers are duly signed by both the passengers and the cashier. No doubt, it envisages a condition that the passenger will not consume the goods until he lands at the final destination outside India. In other words, **the passenger shall become owner of the goods only upon reaching of final destination** - It is a matter of record that all the goods which are sold at the DFSs are either imported or purchased from Indian market and are stored in a customs bonded warehouses and are removed from such warehouses only under the supervision of the Jurisdictional Commissioner, thus, for all intents and purposes are not sold for domestic purposes. The goods which are brought from customs warehouses do not cross customs frontiers, thus, before the goods are imported in the country, they had been sold at DFSs.

If the transaction of sale or purchase takes place when the goods are imported in India or they are being exported from India, no State can impose any tax thereon. It is also not in dispute that all the DFSs are situated at international airports i.e. at Cochin and Calicut, which are beyond the customs frontiers of India and would not be within the customs frontiers of India. When any transaction takes place outside the customs frontiers of India, of course the transaction is said

to have taken place outside India, though the transaction might take place within India. Examining the provisions of Section 2(11) of the Act of 1962 read with Section 286 of the Constitution of India, the said transaction would be said to have taken place outside India.GST will not be applicable.

Levy of GST - Services are in relation to conduction of examination - Bihar School Education Board, educational institution - Whether the services performed by them are exempted by virtue of item (b) of Sr. No. 66 of Notification No. 12/2017-CT (R) dated 28.06.2017?

DATACON TECHNOLOGIES [2020 (9) TMI 783 - AUTHORITY FOR ADVANCE RULING, KARNATAKA, Dated:- 11-9-2020, KAR ADRG 47/2020]

Held: The Notification No. 14/2018-CentaI Tax (Rate) dated 26.07.2018 inserted a clarification in Notification No. 12/2017 -Central Tax (Rate) dated 28.06.2017 that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students. Thus the BSEB becomes an Educational Institution for the purpose of conduction of examination, in terms of the Notification.

It is observed, from the letter dated 06.12.2018 of BSEB, submitted by the applicant containing reference of work order dated 10.11.2018, that the applicant was given the job to scan the OMR Flying slip, OMR marks Foil with barcode sticker, scanning of OMR attendance sheet and scanning OMR Absentee sheet along with data extraction and finalization of data in all the four categories.

Whether the aforesaid work, allotted to the applicant by the BSEB, covered under the conduction of examination or not?

Held: It is an undisputed fact that the process of conducting examination is not limited/ restricted to a test centre. Examination is an incomplete activity without assessment. Scanning of answer sheets and quantifying marks is an essential part albeit main objective of the examination process. Educational institutions or the examinees do not look at these activities in isolation. The stated activity of the applicant is exempted by virtue of Sr. No.66 of Notification No. 12/2017-CT (R) dated 28.06.2017.

Levy of GST - activity of maintaining the facilities at the layout from the funds collected from the members of the Society - Service or not? - GST for the amount pertaining to the un-expired period - Recovery of cost of water from members on monthly basis - collection of lump-sum amount as endowment fund, the proceeds of which would be utilized for maintenance charges in terms of the maintenance - Exemption in terms of N/N. 12/2017 entry no 77 respect of the value of the maintenance amount collected from the members of the society to the extent of ₹ 7,500/-.

Is the activity of maintaining the facilities at the layout from the funds collected from the members of the Society a service attracting GST Maintenance involves upkeep and maintenance of amenities and due to the length of the period roads, drainages and other UGD facilities need to be re-done/ re-constructed?

GNANAGANGA GRUHA NIRMANA SAHAKARA SANGHA NIYAMITHA [2020 (9) TMI 737 - AUTHORITY FOR ADVANCE RULING, KARNATAKA, Dated:- 11-9-2020, KAR ADRG 45/2020]

Held: In the instant case, the applicant is involved in the providing layout maintenance service to its members by supplying goods or services and hence the first condition is satisfied. The applicant has rightly admitted that they are receiving the amount from its members as consideration towards the maintenance of the layout and hence the second condition is also satisfied - the facilities or benefits provided by the applicant to its member for consideration is a business as per section 2(17) of the CGST Act 2017 and hence the third condition is also satisfied. Hence the activity of maintenance of layout by the applicant amounts to supply in terms of Section 7 (1)(a) of the CGST Act 2017 - as applicant has rightly admitted that they are collecting maintenance charges from its member, either annually or once in 10 years and said amount is utilized for the maintenance of the layout. The liability to pay tax on services shall arise at the time of supply as per the provisions of sub section (1) of section 13 of the CGST Act, 2017.

The time of supply of service in this case is earliest of the date of issue of invoice to the applicant or date of receipt of payment by the service provider. It is also seen that the applicant is bound to refund to its members the amount unutilised at the time of transfer of the entire property to the civic authorities. Therefore, going by the nature of the money collected, it is only in the form of deposit and does not take the character of advance for the services provided. Hence, mere collection and deposit of money does not qualify either as supply of goods as per section 2(52) or as supply of service as per section 2(102) of the CGST Act, 2017 and taxability of the goods or services or both arises only at the time of supply of goods or supply of service or both. Thus the extent of amount utilized by the applicant towards the payment at the time of supply of service by the third person, such amount is liable for GST as per subsection (1) of section 9 of the CGST Act, 2017.

Does the Society's collection of sum towards maintenance charges calculated on yearly basis in one lump-sum for certain length of time say 10 years, should the GST be paid even for the amount pertaining to the un-expired period?

Held: The services provided by the unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution up to an amount of seven thousand five hundred per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex is exempted from the levy of GST. Since the applicant being the housing society, this exemption is also applicable to the applicant.

The Society is collecting Water charges from the residents for recovery of charges for water. The entire cost of the water is recovered from the members on monthly basis, does it attract GST?

Held: The applicant is collecting water charges from the residents of the layout towards the cost of pumping water from bore wells to overhead tank and also for management and maintenance of water distribution systems to each individual houses. The applicant is collecting water charges on monthly basis. The supply of water is exempted from the GST as per entry no. 99 of the Notification No. 2/2017 -Central Tax (Rate) dated 28th June, 2017 - the supply of water is exempt from GST and the applicant is not liable to pay GST on water charges. However, it is not clear from the submission of the applicant that whether the applicant is collecting water charges separately from its members or it is included in total contribution. If water charges are collected separately, then it falls in entry 99 of the Notification No. 2/2017 -Central Tax (Rate) dated 28th June, 2017 which is exempt from the levy of GST. In case water charges are included in the total contribution of each individual member in each month then it is covered under the entry No.77 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018 and the exemption or taxability is determined.

Does the society have to pay GST for collecting lump-sum amount as endowment fund, the proceeds of which would be utilized for maintenance charges in terms of the maintenance as indicated in Appendix A above, of the layout with an express condition that the amount would be returned to the Site owners upon the taking over of the layout by the local body as the Society would be utilizing only accretions to the endowment fund from year to year?

Held: In the instant case the applicant is collecting amount from the member who is selling the site and that amount is kept as endowment fund. The applicant utilising the proceeds/ accretions of the endowment fund for sourcing goods or service from the third person for the common use of its members. This amount does not amount to the contribution or reimbursement of amount from its members. The exemption under entry 77 (c) of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018 is available only when the applicant receives the amount from its members as contribution or reimbursement against the amount paid by the applicant for sourcing of goods or services from the third person for common use of its members. Since the applicant utilizing the amount which is collected from the member who are selling their sites, such contribution is not for providing any maintenance services, instead he is providing no-objection certificates and other clearances for the site sellers. Hence this amount when collected amounts to a service and the applicant is liable to pay GST at the rate of 18% as such services are unclassified services covered under entry no. 35 of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 - the contributions of the members who are selling the sites and obtaining clearances from the applicant for such sale, are liable to tax under the GST Acts.

In the event that any or all of the items from (1) to (4) is rendered taxable whether the same is exempt under Notification No. 12/2017 entry no 77 respect of the value of the maintenance amount collected from the members of the society to the extent of ₹ 7,500/- (Rupees Seven thousand five hundred) per month?

Held: Applicability of exemption under entry No. 77 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018- dated 25-01-2018 is discussed in detail in above paras and this entry applicable to the applicant only when the they have provided services to its own members by way of reimbursement of charges or share of contribution up to an amount of seven thousand five hundred per month per member for sourcing of goods or services from a third person for the common use of its members.

Levy of GST - Lease Service - Benefit of exemption N/N. 9/2017-integrated tax (rate) dated. 28th June, 2017 - whether the lessors (here AmbrishVasudeva and 4 others) need not charge GST while issuing the invoice for the lease service to M/s. DTwelve Spaces Pvt ltd.? - whether falls under the Exemption prescribed and can be described as "Services by way of renting of residential swelling for use as residence" as listed in the aforesaid Notification? - challenge to AAR decision.

SRI. TAGHAR VASUDEVA AMBRISH [2020 (9) TMI 354 - APPELLATE AUTHORITY FOR ADVANCE RULING, KARNATAKA, Dated:- 31-8-2020, KAR/AAAR-01/2020-21]

Held: The impugned property was constructed as Hostel building. The project description in the sanctioned plan submitted to us indicates that the plan is for the construction of a hostel building. Can a hostel building be called as a residential dwelling? A common understanding of a hostel is that of an establishment which provides inexpensive accommodation to specific categories of persons such as students, workers, travellers. On the other hand, a common understanding of the term "residential dwelling" is one where people reside treating it as a home. We find that the Appellant has constructed the building with the intention of providing hostel accommodation which is more akin to sociable accommodation rather than what is commonly understood as residential accommodation.

It is concluded that the impugned property cannot be termed as "residential dwelling". Once the impugned property is not a residential dwelling, the exemption under Sl.No 13 of Notification No 09/2017-IT (Rate) dt 28.06.2017 will not apply to the renting/leasing of such property.

Time Limitation– Held: In this case, the application was filed manually on 6th December 2019 and the ruling should have been pronounced on or before 5th March 2020. No doubt the ruling given by the Authority has been passed after the time

period stipulated under the statute. However, that does not render the ruling null and void or unsustainable. An order which is passed without jurisdiction can be held to be null and void and unsustainable. However, an order suffering from illegality or irregularity of procedure cannot be termed in executable -

In this case, the Authority was well within its jurisdiction to pass a ruling on the subject matter. Not adhering to the time limit in passing an order can be termed as an irregularity in procedure which can be set right in appeal proceedings.

The question of charging or not charging GST for the transaction between the applicant and the Company does not arise as the applicant himself is not effecting any supply of service to the Company directly - AAR decision upheld.

Levy of GST - taxable supply or not - sale of Transferable Development Rights (TDR)/ Floor Space Index (FSI) received as consideration for surrendering the joint rights in land in terms of Development Control Regulations - Agreement entered between the Appellant and Pune Municipal Corporation (PMC) read with Development Control Regulations - classification under GST - Applicable rate of GST.

Whether TDR in itself is "land and Building" or "Immovable property other than Land & Building"?

VILAS CHANDANMAL GANDHI [2020 (9) TMI 1145 - APPELLATE AUTHORITY FOR ADVANCE RULING, MAHARASHTRA, Dated:- 26-8-2020, MAH/AAAR/RS-SK/25/2020-21]

Held: The Appellant has referred to various definitions of the term land' occurring under other legislations where the term land has been defined to include 'benefits arising out of land' and as TDR is a benefit arising out of land it will also come under Clause 5 of schedule III to the CGST Act, 2017. We do not agree with the argument of the Appellant as the Clause 5 speaks only of land' and 'building'. Neither the GST Act nor the schedules define land' or choose to do that. In that case there is no need to qualify the term land by ascribing any meaning to it or defining it by borrowing definitions from other laws. The CGST law does not make a reference to any other law while mentioning land' in Schedule III. Also, if it had wanted to widen the scope of 'land' to include 'benefits arising out of land' it could have very well done so. Schedule III to the CGST Act, 2017 is so to speak an exemption notification and exemption notifications have to be strictly interpreted - The term land' has to be interpreted strictly and cannot be extended to cover 'benefits arising out of land'.

