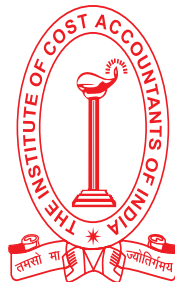




January, 2023

TAX Bulletin

Volume - 127
02.01.2023



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

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

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VISION STATEMENT

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

MISSION STATEMENT

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

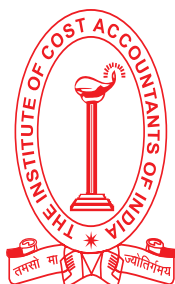
Objectives of Taxation Committees:

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

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1. Certificate Course on GST (CCGST)
2. Advanced Certificate Course on GST (ACCGST)
3. Advanced Certificate Course on GST Audit and Assessment Procedure (ACGAA)
4. Certificate Course on TDS (CCTDS)
5. Certificate Course on Filing of Returns (CCFOF)
6. Advanced Course on Income Tax Assessment and Appeals (ACIAA)
7. Certificate Course on International Trade (CCIT)

Admission Link - <https://eicmai.in/advsc/DelegatesApplicationForm-new.aspx>

Modalities

Description	Course Name						
	CCGST	ACCGST	ACGAA	CCTDS	CCFOF	ACIAA	CCIT
Hours	72	40	30	30	30	30	50
Mode of Class	Offline/ Online	Online					
Course Fee* (₹)	10,000	14,000	12,000	10,000	10,000	12,000	10,000
Exam Fee* (₹)	1,000 per attempt						
Discounts	20% Discount for CMA Members, CMA Qualified and CMA Final Pursuing Students						

*18% GST is applicable on both Course fee and Exam fee

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- ▲ Students including CMA Qualified and CMA Pursuing

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a Certificate would be awarded to the participant
with the signature of the President
of the Institute

Course Details

<https://icmai.in/TaxationPortal/OnlineCourses/index.php>

Courses for Colleges & Universities by the Tax Research Department

Modalities

Eligibility

- ▲ B.Com/ BBA pursuing or completed
- ▲ M.Com/ MBA pursuing or completed

Description	Courses for Colleges and Universities	
	GST Course	Income Tax
Batch Size	Minimum 50 Students per Batch per course	
Course Fee* (₹)	1,000	1,500
Exam Fee* (₹)	200	500
Duration (Hrs)	32	32

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

*18% GST is applicable on both Course fee and Exam fee

Behind every successful business decision, there is always a **CMA**



CMA Chittaranjan Chattopadhyay
Chairman
Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Sir / Madam,

“The first step towards getting somewhere is to decide you’re not going to stay where you are.” —J.P. Morgan

As we start this New Year and embark on this journey, we should plan our days meticulously to achieve greater heights. I would like to start this year with thanking my colleagues in the Council for entrusting on me again to carry this baton of Chairman – Indirect Taxation Committee. I would also like to wish you a Happy New Year 2023 and let the old year end and the New Year begin with the warmest of aspirations. Stay happy, healthy and safe.

An important Workshop on “GST Litigation and Departmental Audit” (Advanced Level) was organized on the 18th to the 20th December, 2022 for a total of 6 hours. The workshop was enriching and the main highlight of the session was a deliberation by Dr. B V Murli Krishna, Addl CCT (e Governance), Karnataka. The Faculty for the sessions were CMA Vishwanath Bhat.

The Classes for the Taxation courses are being conducted and all the courses are on the verge of completion. Exams are scheduled to be held on **12th of February, 2023**.

In the last fortnight of the year 2022, CBIC has announced the following:

1. Show-cause notices for tax not paid or short paid or input tax credit wrongly availed or demand for any penalty have to be sent within two years and nine months from the date of erroneous refund.
2. The GST Council agreed to decriminalise certain offences and doubled the threshold for launching prosecution under the tax law to Rs 2 crore, but retained the limit at Rs 1 crore for fake invoicing. The Council also clarified on the definition of SUVs (sports utility vehicles) for the levy of 22 per cent compensation cess over the 28 per cent GST and decided to come out with parameters to define MUVs (multi utility vehicles).
3. The Ministry of electronics and information technology (MeitY) was appointed as the nodal ministry for online gaming. In addition, the Ministry of youth affairs and sports (MYAS) has been appointed to regulate e-sports as part of multiple sports events, according to an official government release. The online gaming industry has been under fire due to its troubles with reports of gross and service taxes (GST) evasion and cryptocurrency fraud. There has also been a longstanding conversation about real-money gaming and the fear of gambling within the sector. The regulation of the industry also has had concerns over taxation rates.
4. A taxpayer under Goods and Services Tax (GST) will be required to reverse the input tax credit (ITC) claimed by November 30 in case his supplier has failed to deposit the dues taxes by September 30, as per Government of India decision.