Whether supply of "TDR" is supply of "service" or supply of "Goods"? - HELD THAT:- The transferable development right that is TDR is an immovable property and hence not covered under the definition of goods. But the transfer of development right which is an immovable property is covered under the definition of service as the definition of service is very wide and it covers anything other than goods under its ambit. Hence as per the definition of supply under Section 7 of the CGST Act, 2017, the transfer of TDR made for consideration in the course or furtherance of business is supply of service and taxable as per the provisions of CGST Act, 2017. It is again made clear that levy of a tax is not on land but levy of tax is on the benefits arising out of the land, which are in the nature of service - The definition of service is broadened so as to cover all commercial transactions within its ambit and sale of TDR is a commercial transaction. There is no section under the Act which explicitly prohibits the taxation of TDR. The Schedule Ill to the CGST Act, 2017 only mentions 'land' to be outside the ambit of GST and not 'benefits' arising out of land. TDR is a benefit arising out of land and not land itself - Therefore, it is liable to tax.

As the Act casts a liability on the supplier to pay tax on supply or transfer of TDR, the Central Government, in exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), on the recommendations of the GST Council notified the rate as 9% (CGST) covered under Si. No. 16, item (iii) of Notification No. 11/2017 - Central Tax (Rate), dated 28-06-2017 (heading 9972). Therefore, the effective rate of GST on TDR/FSI is 18% . Further, the Central Government issued Notification No. 4/2018 - C.T. (Rate) dated 25.01.2018, thereby postponing the time of supply till the time of supply of the developer arises. The Government presupposes a liability to pay tax before the time of supply arises.

The subject transaction would adequately get classified under the Heading 9972. Now, the Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 to ascertain the exact entry and the GST rate thereto. On perusal of the aforesaid Notification, it is observed that the subject transaction would be covered under entry at SI. No. 16 (iii) of the Notification No. 11/2017-C.T. (Rate), dated 28.06.2017, bearing description "Real estate services other than (i) and (ii) above", and accordingly, would attract GST at the rate of 18%.

The sale of TDR/FSI would be leviable to GST under Heading 9972, at the rate of 18%, as prescribed under the entry at St. No. 16 (iii) of Notification No. 11/2017 - Central Tax (Rate), dated 28-06-2017 - advance ruling upheld.

N. Principle of Natural Justice

Violation of principles of natural justice - Difference in the turnover as reported in GSTR-3B and as per TDS Return GSTR 2A - Suppression of facts (turnover) or not

SHIV KISHOR CONSTRUCTION PRIVATE LIMITED [2020 (10) TMI 45 - PATNA HIGH COURT, Dated.- September 25, 2020, No.- Civil Writ Jurisdiction Case No.7374 of 2020]

Held: Impugned order dated 2nd of March, 2020 is passed by the Deputy Commissioner of State Tax, Patna Central Circle, Bihar, Patna who issued a notice asking the petitioner to show

cause by a particular date. However, for unexplained reasons and circumstances, without any prior intimation or knowledge, the matter was preponed and without affording any opportunity of hearing, decide, holding the view of the revenue. The order does entail civil and pecuniary consequences, causing prejudice to the petitioner. On all fours, principles of natural justice stand violated.

The impugned order dated 02.03.2020 and the resultant order dated 04.03.2020 passed by the Deputy Commissioner of State Tax, Patna Circle, Bihar, Patna are quashed and set aside with the matter remanded back to the authority for consideration afresh - petition allowed by way of remand.

Principles of Natural Justice - denial of supply of copies/extracts of the seized documents - denial of reasonable opportunity to defend - Section 67(5) of the CGST Act, 2017

M/S AGRAWAL OIL MILL VERSUS STATE OF M.P. [2020 (9) TMI 686 - MADHYA PRADESH HIGH COURT, Dated:- 15-9-2020, W.P. 12679/2020, W.P. 12690/2020 And W.P. 12687/2020]

Held: From order sheets as detailed, ever since conduction of search till passing of the impugned order, it is evident that due and sufficient opportunity was afforded to petitioner to produce the remaining relevant documents which had not been recovered during search. The explanation given by petitioner for not producing documents sought by Revenue was that the same are maintained in soft copy in computer while in regard to other documents sought by the Revenue, there was no explanation. This obviously gives an impression that the remaining relevant documents which could not be seized during search are still in possession of petitioner and therefore supply of copies or extracts of the seized documents to petitioner can enable the petitioner to carry out interpolations for reducing or depressing tax liability and with corresponding loss to the Revenue. The formation of this opinion is founded upon reasonable apprehension in the mind of the competent authority that supply of copies/extracts of seized documents can lead to adversely affecting the investigation.

Once it is held that discretion available to the competent authority u/S. 67(5) of the CGST Act had been reasonably exercised while refusing to accede to the request for supply of copies/extracts of seized documents, it cannot be said that the competent authority has travelled beyond it's jurisdictional purviews prescribed by law and therefore in the absence of jurisdictional error in the order impugned, no interference is called for, especially in the face of unavailed alternative statutory remedy of appeal.

Petition dismissed.

Violation of principles of natural justice - Validity of assessment orders - petitioner seeks one more personal hearing and some time to produce evidences in support of its contentions, which is ignored

BHARATH WHEEL ALIGNERS [2020 (9) TMI 828 - MADRAS HIGH COURT, Dated:-11-9-2020 ,W.P. Nos.12409, 12412 & 12416 of 2020 and WMP.Nos.15301, 15294 & 15308 of 2020]

Held: No serious objection is raised by the revenue to the suggestion given of the Court that the impugned order of assessment be set aside and be redone de novo after affording ample opportunity to the petitioner.

The impugned orders of assessments are set aside and the matter remanded to the Assessing Authority to be redone - Petition allowed by way of remand.

Cancellation of registration of petitioner - case of petitioner is that since the impugned order on the face of it is per-se illegal and also the reading of the same would go to show that the same has been passed without application of mind - Principles of natural justice

ASHWANI AGARWAL VERSUS UNION OF INDIA [2020 (9) TMI 371 - ALLLAHABAD HIGH COURT, Dated:- 7-9-2020, Writ Tax No. - 451 of 2020]

Held: It is apparent that while giving the reason for cancellation of the registration, it is mentioned that no reply has been received from the petitioner whereas in the same order in the very beginning there is a specific reference that the said order has taken into the reference the reply dated 25.02.2020 of the petitioner which is in response to the notice to show cause dated 14.02.2020, which is contrary in itself.

The order dated 14.04.2020 passed by the Superintendent, Kanpur Sector 12, Central Goods and Services Tax (Annexure 5 to the writ petition), is set aside with liberty to respondent no. 2 to pass a fresh order in accordance with law - Petition allowed.

Confiscation of goods and conveyance - Final order of confiscation - Form GST MOV-11 - principles of natural justice

DB IMPEX VERSUS STATE OF GUJARAT [2020 (9) TMI 207 - GUJARAT HIGH COURT, Dated:- 31-8-2020, R/SPECIAL CIVIL APPLICATION NO. 10221 of 2020]

Held: It appears that the writ applicant was not given any opportunity of hearing before the final order in Form GST MOV-11 came to be passed.

Matter remitted to the respondent No.3 so as to give an opportunity to the writ applicant to make good his case why the goods and conveyance are not liable to be confiscated under Section 130 of the GST Act, 2017.

Violation of the principles of natural justice - Validity of assessment order - CGST Act - periods 2017-18 to 2019-20

URBANCLAP TECHNOLOGIES INDIA PVT LTD [2020 (9) TMI 206 - MADRAS HIGH COURT, Dated:- 31-8-2020, W.P. Nos.9270 , 9275 & 9287 of 2020 and WMP. Nos.11303, 11334 & 11301 of 2020]

Held: The Assessing Officer, in all fairness, should wait till the end of the working day when personal hearing was fixed, before finalizing the assessment. Finalization of assessment on the same day when the matter was listed for hearing would militate against the requirement of natural justice.

Let notice be issued afresh to the petitioner to enable them to appear and make its submissions and let orders be passed within a period of eight (8) weeks from date of first hearing, in accordance with law.

O. Recovery

Validity of Circular dated 15.03.2018 issued by the Government of India, Ministry of Finance - recovery of CGST short paid

SEKHANI INDUSTRIES PVT. LTD. VERSUS UNION OF INDIA [2020 (9) TMI 886 - GUJARAT HIGH COURTDated:- 18-9-2020, R/SPECIAL CIVIL APPLICATION NO. 11364 of 2020]

Held: A strong prima facie case has been made out for grant of an interim relief in terms of paragraph 25(D) of the petition. We accordingly grant such relief. The respondents shall be served by way of email.

Provisional attachment order - no proceeding pending under Sections 62, 63, 64, 67, 73 and 74 of CGST Act - exercise of power under Section 83 of CGST Act.

NEUTRON STEEL TRADING PVT. LTD. [2020 (9) TMI 781 - DELHI HIGH COURT,

Dated:- 18-9-2020, W.P. (C) 6609/2020]

Held: This Court is of the view that Rule 159(5) of the Central Goods and Services Tax Rules, 2017 is squarely applicable to the facts of the present case - the rule states that *Any person whose property is attached may, within seven days of the attachment under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in* ***FORM GST DRC-23****.*

It is deemed appropriate to direct the respondent No.1 to treat the present writ petition as an objection under Rule 159(5) of the Central Goods and Services Tax Rules, 2017 and decide the same within a week by way of a reasoned order after giving an opportunity of hearing to the petitioner.

Provisional attachment of factory premises and residential premises - grievance is that the authority while issuing fresh GST DRC-01A has simultaneously issued GST DRC-01

FORMATIVE TEX FAX [2020 (9) TMI 829 - GUJARAT HIGH COURT, Dated:- 16-9-2020, R/SPECIAL CIVIL APPLICATION NO. 11299 of 2020]

Held: According to the learned counsel appearing for the writ applicant, his client is yet to reply to the notice issued in Form-01A. It is only thereafter that the further proceedings under GST DRC-01 could have been initiated. Our attention has been drawn to page-85 of the paper book which is the representation addressed by the writ applicant to the Assistant Commissioner of State Tax-04 (Enforcement), Surat, bringing this fact to his notice.

This writ application is disposed off with a direction to the Assistant Commissioner of State Tax-04 (Enforcement), Surat respondent No.4, to immediately look into the representation dated 26th August 2020 referred above and annexed at page-85 of the paper book and take appropriate decision in accordance with law within the period of 15 days from the date of the receipt of this order.

Release of attached Bank Account of petitioner - Section 83 of CGST Act - Rule 159 (5) of the Central Goods and Services Tax Rules, 2017

UFV INDIA GLOBAL EDUCATION VERSUS UNION OF INDIA AND OTHERS [2020 (9) TMI 583 - PUNJAB AND HARYANA HIGH COURT, Dated:- 9-9-2020, CWP No. 11961 of 2020 (O&M)]

The respondents (GST authority) passed the order of partly releasing the Bank Account for payments under the Amnesty Scheme but rejected the prayer to release the provisional attachment holding that the petitioner does not have any property other than the Bank Account from where the Government revenue can be protected.

Held: The effect of Section 83 of the Act shall come to an end as soon as the proceedings pending in any of the aforesaid Sections i.e. 63 or 64 or 67 or 73 or 74 are over because pendency of the proceedings is the *sine qua non* and in case the Commissioner still feel or is of the opinion that it is necessary so to do in the interest of protecting the Government revenue, it still can pass an order in writing to attach any property or even the bank account of the taxable person if the proceedings are initiated in any of the aforesaid provisions and are pending but for the provisions in which the proceedings have earlier been initiated and are over.

The impugned orders passed by the respondents are patently illegal specially when the proceedings initiated under Section 67 of the Act has already been over - impugned orders are hereby set aside with a direction to the respondents to release the aforesaid bank account of the petitioners forthwith which has been provisionally attached vide order dated 29.07.2020.

Provisional attachment of property - dispute was raised by the department with regard to the registration of the place of business which was changed during the course of time - Section 83 of the Central Goods and Services Tax Act, 2017

JACKPOT EXIM PRIVATE LIMITED [2020 (9) TMI 211 - ALLAHABAD HIGH COURT, Dated:- 1-9-2020, Writ Tax No. - 424 of 2020]

Held: Despite revocation of the order of cancellation, the bank account provisionally attached by the order dated 06.09.2019 has not been released. The result is that the petitioner has not been able to operate his business account. It appears that there is a dispute with regard to payment of GST by the petitioner for the period of business prior to 06.09.2019.

In view of the provisions in Section 83(2), it is observed that the provisional attachment order dated 06.09.2019 has outlived its life after a period of one year.

The competent authority is directed to consider the grievances of the petitioner and pass a fresh order, keeping in mind the

provisions of Section 83(2) and as per law.

P. Revocation of cancellation of registration

Filing of return with part payment of tax or with outstanding tax liability - manual filing of GSTR 3B till August 2020 and from September 2020 onwards electronically - permission of payment of GST liabilities in accordance with the undertaking attached.

OCTAGON COMMUNICATIONS PRIVATE LIMITED VERSUS UNION OF INDIA [2020 (9) TMI 979 - GUJARAT HIGH COURT, Dated:- 16-9-2020, R/Special Civil Application No. 11081 of 2020]

Held: It appears from the materials on record that the GST registration of the writ applicant has been cancelled for failure to file appropriate returns. We take notice of the fact that entire issue has been brought to the notice of the Commissioner of SGST by way of representation dated 26th August 2020 addressed to the Commissioner, SGST, Ahmedabad. In the said representation, the request is two-fold; first to revoke the cancellation of registration as according to the writ applicant, it is causing unnecessary hardship in the current situation of slowdown and secondly to permit the writ applicant manual filing of the GSTR 3B.

This writ application is disposed of with a direction to the Commissioner, SGST, Ahmedabad to immediately look into the representation dated 26th August 2020 and take appropriate decision in accordance with law within a period of 15 days from the receipt of the writ of this order.

Q. Refund

Refund of unutilized input tax credit - time limitation - constitutional validity of Circular No.125/44/2019-GST dated 18th November 2019 - vires of Section 54 of the CGST Act, 2017 or not

MEGICON IMPEX PVT. LTD. [2020 (9) TMI 1106 - DELHI HIGH COURT, Dated- September 25, 2020, No.- W.P. (C) 6556/2020]

Writ petition has been filed challenging orders whereby the refund claim for the month of February 2018 was rejected on the ground that same was filed beyond limitation. Petitioner also prays for directions to the respondents to issue a refund of unutilized input tax credit of ₹ 66,07,432/- for the month of February, 2018 to the petitioner as well as for a declaration that Paragraph 12 of Circular No.125/44/2019-GST dated 18th November 2019 is ultra vires Section 54 of the CGST Act, 2017.

Held: Issue Notice.List on 09th December, 2020 along with W.P.(C) 6486/2020.

Refund of unutilised Input Tax Credit - accumulation on account of being subjected to an inverted duty structure - constitutional validity of Section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 - constitutional validity of amended Rule 89(5) of the Central Goods and Services Tax Rules, 2017 - *ultra vires of* Section 54 of the CGST Act and the Constitution of India - Whether it is necessary to read the word "inputs" in Section 54(3)(ii) as encompassing both goods and services so as to ensure that the said provision is not struck down? - Whether the words input services may be read into Section 54(3)(ii) as an exception to the general rule of *casus omissus*? - Whether the proviso to Section 54(3) qualifies and curtails the scope of the principal clause to the limited extent of specifying the two cases in which registered persons become eligible for a refund of the unutilised input tax credit? - Whether sub-clause (ii) of the proviso merely stipulates the eligibility conditions for claiming a refund of the unutilised input tax credit or whether it also curtails the entitlement to refund to unutilised input tax credit from a particular source, namely, input goods and excludes input services? - Whether the rule making power under Section 164 empowers the Central Government to make Rule 89(5) as amended? - Whether Rule 89(5) of the CGST Rules, as amended, is *ultra vires* Section 54(3) of the CGST Act? - Whether the definition of the term Net ITC, as contained in Rule 89(5), is liable to be read as encompassing both input goods and input services?

TVL. TRANSTONNELSTROY AFCONS JOINT VENTURE, TVL. ESSA GARMENTS PRIVATE LIMITED, INDIA DYEING MILLS (P) LIMITED, M/S. VEEKESY FOOTCARE (INDIA) PVT. LTD., KALEESUWARI REFINERY PVT LTD., VICTUR DYEINGS VERSUS UNION OF INDIA, THE GOODS AND SERVICES TAX COUNCIL, ASSISTANT COMMISSIONER ST AND OTHERS, 2020 (9) TMI 931 - MADRAS HIGH COURT, Dated:- 21-9-2020, Writ Petition Nos.8596, 8597, 8602, 8603, 8605, 8608, 14799, 21432 32308, 32311, 32314, 32316, 32317, 32327, 34219 and 34221 of 2019]

Held: If the intention of Parliament was to curtail the quantity of unutilised input tax credit in respect of which a refund claim may be made, it would have been indicated in Section 54(3) by qualifying the words used therein. However, no such qualification is contained therein. As regards the proviso thereto, according to the learned counsel, they set out the two cases in which a registered person may claim a refund of the unutilised input tax credit. The first of these cases relates to zero-rated supplies made without payment of tax. This case pertains to exporters. Even among exporters, only those who make zero-rated supplies without payment of tax by executing a bond or undertaking would be entitled to a refund under Section 54(3). The exporters who undertake supplies upon payment of tax can claim a refund under Section 54(1) but not under Section 54(3). The second case pertains to registered persons who accumulate input tax credit on account of the rate of tax on input goods being higher than the rate of tax on output supplies.

Keeping in mind the scope, function and role of a proviso as adumbrated above, we closely examined the text of Section 54(3)(ii) in order to test the tenability of the rival contentions. We find that Section 54(3) undoubtedly enables a registered

person to claim refund of any unutilised input tax credit. However, the principal or enacting clause is qualified by the proviso which states that "provided that **no** refund of unutilised input tax credit shall be allowed in **cases other than**" - Parliament has used a double negative in this proviso thereby making it abundantly clear that unless a registered person meets the requirements of clause (i) or (ii) of Sub-section 3, no refund would be allowed. On further examining sub-clause (ii), we find that it uses the phrase "where the credit accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies".

Given the fact that we concluded that Section 54(3)(ii) enables a registered person to claim a refund of unutilised input tax credit only to the extent that such credit has accumulated on account of the rate of tax on input goods being higher than the rate of tax on output supplies, it remains to be considered whether Rule 89(5) is *ultra vires* the rule making power and Section 54(3). Keeping in mind that Section 164 confers power on the Central Government to frame rules for carrying out the provisions of the CGST Act and no fetters are discernible therein except that the rules should be in furtherance of the purposes of the CGST Act - Rule 89(5) would be *intra vires* the CGST Act and the rule making power if it is in line with Section 54(3)(ii) and *ultra vires* both Sections 54(3)(ii) and 164 if it is not.

Rule 89(5) of the CGST Rules, as amended, is *intra vires* both the general rule making power and Section 54(3) of the CGST Act. There is no dispute as regards the power to amend with retrospective effect either as such power is conferred under Section 164 of the CGST Act, albeit subject to the limitation that it cannot pre-date the date of entry into force of the CGST Act.

Constitutional Challenge - meaning of inputs – Held: Explanation to Section 54 uses the terms "inputs" and "input services" separately and distinctively, thereby indicating the legislative intent to distinguish one from the other - we are unable to countenance Mr.Ghosh's submission that the word ''inputs" should be read so as to include ''input services" merely because the undefined word ''output supplies" is used in Section 54(3)(ii) - it is concluded that both the statutory definition and the context point in the same direction, namely, that the word "inputs" encompasses all input goods, other than capital goods, and excludes input services.

Nature of Refund – Held: Although there is a constitutional challenge in this case, the challenge is to a refund provision and this is not a refund claim arising out of a successful challenge to a provision under a tax statute that had imposed a liability. This issue can be approached from another perspective: would a registered person be entitled to such refund but for the statutory prescription in Section 54(3)(i) & (ii)? The answer is a resounding 'no'.

Validity of Classification – Held: There is a classification of sources of unutilised input tax credit into sources that give rise to a right to refund, i.e. input goods, and those that do not, i.e. input services. As a corollary, registered persons may be entitled to full, partial or nil refund as regards unutilised input tax credit accumulating on account of being subject to an inverted duty structure - There is no doubt that the object and purpose of the present GST laws is to avoid the cascading of taxes and to impose a tax on consumption, be it goods or services. Thus, the long term objective appears to be to treat goods and services, as far as possible, similarly. Nonetheless, it must be borne in mind that this is an evolutionary process. By way of illustration, we may draw reference to the fact that the concept of input tax credit was not originally available under sales tax law and central excise law. It was first introduced in the form of MODVAT credit. MODVAT credit was initially available only in respect of goods.

After the introduction of service tax through the Finance Act, CENVAT credit was introduced and made available both in respect of goods and services. However, refund of unutilised input tax credit was not provided - Thereafter, the GST laws have been introduced which enable registered persons to avail input tax credit both on goods and services but there are restrictions as regards refund. When viewed objectively and holistically, we find that, under the GST laws, goods and services are treated similarly in certain respects but differently in other respects. Even with regard to rate of tax, almost all services attract a uniform rate of 18%, whereas goods are taxed at rates that vary considerably.

Entitlement to refund of unutilised input tax credit and not the availing of input tax credit – Held: Under Section 54(3)(ii), Parliament has provided the right of refund only in respect of unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies. Goods and services have been treated differently from time immemorial, as reflected in the use of the expressions, *quantum valebant,* as regards the measure of payment for goods, and *quantum meruit,* as regards the measure of payment for services, supplied non-gratuitously and without a formal contract. While there has been a legislative trend towards a more uniform treatment as between goods and services, the distinction has certainly not been obliterated as is evident on perusal of the CGST Act, including provisions such as Sections 12 & 13, etc., which are specifically targeted at goods and services - Given the fact that we have concluded that Section 54(3)(ii), on a plain reading, does not violate Article 14, it is not necessary to draw definitive conclusions on the scope of reading down or to examine if the *casus omissus* rule should be deviated from in this case. Nonetheless, extensive submissions were advanced as regards reading down.

Following conclusions are reached at:

(1) Section 54(3)(ii) does not infringe Article 14.

(2) Refund is a statutory right and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services is a valid

classification and a valid exercise of legislative power.

(3) Therefore, there is no necessity to adopt the interpretive device of reading down so as to save the constitutionality of Section 54(3)(ii).

(4) Section 54(3)(ii) curtails a refund claim to the unutilised credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also the imposes a source-based restriction on refund entitlement and, consequently, the quantum thereof.

(5) As a corollary, Rule 89(5) of the CGST Rules, as amended, is in conformity with Section 54(3)(ii).

Consequently, it is not necessary to interpret Rule 89(5) and, in particular, the definition of Net ITC therein so as to include the words input services.

All the writ petitions challenging the constitutional validity of Section 54(3)(ii) are dismissed.

Constitutional Validity of Rule 90(3) of the CGST Rules - Refund the excess tax

INSITEL SERVICES PVT.LTD. VERSUS UNION OF INDIA & ORS. [2020 (9) TMI 779 -DELHI HIGH COURT, Dated:- 16-9-2020, W.P. (C) 6486/2020 & CM APPL. 22791/2020]

Rule 90(3): Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in **FORM GST RFD-03** through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Held: Issue notice.List on 09th December, 2020. The order be uploaded on the website forthwith.

Refund of IGST/ITC - case of petitioner is that this Court had directed the respondents to examine the claim of the petitioner and release the refund amount within four weeks positively, if the same or any part whereof was found to be payable

NAGINA INTERNATIONAL VERSUS UNION OF INDIA & ORS [2020 (9) TMI 468 - DELHI HIGH COURT, Dated:- 9-9-2020, W.P. (C) 11796/2019]

Held: Issue Notice.Issue notice to the unserved respondents through counsel by all modes, returnable for 23rd September, 2020.

Refund of ITC - zero-rated supply - Section 54 of the CGST Act, 2017 - periods of July, August, September, October and November 2017

JAY JAY MILLS (INDIA) PVT. LTD. VERSUS THE STATE TAX OFFICER, SPECIAL CIRCLE-II, KONGU NAGAR [2020 (9) TMI 678 - MADRAS HIGH COURT, Dated:- 4-9-2020, W.P.No.28003 to 28005 & 28008 & 28011 of 2018]

Held: The respondent had, in a cryptic manner, rejected some of the proposals by stating that, as per Section 54 (8)(a), the ineligible goods or services are not directly used for making zero-rated supply. Apart from this, there is absolutely no other reasons adduced in the order.

It is a settled proposition of law that whenever an application of this nature is made, the statutory authority are bound to consider the claim made and pass a reasoned order. In the present case, the petitioner had made an application for refund under Section 54 of the Act and when the respondent had issued notice to them for rejection of the ineligible goods and services of SGST, CGST and IGST, they have given a detailed reply, objecting to the notices - All these objections were required to be dealt with by the authority, before taking a final call, which is conspicuously absent. As such, the order itself can be termed to be "a non-speaking order" and therefore, are liable to be set aside.

The impugned orders are set aside and the matter is remanded back to the respondent for fresh consideration - Petition allowed by way of remand.

Provisional claim of Refund - Section 54(6) of the CGST Act, 2017/SGST Act, 2017, read with Rule 91(2) of the CGST Rules, 2017

UNI WELL EXIM VERSUS STATE OF GUJARAT [2020 (9) TMI 41 - GUJARAT HIGH COURT, Dated:- 26-8-2020, R/Special Civil Application No. 9955 of 2020]

Held: Without any opinion on merits of the show cause notice dated 11.1.2020 issued by respondent authorities to the petitioner, at this stage, interest of justice would be served, if the concerned respondent authorities shall hear the petitioner on the issue of show cause notice and after hearing the petitioner, pass necessary orders. Such exercise may be preferably undertaken by the concerned authority as expeditiously as possible latest by 09.10.2020. The authority shall pass an appropriate order in accordance with law, without being any influenced by this order.

R. Returns

Maintainability of petition - Seeking time for filing of the reply to this application

VISHNU ENTERPRISES [2020 (9) TMI 208 - BOMBAY HIGH COURT, Dated:- 31-8-2020, Civil Application No.1147 of 2019 In Writ Petition No.1100 of 2019]

Held: What happens in the filing of return is a positive act on the part of assessed and corresponding acceptance of such positive act by the revenue. In the present case, the positive act in the nature of filing of the return did take place, but the effort was negated by the respondents and now blame is being put on the system that respondents have adopted to enable e-filing of tax returns. In such a case the system can always be amended suitably for the system is created by human beings and not the vice-versa.

Two weeks' time granted to the respondents to file reply in the matter. Meanwhile, respondents shall make suitable amends to the system and accept the returns filed by the petitioner on or before the next date. If the petitioners returns are not accepted online, the petitioner shall be allowed to file them manually,

which returns shall be taken on record by the respondents - Stand over for two weeks.

S. Search and Seizure

Jurisdiction - power to effect seizure of cash from petitioner - Section 67(2) of the Central Goods and Services Tax Act, 2017 - petitioner's contention is that the word "money" is not included in Section 67(2) of the CGST Act, 2017 and therefore, once the "money" is not included under Section 67(2) of the CGST Act, 2017 the Investigating Agency / Department is not competent to seize the same - illicit supply of Pan Masala of various brands without invoices and without payment of applicable GST.

Whether expression "things" covers within its meaning the cash or not?

SMT. KANISHKA MATTA VERSUS UNION OF INDIA AND OTHERS [2020 (9) TMI 42 - MADHYA PRADESH HIGH COURT, Dated:- 26-8-2020, Writ Petition No. 8204/2020]

Held: In the considered opinion of this Court, the CGST Act, 2017 has to be seen as a whole and the definition clauses are the keys to unlock the intent and purpose of the various sections and expressions used therein, where the said provisions are put to implementation. Section 2(17) defines "business" and Section 2(31) defines "consideration". In the considered opinion of this Court a conjoint reading of Section 2(17), 2(31), 2(75) and 67(2) makes it clear that money can also be seized by authorized officer - The word "things" appears in Section 67(2) of the CGST Act, 2017 is to be given wide meaning and as per Black's Law Dictionary, 10th Edition, any subject matter of ownership within the spear of proprietary or valuable right, would come under the definition of " thing" (page No.1707).

Thus, keeping in view the aforesaid interpretation of the word "thing" money has to be included and it cannot be excluded as prayed by the petitioner from Section 67(2). The present case is at the stage of search and seizure. A search has been carried out and proceedings are going on.

Keeping in view the totality of the circumstances of the case, the material available in the case diary and also keeping in view Section 67(2) of the CGST Act, 2017, this Court is of the opinion that the authorities have rightly seized the amount from the husband of the petitioner and unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise - Petition dismissed.

T. Transitional Provisions

Permission to file Form TRAN-1 - transitional credit - transition of GST regime - CGST Act - validity of Rule 117 of the CGST Rules

VENKATESWARA WIRES PVT. LTD., SARVODAYA FERTILIZERS AND CHEMICALS [2020 (9) TMI 584 - RAJASTHAN HIGH COURT, Dated:- 10-9-2020, D.B. Civil Writ Petition No. 16645/2018, 4521/2020]

Held: The controversy involved in the present writ petitions is similar to the controversy involved in OBELISK COMPOSITE TECHNOLOGY LLP, VERSUS UNION OF INDIA, THE SECRETARY TO THE GOVT. OF INDIA, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE [2019 (12) TMI 1162 - RAJASTHAN HIGH COURT] where it was held that The challenge to the constitutional validity of Rule 117 no more being res integra, this Court cannot entertain such prayer and accordingly reject the same, however, considering the fact that the Union of India and the Finance Department have extended the period contemplated under Rule 1A of Rule 117 till 31st December, 2019, we grant liberty to the petitioner to make an application before GST Council (through Standing Counsel, who is further requested to hand over the same to the jurisdictional officer) for forwarding the same to the GST Council to issue requisite certificate of recommendation alongwith requisite particulars.

Thus, liberty granted to the petitioners to make an application before GST Council through Standing Counsel, who is further requested to hand over the same to the jurisdictional officer for forwarding the same to the GST Council to issue requisite certificate of recommendation alongwith requisite particulars, evidence and a certified copy of the order instantly and such decision be taken forthwith and if the petitioners' assertion is found to be correct, the GST Council shall issue necessary recommendation to the Commissioner to enable the petitioners to get the benefit of CENVAT credit within the stipulated time as stipulated by the Union of India.

Reimbursement of differential tax amount arising out of change in tax regime from Value Added Tax (VAT) to Goods and Service Tax (GST) with effect from 01.07.2017 - grievance of the petitioner is that in view of the introduction of the GST, petitioner is required to pay tax which was not envisaged while entering into the agreement

DHABALESWAR PATTANAIK VERSUS STATE OF ODISHA [2020 (9) TMI 213 - ORISSA HIGH COURT, Dated:- 2-9-2020, W.P.(C) No.18861 of 2020]

Held: The Government has now come out with a revised guidelines in this respect in supersession of the guidelines issued vide Finance Department letter dated 07.12.2017. He has filed Additional Counter Affidavit of O.P.-authority in similar cases annexing the revised guidelines relating to works contract under GST issued by the Government of Odisha, Finance Department vide Office memorandum No. FIN-CTI-TAX-0045-2017/38535/F Dated 10.12.2018.

In that view of the matter, petitioner shall make a comprehensive representation before the appropriate authority within four weeks from today ventilating the grievance. If such a representation is filed, the authority will consider and dispose of the same, in the light of the aforesaid revised guidelines dated 10.12.2018 issued by the Finance Department, Government of Odisha, as expeditiously as possible, preferably by 21.10.2020 - No coercive action shall

be taken against the petitioner till 21.10.2020.

Transitional credit - time limitation - case of petitioner is that the Rule 117 of the Central Goods and Service Tax Rules provides the procedure of transaction of credit pertaining to pre-GST period under Section 140 of CGST Act, 2017

KAMAL AGENCIES VERSUS UNION OF INDIA AND 4 OTHERS [2020 (9) TMI 372 - ALLAHABAD HIGH COURT, Dated:- 1-9-2020, Writ Tax No. - 420 of 2020]

COMMITTEE OF MANAGEMENT, SADHAN SAHKARI SAMITI LTD. VERSUS STATE OF U.P. AND 7 OTHERS [2020 (9) TMI 209 - ALLAHABAD HIGH COURT, Dated:- 1-9-2020, Writ - C No. - 420 of 2020]

Held: The respondents No.4 and 5 states that the GST portal is being managed by the Goods and Services Tax Network (GSTN), an agency hired by the department. However, the respondent No.5-Additional Commissioner, Central Goods and Services Tax (CGST), Nodal Officer IT Grievance Redressal Mechanism is the appropriate authority to redress the grievances of the petitioner.

Without entering into the merits of the claim of the petitioner, we direct that the petitioner may approach the respondent No.5- Additional Commissioner, Central Goods and Services Tax (CGST), Nodal Officer IT Grievance Redressal Mechanism by moving a fresh application along with a copy of this order within a period of three weeks from today. The respondent No.5-Additional Commissioner, Central Goods and Services Tax (CGST), Nodal Officer IT Grievance Redressal Mechanism is directed to look into all the grievances of the petitioner, and take necessary steps to redress the same within a period of four weeks thereafter.

DISH TV INDIA LIMITED vs. UNION OF INDIA [2020 (9) TMI 43 - DELHI HIGH COURTDated:- 28-8-2020, W.P. (C) 5735/2020]

Legality of FAQ released in January, 2018 and the Guidance Note on CGST Transitional Credit dated 14th March, 2018 - legality and validity of Section 140 of the Central Goods and Services Tax Act, 2017 notified on 29th January, 2019 with effect from 1st July, 2017 - as well as the provisions of Circular dated 2nd January, 2019 issued by respondent no. 2 giving retrospective/retroactive effect to Section 28(a) & (d) of the Central Goods and Services Tax (Amendment) Act, 2018 with effect from 1st July, 2017.

Held: Issue Notice.To await the judgment of the Division Bench of Madras High Court in SUTHERLAND GLOBAL SERVICES PRIVATE LIMITED VERSUS ASSISTANT COMMISSIONER CGST AND CENTRAL EXCISE, COMMISSIONER OF CGST AND CENTRAL EXCISE, GOVERNMENT OF TAMIL NADU, UNION OF INDIA, CENTRAL BOARD OF EXCISE AND CUSTOMS, THE CHAIRMAN, GSTN [2019 (11) TMI 278 - MADRAS HIGH COURT], list on 07th December, 2020.

Short transition of input tax credit - transition to GST regime

M/S GURUKRIPA LUBRICANTS VERSUS UNION OF INDIA AND OTHERS [2020 (8) TMI 824 - MADHYA PRADESH HIGH COURT, Dated:- 27-8-2020, WP-12184-2020]

Held: The issue has been decided by various High Courts as well as by the Apex Court, this court deems it proper to direct the petitioner to file a fresh representation annexing all the judgments cited before this court within a period of seven days before the Jurisdictional Commissioner from the date of receipt of certified copy of the order - Reliance can be placed in the case of Adfert Technologies Pvt. Ltd. Vs. Union of India [2019 (11) TMI 282 - PUNJAB AND HARYANA HIGH COURT].

Refund of Service Tax - cancellation of booking of flat - denial on the ground that the assessment was final and not provisional - doctrine of unjust enrichment

MR. HARESH V KAGRANA (HUF) VERSUS DEPUTY COMMISSIONER (REFUND) CGST AND CX MUMBAI WEST [2020 (9) TMI 425 - COMMISSIONER GST AND CX (APPEALS III), MUMBAI, Dated:- 25-8-2020, NA/GST/A-III/MUM/84/2020-21]

Held: It is important that Section 142(5) provides that any amount eventually accruing shall be paid in cash. I further find that the clause notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 is extremely crucial. It frees such claims from the fetters of limitation which is provided under sub-Section (1) of Section 11B. The only thing that is not overridden is the requirement of fulfillment of unjust enrichment clause as provided under sub-Section (2) of Section 11B.

No service has been provided to the appellant in this case and therefore the provision of relevant date of one year and date of payment of payment as per Section 11B of CEA cannot be made applicable in the present case. The service tax paid by the appellant is in the nature of deposit and not service tax.

Even if the payment is in the nature of service tax, the date of cancellation of flat will be considered as the relevant date for calculating the time limit of one year, as the event that led to the refund of taxes is the cancellation by the buyer. If the cancellation would not have happened, the refund claim would not have arisen at all.

Doctrine of Unjust Enrichment – Held: Appellant is the customer, who had booked the flat, It is on record that the component of Service Tax was recovered from him by the builder and paid to the exchequer. It is also on record that the builder has not refunded Service Tax to the appellant. It is therefore clear that appellant has borne the incidence of Service Tax whose refund is being claimed, It is crystal clear that the claim is not hit by the doctrine of unjust enrichment.Appeal allowed - decided in favor of appellant.

Reopening of GSTN portal to file the TRAN-1 form - transitional input credit - transition to GST regime - case of respondents is that there is no material on record to show that

the petitioner herein has made any effort to get his form TRAN-1 uploaded in the GST web portal

KUN UNITED MOTORS PVT. LTD. [2020 (9) TMI 251 - ANDHRA PRADESH HIGH COURT, Dated:- 21-8-2020, Writ Petition No.4590 of 2020]

Held: There was exchange of letters in the year 2018 as well as in the year 2019, between the petitioner and respondents 1 and 2, with regard to the inability of the petitioner to upload form TRAN-1, due to freezing of portal or the portal not getting opened. In fact, the material filed along with the counter itself show that in the month of February, 2019 also the petitioner made a request to the Deputy Commissioner, GST Cell, Commissioner of Central Taxes, Tirupathi GST Commissionerate, Tirupathi, requesting him to take required action to re-open TRAN-1 as per the provisions of the GST law and circular instructions. Similar such letter was addressed to him on 11.2.2019, but there was no response till the order rejecting the request came to be passed.

It is very clear that the petitioner did make efforts to get form TRAN-1 uploaded or in the alternative to accept the application manually and do the needful.

Identical issue decided in the case of BHARGAVA MOTORS VERSUS UNION OF INDIA & ORS. [2019 (5) TMI 899 - DELHI HIGH COURT] and KUSUM ENTERPRISES PVT. LTD., SANKO GOSEI TECHNOLOGY INDIA PVT. LTD. VERSUS UNION OF INDIA & ORS. [2019 (7) TMI 945 - DELHI HIGH COURT] where the High Court disposed of the Writ Petition directing the respondents to either open the portal to enable the petitioner to again file form GST TRAN-1 electronically or in the alternative accept the form GST TRAN-1 presented manually on or before 30.9.2019 - Similar such view came to be taken by a Division Bench of this Court in LANTECH PHARMACEUTICALS LTD, SRIKAKULAM VERSUS THE PRL COMMISSIONER VISAKHAPATNAM [2019 (10) TMI 477 - ANDHRA PRADESH HIGH COURT].

Thus, it is not a case where the petitioner has not made any efforts in getting TRAN-1 form uploaded in the GST portal. Efforts were made in December, 2017 and thereafter in the years 2018 and 2019, which is evident from the communications referred to earlier. Therefore, non-filing of screenshots in our view cannot be a ground to reject the request on the ground that no effort was made, since the communication between the petitioner and the respondents is not in dispute - Further, question of preserving screenshots by everyone may not be possible having regard to the conditions prevailing in the country and also the facilities that are available for an uneducated assessee.

As observed in UNINAV DEVELOPERS PVT. LTD. VERSUS UNION OF INDIA & ORS. [2019 (8) TMI 85 - DELHI HIGH COURT], the GST system is still in a trial and error phase and it will be too much of a burden to place on the Assessee to expect them to comply with the requirement of the law where they are unable to even connect to the system on account of network failures or other failures.

As the petitioner could not upload the TRAN-1 form electronically due to technical snags and since Government of India has been extending the time regularly for submitting TRAN-1 forms, we feel that it is a fit case where the request of the petitioner can be considered - the Writ Petition is disposed of directing the respondents herein either to open the portal to enable the petitioner to again file GST TRAN-1 form electronically or in the alternative accept the GST TRAN-1 form manually on or before 30.9.2020. Once it is uploaded or submitted manually, the claim of the petitioner may be processed in accordance with law.

U. Tribunal

Non-constitution of GST Tribunal - Submission is that issues of facts and law both can be raised before the Tribunal in view of Sections 112 and 113 of the Act.

BULAND ENTERPRISES [2020 (9) TMI 1105 - ALLAHABAD HIGH COURT, Dated:-24-9-2020, Writ Tax No. - 279 of 2020]

Held: The seized goods shall be released to the petitioner upon payment of specified tax along with 100 % penalty under Section 129(1)(a) of the Act. For the remaining amount, the petitioner shall furnish security other than cash and bank guarantee. Such payment shall remain subject to the final determination to be made in this matter.

Learned State counsel shall also apprise the Court as to by what date the GST Tribunal would be constituted - List in the regular cause list after its publication resumes.

V. Valuation

Renting of immovable property service - Deduction of property taxes and other statutory levies - Valuation of rental income - inclusion of notional interest on the security deposit - exemption of tax under the general exemption of ₹ 20 lakhs - whether the property tax & other statutory levies paid/ payable by the applicant be deducted from the rental income for the purpose of arriving at the value of rental income?

MIDCON POLYMERS PVT. LTD. [2020 (9) TMI 784 - AUTHORITY FOR ADVANCE RULING, KARNATAKA, Dated:- 16-9-2020, KAR ADRG 48/2020]

Held: It could easily be inferred from Section 15(2) that any taxes, duties, cesses, fees and charges, levied under any law for the time being in force, shall include in the value of taxable supply. In the instant case the property tax is levied, under the Karnataka Municipalities Act 1964, by the BBMP in Bangalore. Further the only exclusions from the value of the taxable supply are the taxes, duties, cesses, fees and charges levied under the CGST Act 2017, SGST (KGST) Act 2017, UTGST Act 2017 & GST (Compensation to States) Act, subject to the condition that they are charged separately by the supplier - It is observed that in the instant case, the supplier (applicant) and the recipient are not related; price is the sole consideration of the supply and monthly rent is the price payable. Thus the monthly rent is the transaction value and the

same would be the value of supply of the impugned service of RIS - the property tax is not deductable from the value of taxable supply of "Renting of Immovable Property" service.

Whether notional interest on the security deposit should be taken into consideration for the purposes of arriving at total income from rental? –

Held: The security deposit is collected normally equivalent to 6 months or 12 months' rent. Also it is a known fact that the higher the security deposit lower the monthly rent amount. In the instant case, an amount of ₹ 5 Crore is proposed to be collected as security deposit and a monthly rent of ₹ 1.5 Lacs. However the applicant has not furnished adequate date / information so as to decide whether actually the notional interest influences the monthly rental amount or not - the notional interest has to be considered as part of value of supply of service, if and only if the said notional interest influences the value of supply i.e. value of RIS service / monthly rent and is leviable to GST along with monthly rent at the rate applicable to monthly rent.

Whether the applicant is entitled for exemption of tax under the general exemption of ₹ 20 lakhs?

Held: The interest free security deposit does not come under the purview of supply as per Section 7 of CGST Act, 2017 since it is not a consideration. However, the notional interest on security deposit becomes part of consideration along with monthly rent, if it influences the value of the supply - in view of the submission made by the applicant that they have no other business besides what they have submitted to this Authority, it is found that they are entitled for the general exemption for registration purpose, subject to the condition that their annual total turnover which includes monthly rent and notional interest, if it influences the value of supply, does not exceed the threshold limit.

(Footnotes)

[1]Earlier, the words used were 'a financial year'.

[2]after the words "goods or services or both to a registered person", the words "or for exports" has been inserted.

LATEST INCOME TAX JUDGEMENTS

CA Manjulata Shukla

SECTION 2(47) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS

Commissioner of Income-tax v. Nalwa Investment Ltd. - [2020] 118 taxmann.com 278 (Delhi)

When assessee gets shares of amalgamated company in lieu of shares of amalgamating company, a 'transfer' does take place within meaning of section 2(47) .

SECTION 28(i) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME

Principal Commissioner of Income-tax v. Khivraj Motors (P.) Ltd. - [2020] 118 taxmann.com 224 (Madras)

Where assessee developed software technology park and gave certain properties in said park on lease to different software companies, rental income earned by assessee from leased out properties was liable to tax as 'business income' .

Zaveri& Co. (P.) Ltd. v. Deputy Commissioner of Income Tax, Circle 4(1)(2), Ahmedabad - [2020] 118 taxmann.com 429 (Ahmedabad - ITAT)

Where assessee earned interest income from fixed deposit (FD) receipts with bank which were made by assessee in course of its trading business of import for purpose of re-export, for obtaining letter of credit for its purchases, same was to be assessed as business income .

SECTION 50C OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - SPECIAL PROVISION FOR COMPUTATION OF FULL VALUE CONSIDERATION

Ramesh Govindbhai Patel v. Income Tax Officer - [2020] 118 taxmann.com 201 (Ahmedabad - Trib.)

Where in respect of sale of property by assessee, Assessing Officer made addition to taxable income by invoking provisions of section 50C, in view of fact that valuation of property sold on basis of stamp duty valuation as on date of registration had been determined without referring matter to DVO, impugned addition made by Assessing Officer was to be deleted .

Areva T & D (I) Ltd. v. Commissioner of Income Tax - [2020] 119 taxmann.com 171 (Madras)

Transfer of assessee's non-transmission and distribution business in exchange of issuance and allotment of equity shares under a scheme of arrangement approved by High Court is not a slump sale exigible to capital gain tax under section 50 as transfer pursuant to approval of scheme of arrangement is not a contractual transfer but a statutorily approved transfer and cannot be brought within definition of word 'sale' .

SECTION 72A OF THE INCOME-TAX ACT, 1961 - LOSSES - CARRY FORWARD AND SET OFF OF ACCUMULATED LOSS, ETC., IN CASE OF AMALGAMATION

Principal Commissioner of Income-tax v. Lotte India Corporation Ltd. - [2020] 118 taxmann.com 225 (Madras)

In order to claim benefit of set-off of losses under section 72A, condition of filing Form No. 62 is only directory and non-compliance thereof would not disentitle

assessee to claim carry forward losses to be set off against profits of company

SECTION 245C OF THE INCOME-TAX ACT, 1961 - SETTLEMENT COMMISSION

Principal Commissioner of Income-tax v. Income Tax Settlement Commission - [2020] 118 taxmann.com 197 (SC)

Notice issued and accepted by respondents in SLP against impugned order of High Court holding that when order under section 245D came to be passed, respondents were not assessees as contemplated under Black Money Act; accordingly, provisions thereof did not apply to them and, therefore, undisclosed foreign income and assets of respondents had rightly been assessed under Income-tax Act

CIT v. Tarachanthini Services (P.) Ltd. - [2020] 118 taxmann.com 252 (Madras)

Factual issue cannot be raised first time before ITAT if it never raised before AO during assessment

Assessee filed return of income declaring losses and same was processed under section 143(1). Assessment was reopened under section 147 and notice was issued and served on assessee. Subsequently, a notice under section 142(1) was issued along with questionnaire. After issuing summons to certain persons, assessment was completed. Assessee being aggrieved by such order filed an appeal before CIT(A). Such appeal was dismissed.

Assessee preferred an appeal before ITAT. Assessee for the first time raised a new ground before ITAT stating that since the name of assessee was struck off from the register of companies even before the assessment order was passed, the assessment itself was bad in law and nullity. ITAT remanded the matter to AO to investigate as to whether assessee was in existence at relevant time.

On revenue's appeal, the Madras HC held that assessee filed return of income for assessment year 2000-01 and assessment for same was reopened. Assessee fully participated in reassessment proceedings and thereafter assessment order had been passed. Therefore, reassessment order would take effect and to be effective for the said assessment year. The striking off the name of company from the register of companies could not impact the said assessment. Further, where assessee had failed to raise the factual issue before AO at the first instance and consciously participated in the proceedings, it could not have been permitted to canvass such issue for the first time before ITAT.

REASSESSMENT

SURESH KUMAR AGARWAL VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0173 DelTrib

If assessing officer acts as a reasonable and prudent man on the basis of information gathered there is a good case for reopening of the assessment.

DEDUCTIONS

PATEL INFRASTRUCTURE PVT. LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0266 RajkotTrib

Wherein it has been held that where contracts involve development, operating, maintenance, financial involvement and defect correction and liability period, then such contracts cannot be called as simple works contracts so as to deny deduction under section 80-IA(4) to assessee.

KATIRA CONSTRUCTION LIMITED & ANR. VS ASSISTANT COMMISSIONER OF INCOME TAX & ANR. : (2020) 59 CCH 0264 RajkotTrib

The deduction claimed by the assessee under section 80-IA of the Act cannot be

denied to the assessee merely on the reasoning that there was no valid agreement furnished by the assessee when there were tender documents along with letter of intent and work order which contain all the features of a valid agreement and are legally enforceable in the eyes of law.

M/S. THE KUMARAMPUTHUR SERVICE CO-OPERATIVE BANK LIMITED AND ORS. VS INCOME AX OFFICER : (2020) 59 CCH 0184 CochinTrib

A.O. has to examine details of each loan disbursement and determine purpose for which loans were disbursed, i.e., whether it is for agricultural purposes or non-agricultural purposes.

RYTHARA SEVA SAHAKARA SANGHA NIYAMITHA VS INCOME TAX OFFICER : (2020) 59 CCH 0181 BangTrib

Interest earned from Schedule bank or cooperative bank is assessable under the head income from other sources and therefore the provisions of Sec.80P(2)(d)of the Act was not applicable to such interest income.

MANTOLA COOPERATIVE THRIFT & CREDIT SOCIETY LTD. VS INCOME TAX OFFICER : (2020) 59 CCH 0255 DelTrib

Assessee, a thrift & credit society should not be constituted as banking company and is not eligible for deduction u/s 80P(2)(a)(i).

M/S. THE KUMARAMPUTHUR SERVICE CO-OPERATIVE BANK LIMITED AND ORS. VS INCOME AX OFFICER : (2020) 59 CCH 0184 CochinTrib

A.O. has to examine details of each loan disbursement and determine purpose for which loans were disbursed, i.e., whether it is for agricultural purposes or non-agricultural purposes.

KARKURISSI SERVICE CO-OPERATIVE BANK LIMITED VS INCOME TAX OFFICER : (2020) 60 CCH 0043 CochinTrib

Assessing Officer has to conduct an inquiry into the factual situation as to the activities of the assessee society to determine the eligibility of deduction u/s 80P.

INCOME FROM OTHER SOURCES

ANTARIKSH SOFTTECH PVT. LTD. VS INCOME TAX OFFICER : (2020) 59 CCH 0189 BangTrib

In order to invoke the provisions of section 56(2)(viib), it is essential that the excess amount is received by the company from a resident and therefore, this should be first examined as to whether the person from whom any money is received by the company on issue of its shares is resident in India or not in the relevant year.

COMMISSIONER OF INCOME TAX & ANR. VS ASKHOK AGARWAL HUF & ANR. : (2020) 59 CCH 0258 JaipurTrib

When properties in question are undisputedly shown in books of account of assessee as stock-in-trade and part of closing stock, then same would not fall in ambit of property as defined in explanation to section 56(2)(vii) and consequently provisions of section 56(2)(vii) will not be applicable.

INTEREST PAYABLE UNDER SEC 201(1) AND 201(1A)

DEPUTY COMMISSIONER OF INCOME TAX & ORS. VS SAHARA INDIA FINANCIAL CORPORATION LTD. & ORS. : (2020) 59 CCH 0099 DelTrib

Where the jurisdiction over TDS was not transferred to the other specified officers other than ITO (TDS), order passed by the Assistant Commissioner of Income Tax under section 201 (1) and 201 (1A) was without jurisdiction.

CHARITABLE TRUSTS

GUJARAT MARITIME BOARD VS ASSISTANT COMMISSIONER OF INCOME TAX (EXEMPTION) : (2020) 59 CCH 0097 AhdTrib

Where the activities carried out by the assessee is for advancement of any other object of general public utility without any intention of the profit motive, it cannot be said that the activities carried out by the assessee are in the nature of trade commerce or business.

KALYAN EDUCATIONAL SOCIETY VS COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0268 KolTrib

Assessee is running an educational institution not for profit and expenditure incurred in establishing the educational institution, are all application of income for charitable activity and if any income was generated in the course of educational activity, the said income would be construed as if it was generated in the course of carrying on the charitable activity.

INCOME

KAKINADA SEZ (P) LTD. VS INCOME TAX OFFICER : (2020) 59 CCH 0112 HydTrib

Interest earned on funds primarily brought for infusion in business earned in a period prior to commencement of business is in nature of capital receipt.

PENALTY

SANGHAMITRA PATTNAIK VS INCOME TAX OFFICER : (2020) 59 CCH 0102 CuttackTrib

If the income of the taxpayer falls above the prescribed limit, then he should maintain books of accounts u/s.44AA and he should produce the same as and when required by the AO enabling him to calculate correct taxable income of the assessee.

ASSISTANT COMMISSIONER OF INCOME TAX VS DLF LTD. (FORMERLY KNOWN AS DLF UNIVERSAL LTD.) : (2020) 60 CCH 0028 DelTrib

Merely because the disallowance has been confirmed by the higher forum, it cannot automatically result into penalty.

SECTION 14A OF THE INCOME-TAX ACT, 1961 - EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME

FLSmidth (P.) Ltd. v. Deputy Commissioner of Income-tax - [2020] 118 taxmann.com 272 (Madras)

Where Assessing Officer having regard to volume of investment in shares and quantum of dividend income earned thereon, invoked provisions of Rule 8D of 1962 Rules, read with section 14A and enhanced amount of disallowance for earning exempt income, disallowance so made was to be confirmed .

Triveni Engineering & Industries Ltd. v. Additional Commissioner of Income-Tax - [2020] 118 taxmann.com 301 (Delhi - Trib.)

Where assessee earned exempt dividend income by making investment in shares out of surplus funds, impugned ad hoc disallowance made by Assessing Officer under section 14A without establishing any nexus between expenditure incurred and earning of exempt dividend income was to be deleted

Zaveri& Co. (P.) Ltd. v. Deputy Commissioner of Income Tax, Circle 4(1)(2), Ahmedabad - [2020] 118 taxmann.com 429 (Ahmedabad - ITAT)

Where assessee had Rs. 305 crores in its share capital and reserves against which it had made investment of Rs. 32.73 crores since, interest free fund available with assessee was far more than investment, thus, no interest expenditure could be disallowed

.Deputy Commissioner of Income Tax, Circle 2(2), Bangalore v. Cornerstone Property Investment (P.) Ltd. - [2020] 118 taxmann.com 541 (Bangalore - Trib.)

Where from P&L account of assessee it was clear that assessee had not earned any exempt income during year, no disallowance under section 14A was to be made .

SECTION 41(1) OF THE INCOME-TAX ACT, 1961 - REMISSION OR CESSATION OF TRADING LIABILITY

Principal Commissioner of Income-tax v. Adani Agro (P.) Ltd. - [2020] 118 taxmann.com 307 (Gujarat)

Merely because liability had remained outstanding for more than three years and same was not written back in profit and loss account, application of provisions of section 41(1) could not be made to consider such liability as income for year under consideration without there being any remission or cessation of liability.

SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING .

Regus Business Centre (P.) Ltd. v. Income Tax Officer - [2020] 118 taxmann.com 203 (Mumbai - Trib.)

In view of fact that amendment to sub-section(2) to section 92B would be applicable from 01-04-2015, TPO could not treat loan transactions entered into between assessee and its group entities located in India as 'deemed international transactions' in assessment year in question .

INCOME TAX OFFICER VS SABRE TRAVEL TECHNOLOGIES PVT. LTD. : (2020) 60 CCH 0010 BangTrib

Functionally different companies cannot be selected as comparables

M/S MIDLAND CREDIT MANAGEMENT INDIA PVT LTD AND ANR. VS ADDITIONAL COMMISSIONER OF INCOME TAX AND ANR. : (2020) 60 CCH 0038 DelTrib

Functionally different entities having a high brand value cannot be selected as comparables.

KEC INTERNATIONAL LTD. AND ANR. VS DEPUTY COMMISSIONER OF INCOME TAX AND ANR. : (2020) 60 CCH 0041 MumTrib

Where the advances were towards fulfilment of the assessee's obligation of being a JV partner as any financial incapacitation of JV would adversely affect the continuation of the project and ultimately jeopardize the interest of the assessee therefore, the said advances could not be put in the category of loans.

SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE

Johnson Controls (I.) (P.) Ltd. v. Deputy Commissioner of Income Tax - [2020] 118 taxmann.com 292 (Mumbai - Trib.)

Where TPO made certain addition to assessee's ALP on account of bad debts written off in respect of engineering services rendered to AE for air-conditioning equipments, in view of fact that operating margin of said segment had been accepted and, moreover, TPO had disallowed claim for bad debts written off on ad-hoc basis, impugned addition was to be deleted.

FIS Global Business Solutions India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2020] 118 taxmann.com 221 (Delhi - Trib.)

Where in respect of software development services rendered to AE, assessee entered into Advance Pricing Agreement (APA) with CBDT, in such a case, when undisputedly there was no change in FAR of assessee in year under assessment vis-à-vis years covered under APA and, consolidated margin computed as per APA at 19.26 per

cent was much more than consolidated margin agreed upon between assessee and CBDT for years covered under APA at 16.60 per cent, impugned transfer pricing adjustment made by TPO by applying transfer pricing principles was to be set aside

Colgate - Palmolive (India) Ltd. v. Additional Commissioner of Income Tax-10(3), Mumbai - [2020] 118 taxmann.com 399 (Mumbai - Trib.)

Where TPO made certain adjustment to assessee's ALP in respect of AMP expenses incurred by taking a view that same resulted in brand building of AE, in absence of any agreement between assessee and AE obliging assessee to incur AMP expenses on behalf of AE, no international transaction could be said to have taken place and, thus, impugned adjustment was to be set aside .

Colgate - Palmolive (India) Ltd. v. Additional Commissioner of Income Tax-10(3), Mumbai - [2020] 118 taxmann.com 399 (Mumbai - Trib.)

R & D services providers, in case of : Where assessee was rendering research and development services to AE in field of FMCG, a company engaged in providing seismic research activity, seismic data acquisition, processing and interpretation, could not be accepted as comparable .

Deputy Commissioner of Income-tax v. Landis+ Gyr Ltd. - [2020] 118 taxmann.com 293 (Kolkata - Trib.)

Liability for payment of R&D Cess is that of assessee and, thus, same should not be covered within contractual payment of royalty or as income of foreign company while determining ALP of royalty payment made to AE.

Deputy Commissioner of Income Tax, Range-9(1)(1) v. Agility Logistics (P.) Ltd. - [2020] 119 taxmann.com 141 (Mumbai - Trib.)

Where assessee-company entered into international transaction with its AE and in course of such transactions had paid freight expenses and CUP method was adopted to benchmark said transaction, since said method was accepted in earlier years, in absence of any change in facts and circumstances, TPO could not make addition to assessee's ALP by applying TNMM during relevant year.

EF Information Systems (P.) Ltd. v. Deputy Commissioner of Income tax, Circle 2(1)(2), Bangalor - [2020] 119 taxmann.com 152 (Bangalore - Trib.)

Where inclusion of a company in comparable list was not challenged by assessee before DRP, comparability of said company was to be restored to TPO/Assessing Officer for consideration afresh .

EF Information Systems (P.) Ltd. v. Deputy Commissioner of Income tax, Circle 2(1)(2), Bangalor - [2020] 119 taxmann.com 152 (Bangalore - Trib.)

Where inclusion of a company in comparable list was not challenged by assessee before DRP, comparability of said company was to be restored to TPO/Assessing Officer for consideration afresh .

EF Information Systems (P.) Ltd. v. Deputy Commissioner of Income tax, Circle 2(1)(2), Bangalor - [2020] 119 taxmann.com 152 (Bangalore - Trib.)

Where TPO excluded a company from list of comparable companies on ground that there was no breakup for employee cost and hence it was not possible to verify whether employee cost was more than 75 per cent of sales revenue of this company, however, assessee submitted that employee cost to sales was 83.69 per cent and in event of any doubt, Assessing Officer should have invoked his powers under section 133(6), matter was to be remanded back for adjudication afresh .

SECTION 144C OF THE INCOME-TAX ACT, 1961 - DISPUTE RESOLUTION PANEL

Rivendell PE, LLD v. Assistant Commissioner of Income Tax (IT) - [2020] 118 taxmann.com 204 (Mumbai - Trib.)

Where due to natural calamity assessee could not file Form No. 35A signed by concerned director but filed a scanned copy of same signed by director residing in other country before DRP with a bonafide intention to meet deadline for filing its objections against draft assessment order, impugned order rejecting Form No.35A was to be quashed .

SECTION 80-IA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INFRASTRUCTURE UNDERTAKINGS

Zaveri& Co. (P.) Ltd. v. Deputy Commissioner of Income Tax, Circle 4(1)(2), Ahmedabad - [2020] 118 taxmann.com 429 (Ahmedabad - ITAT)

Loss prior to initial assessment year which was already been set off cannot be brought forward and adjusted -

SECTION 80-IB OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKING OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKING

Commissioner of Income-tax, Chennai v. Smt. A. Jagadeeswari - [2020] 118 taxmann.com 369 (Madras)

Where Assessing Officer denied deduction under section 80-IB on ground that area of two plots situated in two different streets, which assessee had considered as single project, constituted an area of less than 1 acre each when considered individually, but Tribunal had allowed deduction holding that it was done as a composite project at proposed site no substantial question of law arose for consideration .

Deputy Commissioner of Income Tax, Circle-3, Pune v. Shewale& Sons - [2020] 118 taxmann.com 426 (Pune - Trib.)

In order to get deduction under section 80-IB(10) after completion of project, completion certificate has to be obtained from concerned authority i.e. Municipal Corporation.

Form 35A filed with scanned sign of director to meet deadline for filing objections before DRP is valid: ITAT

Rivendell PE, LLD v. Assistant Commissioner of Income Tax (IT) - [2020] 118 taxmann.com 204 (Mumbai - Trib.)

Assessee was resident of Mauritius. It filed return of income claiming short-term and long-term capital loss. Upon scrutiny, AO issued the draft assessment order under section 143(3) r.w.s. 144C considering capital gain losses as non-genuine and not allowable to be carried forwarded.

Assessee preferred an objection along with Form No. 35A before the Dispute Resolution Panel (DRP). Said Form 35A wasn't verified as per the procedure laid down since the signature of the person on verification page in the said form was a copy of the original signature. DRP rejected said form and held that verification form submitted with the scanned copy of the signature of the director. It was as good as submitting of unsigned paper since the scanned copy of the signature has no legal sanctity.

The Mumbai Tribunal held that during relevant point of time, Mauritius was hit by a cyclone leading to heavy rainfall. This caused devastating damage in the country and the Directors present in Mauritius were not available for signing the Form.

The assessee with bona fide intention got the said form signed by the other Director of the company available in United States of America and filed the scanned document thereon in due date. Even it was a defect in

the eyes of law, it was procedural defects and curable in nature, since procedures are handmade of justice. Thus, DRP was to be directed to proceed with matter in accordance with law.

Identity of payee Co. can't be proved just by submitting affidavit signed by its directors to justify expenses

JaeeVishwas Joshi v. ACIT - [2020] 118 taxmann.com 291 (Mumbai - Trib.)

Assessee's case was selected for scrutiny and notice was issued under section 142(1) calling assessee to file necessary evidence including details of income earned from its proprietary business and expenses incurred against said income. In response to notice, assessee filed various details. During the course of assessment proceedings, AO held that expenditure incurred under the head counseling charges were not genuine expenditure which was booked to reduce profit for the year. Assessing Officer (AO) held that in the detailed investigation done by investigation wing it was found that the entities to whom payment was made were shell entities and transactions with them were not genuine. AO observed that assessee made bogus payment to said entities and debited these payments under the head business counseling charges.

Assessee challenged additions made by AO towards disallowances of business counselling charges paid along with affidavit from the director of companies to whom payment was made and argued that business counselling charges were paid to those two companies for referring assessee to M/s AltiusFinserve (P.) Ltd. and also, for doing necessary work in connection with services rendered to M/s AltiusFinserve (P.) Ltd.

On appeal, ITAT held that it was a well-settled that merely paper formalities were not sufficient proof particularly where the companies to whom payments were made were not found traceable and their existence, their presence, their infrastructure, the services rendered by them or not proved at all. Further, enquiries and spot verification is done by the Investigation wing revealed that said companies had never been operated and also presently not operating from any of the addresses. No details were provided as to what services had been provided by the entities to the assessee, documentary evidence in support of services rendered and any correspondence between these two entities and the assessee. Further, notice issued under section 133(6) to said entities were unserved and returned by the postal authorities. Thus, ITAT upheld the disallowance of said expenditure

SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA

Next Gen Films (P.) Ltd. v. Income Tax Officer - [2020] 118 taxmann.com 314 (Mumbai - Trib.)

Where assessee, a resident company, entered into agreement with a UK based company to produce, complete and deliver a feature film on payment of certain agreed consideration, in view of fact that said agreement was entered into between assessee and non-resident company on Principal to Principal basis and, assessee did not participate in management, control and capital of said company, provisions of article 10 of India-UK DTAA would not apply and, thus, amount remitted to UK based company was not taxable in India .

SECTION 148 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - ISSUE OF NOTICE FOR

Kasautii v. Commissioner of Income Tax - [2020] 118 taxmann.com 407 (Jharkhand)

Where notices issued under section 148 had been challenged in writ petition on ground that assumption of jurisdiction under section 147 by ITO was ab initio void, since

notices under section 148 had culminated into an order of assessment which could be assailed before appellate authority, said writ petition need not be entertained .

SECTION 115JB OF THE INCOME-TAX ACT, 1961 - MINIMUM ALTERNATE TAX

Zaveri& Co. (P.) Ltd. v. Deputy Commissioner of Income Tax, Circle 4(1)(2), Ahmedabad - [2020] 118 taxmann.com 429 (Ahmedabad - ITAT)

Section 14A application : Computation for purpose of clause (f) of Explanation 1 to section 115JB(2) is to be made without restoring to computation as contemplated under section 14A read with rule 8D .

SECTION 245D OF THE INCOME-TAX ACT, 1961 - SETTLEMENT COMMISSION - PROCEDURE ON APPLICATION UNDER SECTION 245C

Krishna VenkataRamana Shetty v. Income Tax Settlement Commissioner, Additional Bench - [2020] 118 taxmann.com 424 (Madras)

Where Settlement Commission had rejected application of petitioner for assessment years (AY) 2011-12 to 2017-18 as 'invalid', on ground that there was short payment of tax, since there were computational differences that could well be reason for remittances falling short of required amounts and differences were quite insignificant in context of entirety of payment made, in interests of justice, petitioner's case should be considered on merits by Commission.

APPEALS

DEPUTY COMMISSIONER OF INCOME TAX VS GANDHINAGAR URBAN DEVELOPMENT AUTHORITY : (2020) 59 CCH 0259 AhdTrib

Whenever reasons are assigned by an applicant for explaining the delay, then such reasons are to be construed with a justice oriented approach.

ADVANCE RULINGS

COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) & ORS. VS AUTHORITY FOR ADVANCE RULING INCOME TAX & ANR. : (2020) 108 CCH 0072 DelHC

A question cannot be said to be pending under Clause (i) of proviso to Section 245R(2) upon issuance of a mere notice under Section 143(2) especially when it has been issued in a standard pre-printed format and the questions raised before the authority for advance ruling do not appear to be forming the subject matter of the said notice.

BUSINESS EXPENDITURE

ASSISTANT COMMISSIONER OF INCOME TAX VS BAJAJ HOLDINGS & INVESTMENTS LTD. : (2020) 59 CCH 0313 MumTrib

When the dies and moulds were attached to the machine to manufacture the designed product, claim would fall for consideration only under Section 31.

SECTION 37(1) OF THE INCOME TAX ACT, 1961 - BUSINESS EXPENDITURE - ALLOWABILITY OF

Commissioner of Income Tax v. Rajmahal Silks - [2020] 119 taxmann.com 145 (Karnataka)

Where Assessing Officer disallowed payments made by assessee towards transportation charges for transporting mineral and Commissioner (Appeals) also upheld same for reason that no confirmations about such payments were received from transport contractors and also no relevant materials were produced by assessee so as to prove that mineral was actually transported and, thus, said payment could not be allowed under section 37(1), however, Tribunal deleted entire additions made by lower authorities except for confirming addition of a nominal amount, since Tribunal had neither assigned

any valid reason nor disclosed any basis for deleting such additions made by lower authorities, impugned order of Tribunal was cryptic and same was to be set aside and matter was to be remanded .

NATIONAL CO-OPERATIVE DEVELOPMENT CORPORATION VS COMMISSIONER OF INCOME TAX : (2020) 109 CCH 0001 ISCC

Where the disbursement of grants is the core business of the Assessee-Corporation, the expenditure incurred by it in the course of business and for the 'purpose of business', would be an allowable deduction under Section 37(1)

Triveni Engineering & Industries Ltd. v. Additional Commissioner of Income-Tax - [2020] 118 taxmann.com 301 (Delhi - Trib.)

Software implementation expenses : Expenditure incurred by assessee on implementation of software for smooth functioning of business, was to be allowed as deduction under section 37(1) .

National Co-operative Development Corporation v. Commissioner of Income Tax - [2020] 119 taxmann.com 137 (SC)

Where disbursements of grants was held to be core business of appellant corporation, expenditure incurred in course of business and for purpose of business would naturally be an allowable deduction under section 37(1) Source of funds from which expenditure is made is not relevant It is also not really relevant as to whether expenditure is incurred out of corpus funds or from interest income earned by appellant corporation Further, merely because grants benefit a third party, it would not render disbursement as application of income and not expenditure Thus, every application of income towards business objective of appellant - Corporation is a business expenditure and nothing else .

NON-RESIDENT

SYMANTEC ASIA PACIFIC PTE LTD. VS DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) : (2020) 59 CCH 0319 DelTrib

Amended definition of Royalty under the domestic law even if amended with retrospective effect cannot be extended to the definition of 'Royalty' under the DTAA where the term 'Royalty' under the DTAA has not been amended.

LIABILITY IN SPECIAL CASES

LATE GHANSHYAM H PARSANA VS INCOME TAX OFFICER : (2020) 59 CCH 0318 AhdTrib

A proceeding could be continued against the legal representative of the deceased assessee only if it had been initiated when the assessee was alive.

Tax Deducted at Source

ARIHANT CHARITABLE TRUST VS INCOME TAX OFFICER (TDS) : (2020) 59 CCH 0315 IndoreTrib

Collection, transportation and disposal of waste by assessee cannot be said to be in the nature of technical, managerial or consultancy services as envisaged in Section 194J. It is covered under the provisions of Section 194C.

ADITYA MOHAPATRA VS PRINCIPAL COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0013 CuttackTrib

Where the turnover of the assessee is below Rs.60 lakhs which is not required to be audited u/s.44AB, assessee falls out of the purview of Section 194H for making deduction on payments made to the retailers as a commission or discount of more than Rs.5000.

SECTION 115BBE OF THE INCOME-TAX ACT, 1961 - TAX ON INCOME REFERRED

TO IN SECTION 68 OR SECTION 69 OR SECTION 69A OR SECTION 69B OR SECTION 69C OR SECTION 69D

Shree Karthik Papers Ltd. v. Deputy Commissioner of Income Tax - [2020] 118 taxmann.com 467 (Madras) Amendment brought in sub-section (2) of section 115BBE by Finance Act, 2016, whereby set off of losses against income referred to in section 68 was denied, would be effective from 1-4-2017 .

M/S. THE KUMARAMPUTHUR SERVICE CO-OPERATIVE BANK LIMITED AND ORS. VS INCOME TAX OFFICER : (2020) 59 CCH 0184 CochinTrib

A.O. has to examine details of each loan disbursement and determine purpose for which loans were disbursed, i.e., whether it is for agricultural purposes or non-agricultural purposes.

EXEMPTIONS

IBM INDIA PVT. LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0260 BangTrib

Assessee is not barred from claiming deduction under the main provisions of section 10A(3), whereby it can satisfy the AO about the receipt of sale proceeds of computer software exported out of India being brought into India in convertible foreign exchange within the period stipulated in the provisions u/s 10A(3).

ASSISTANT COMMISSIONER OF INCOME TAX VS EYGBS INDIA PVT. LTD. : (2020) 59 CCH 0316 BangTrib

Income offered to tax pursuant to voluntary Transfer Pricing adjustment should be regarded as profits of business for the purpose of computing deduction u/s. 10AA.

CAPITAL GAINS

ASHOKBHAI CHINUBHAI BHARWAD VS INCOME TAX OFFICER : (2020) 60 CCH 0018 AhdTrib

Where the Circle rate at the time of execution of agreement was lesser than one adopted by the parties as sale consideration, full sale consideration for the purpose of computing long term capital gain in the hands of the assessee is to be adopted.

JUVERIA BEGUM & ORS. VS INCOME TAX OFFICER : (2020) 60 CCH 0016 HydTrib

Section 54F only mandates that the capital gain should be invested in 'a residential house' within the stipulated time by way of purchase or construction and the amount spent on renovation of such residential house by an assessee according to his requirements is also allowable as exempt u/s.54F as it would amount to construction of a residential house.

ACCOUNTS

DEPUTY COMMISSIONER OF INCOME TAX VS THERMO KING INDIA PVT. LTD. : (2020) 60 CCH 0014 BangTrib

When an assessee is following method of valuation of inventory which is in accordance with the Accounting Standards prescribed by ICAI, Revenue cannot step into the shoes of assessee and foist on it a different method, unless there is a clear statutory edict allowing a departure from such accepted standards.

SECTION 5 OF THE INCOME TAX ACT, 1961 - INCOME - ACCRUAL OF

Sri Nandhanam Educational & Social Welfare Trust v. Reserve Bank of India - [2020] 119 taxmann.com 133 (Madras)

Where, though cause of action was available to petitioner at earlier point of time, to claim interest at rate of 9 per cent on FDs kept with bank, after date of maturity till date of transfer of amount, petitioner not having claimed same in earlier writ petition,

petitioner was estopped from filing second writ petition on same cause of action Bank also could not be said to have unlawfully enriched itself by withholding petitioner's FDs amount, as it had paid applicable rate of 4 per cent interest from date of maturity till date of payment .

SECTION 145 OF THE INCOME-TAX ACT, 1961 - METHOD OF ACCOUNTING - CHANGE OF

Assistant Commissioner of Income Tax v. Thiagarajar Mills Ltd. - [2020] 119 taxmann.com 140 (Chennai - Trib.)

Where assessee during relevant year changed method of valuing finished stock from 'market value' to 'cost or market value whichever was lower' method, since changed method of valuing stock was as per AS prescribed by ICAI, it could be said that change in method of valuing finished stock was bona fide and assessee had rightly applied said method to its closing stock of finished goods and that same was to be applied for valuation of opening stock for that year, however, there was no need to apply said changed method for valuation of stock of finished goods held by assessee at beginning of previous year relevant to impugned assessment year which could be valued as per old method .

Assistant Commissioner of Income Tax v. Thiagarajar Mills Ltd. - [2020] 119 taxmann.com 140 (Chennai - Trib.)

Where assessee changed method of valuing finished stock from 'market value' to 'cost or market value whichever was lower' method and assessee had applied different methods for valuing different components of inventory, if assessee had to change method of valuing inventory in compliance with AS-2 issued by ICAI, then changed method of valuation had to be applied to all components of inventory as prescribed under AS-2 and assessee could not chose method of valuing inventory to apply method to some components of inventory and leaving out other components of inventory.

SECTION 263 OF THE INCOME-TAX ACT, 1961 - REVISION OF - OF ORDER PREJUDICIAL TO INTEREST OF REVENUE

Commissioner of Income-tax (Exemptions) v. India Heritage Foundation - [2020] 118 taxmann.com 512 (Karnataka)

Where section 263 order was no more in existence, order passed by Assessing Authority in accordance with directions issued by Commissioner under section 263 would be infructuous .

SECTION 2(1A) OF THE INCOME-TAX ACT, 1961 - AGRICULTURAL LAND

Jairam G Kimmane v. Deputy Commissioner of Income Tax, Central Circle-1(3) - [2020] 119 taxmann.com 99 (Bangalore - Trib.)

Assessee sold land/property, but capital gain on same had not been disclosed in return of income Assessee took a stand that property was an agricultural land and therefore was not a capital asset and capital gain on sale of agricultural land was not exigible to tax .

SECTION 36(1)(iii) OF THE INCOME-TAX ACT, 1961 - INTEREST ON BORROWED CAPITAL

Deputy Commissioner of Income Tax, Circle 2(2), Bangalore v. Cornerstone Property Investment (P.) Ltd. - [2020] 118 taxmann.com 541 (Bangalore - Trib.)

Interest paid on borrowed funds which were used for acquisition of land which was an inventory was allowable under section 36(1)(iii).

SECTION 158BE OF THE INCOME-TAX ACT, 1961 - BLOCK ASSESSMENT IN SEARCH CASES - TIME LIMIT FOR COMPLETION OF

Narang International Hotels (P.) Ltd. v.

Deputy Commissioner of Income Tax - [2020] 118 taxmann.com 454 (Mumbai - Trib.)

Computation of limitation period : Department could not keep search action in abeyance for a long period of almost one year from date of last authorisation more so, when after a period of one year nothing was searched but only prohibitory order passed one year back was converted into deemed seizure .

SECTION 244A OF THE INCOME-TAX ACT, 1961 - REFUNDS - INTEREST ON

Principal Commissioner of Income Tax v. Solan District Truck Operators Transport Co-op. Society - [2020] 119 taxmann.com 100 (Himachal Pradesh)

Interest on delayed refund becomes part of principle amount and, thus, delayed interest includes interest for not refunding principle amount as well as interest on delayed refund .

REVISION

SMT. BHAVNA B. KOTHARI VS INCOME TAX OFFICER : (2020) 60 CCH 0040 MumTrib

Merely because issue was not elaborately discussed in quantum assessment could not be a ground to invoke revisional jurisdiction u/s 263 particularly when details called for by AO were submitted and placed on record.

SECTION 132 OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE

Union of India v. Hashir - [2020] 118 taxmann.com 511 (Kerala)

Where money had been seized by police from a person and deposited in criminal court, appropriate remedy open to Income Tax Officer was to apply under section 226(4) for payment of money towards tax and other amounts due and not to issue any command to Court demanding release of cash .

SECTION 245D OF THE INCOME TAX ACT, 1961 - SETTLEMENT COMMISSION - PROCEDURE ON APPLICATION UNDER SECTION 245C

Deputy Commissioner of Income-tax, (International Taxation-1) v. Hitachi Power Europe GmbH - [2020] 119 taxmann.com 173 (Madras)

Section 245D(2C) does not spell out an adjudicatory process and procedure to be adopted by Settlement Commission is summary in nature Therefore, if in opinion of Settlement Commission, based on report, issue needs to be adjudicated, the application can not be declared as invalid and each case which comes before Commission has to be decided on own facts Where applicant, a foreign company had entered into a contract with NTPC for supply and installation of steam generators in India and after passing draft assessment order, assessee-company approached Settlement Commission and while considering application under section 245D(2C), Commission being guided by report of CIT that composite contract of offshore and onshore supplies were artificially bifurcated, declared application as invalid for non-disclosure of true and full facts, since to decide whether a contract is a composite or a separate contract a deeper probe in a factual scenario as well as legal position is required, application of assesseecan not be declared as invalid on account of failure to fully and truly disclosed his income and, thus, application should be proceeded with under section 245D(2C) and Settlement Commission should take up matter for consideration under section 245D(4) and take decision after adjudicating claim.

BUSINESS INCOME

ORION PROPERTY MANAGEMENT SERVICES LTD. VS INCOME TAX OFFICER : (2020) 60 CCH 0045 BangTrib

Addition on account of sponsorship and promotional income is not sustainable where the assessee has considered respective income under relevant heads before debiting expenses to profit and loss account.

DEPRECIATION

RANBAXY HOLDING COMPANY & ANR. VS DEPUTY COMMISSIONER OF INCOME TAX & ANR. : (2020) 60 CCH 0027 DelTrib

Applicability of Section 43A will not be attracted when there is no acquisition of any capital assets in relevant assessment year.

SECTION 57 OF THE INCOME TAX ACT, 1961 - INCOME FROM OTHER SOURCES - DEDUCTIONS

Best Trading & Agencies Ltd. v. Deputy Commissioner of Income Tax - [2020] 119 taxmann.com 129 (Karnataka)

The purpose of expenditure is relevant in determining the applicability of section 57(iii) and purpose must be making and earning income Where, as per scheme of arrangement approved by High Court, assessee was utilized as special purpose vehicle for purpose of distribution of surplus after clearance of debts of a company, since process of settlement was continuing, surplus was deposited as fixed deposit in banks which earned interest, since assessee in order to cover cost of interest payable to creditors for unpaid period, invested surplus in fixed deposit and earned interest which was paid to lender or creditors, there was close nexus between interest paid to creditors on unpaid balance and interest earned on deposits, assessee was entitled to section 57(iii) deduction.

October Calendar

Due Date	Compliance Dates	
7th Oct' 20	7th Oct' 20	TDS / TCS Payment for the Month of Sep' 20
11th Oct' 20	11th Oct' 20	GSTR 1 For all regular assessees whose turnover exceed 5 Crores., for the month of Sep' 2020
15th Oct' 20	15th Oct' 20	TCS Return for the Period 1st July' 2020 to 31st Sep' 2020
15th Oct' 20	15th Oct' 20	Depositing Contribution toward PF/ESI for the Month of Sep' 2020.
20st Oct' 20	20st Oct' 20	GSTR 3B For all regular assessees whose turnover exceed 5 Crores. Tax Period for the Month of Sep' 2020
21th Oct' 20	21th Oct' 20	Profession Tax payment for the month of Sep' 2020.
22nd/24th Sep'20	1st / 3rd Oct'20	GSTR 3B For all regular assessees whose turnover is upto 5 Crores. Tax Period for the Month of Aug' 2020
22nd/24th Oct' 20		GSTR 3B For all regular assessees whose turnover is upto 5 Crores. Tax Period for the Month of Sep' 2020
31st Oct' 20	31st Oct' 20	TDS Return for the Period 1st July' 2020 to 31st Sep' 2020
31st Oct' 20	31st Oct' 20	Filing of audit report under section 44AB for the assessment year 2020-21 in the case of a corporate-assessee or non-corporate assessee
31st Oct' 20		GSTR 1 For all regular assessees whose turnover is upto 1.5 Crores., for the Qty of Sep' 2020
31st Oct' 20		Annual Return GSTR 9 (Regular assessesses) & GSTR 9A (Composite Supplier) for the FY 2018-2019. GSTR 9C (Reconcilation Statemnet) for assessesses who's turnover exceeds 5 crores for the FY 2018-2019.
31st Oct' 20		Tax Audit Report for assessees, liable to be filled u/s 44AB for the F.Y 2018-2019

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