5. A taxpayer under Goods and Services Tax (GST) will be required to reverse the input tax credit (ITC) claimed by November 30 in case his supplier has failed to deposit the dues taxes by September 30, the finance ministry has said.

It is absolutely important to announce that the Admissions to the upcoming batches of the following courses have commenced and can be applied at the link: <https://eicmai.in/advsc/Course-Selection.aspx>

- (i) Certificate Course on GST (CCGST13)
- (ii) Advanced Certificate Course on GST (ACCGST 9)
- (iii) Certificate Course on TDS (CCTDS 9)
- (iv) Certificate Course on Filing and Filling of Return (CCFR 9)
- (v) Certificate Course on International Trade(CCIT-3)
- (vi) Advanced Course on Income Tax Assessment and Appeal (ACITAA 6)
- (vii) Advanced Course on GST Audit and Assessment procedure (ACGAAP 6)

The Tax Research Department is also very much active in conducting various courses, quiz on Taxation etc regularly as per schedule.

Suggestions/observations are solicited from our esteemed readers for furtherance of the objective of the Department.

Warm Regards



CMA Chittaranjan Chattopadhyay

Chairman

Indirect Taxation Committee

02.01.2023



CMA (Dr.) Ashish P. Thatte
Chairman
Direct Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Sir / Madam,

Here's wishing you a Happy New Year 2023 with the hope that you will have many blessings in the year to come. Stay happy, healthy and safe.

I am happy to inform you that I have been appointed as Chairman of Direct Tax Committee effective from December 2022. I am thankful to my predecessor who is also currently Vice President of the Institute CMA Rakesh Bhalla ji for handing me the committee which is quite active by way of contributing bulletin every month. I will try my level best to give justice to the responsibility entrusted on me by the Council. In case of any suggestions or responses you can directly get in touch with me on mail Id mentioned below.

In the last fortnight of the year 2022, CBDT has announced the following:

6. An amount of Rs 60.46 crore has been received in tax from entities for transactions in virtual digital assets (VDAs), including cryptocurrencies, since the introduction of TDS provisions in July.
7. The Government has allowed non-resident taxpayers to manually file Form 10F till March 31 for claiming their TDS benefit.
8. The Gross collection of Direct Taxes (before adjusting for refunds) stood at Rs. 13,63,649 crore compared to Rs. 10,83,150 crore in the corresponding period of the preceding financial year registering a growth of 25.90 per cent.
9. The CBDT has filed a review petition before the Supreme Court against its August ruling that the anti-benami transactions law cannot be applied retrospectively by the Income-tax department, arguing that the possession of illicit assets by those charged should be considered a "continuing criminal offence."
10. The Comptroller & Auditor General of India (CAG) has asked the revenue department to take effective steps to pursue, in a time bound manner, cases rejected under the indirect tax dispute settlement scheme Sabka Vishwas Legacy Dispute Resolution Scheme 2019. The CAG also asked the department to investigate 28,825 cases for which discharge certificates could not be issued due to non-payment of the estimated payable amount.

The Classes for the Taxation courses are being conducted and all the courses are on the verge of completion. Exams are scheduled to be held on **12th of February, 2023**.

It is of utmost importance here to announce that the Admissions to the upcoming batches of the following courses have commenced and can be applied at the link: <https://eicmai.in/advsc/Course-Selection.aspx>

- (i) Certificate Course on GST (CCGST13)
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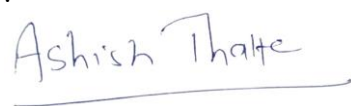
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- (vi) Advanced Course on Income Tax Assessment and Appeal (ACITAA 6)
- (vii) Advanced Course on GST Audit and Assessment procedure (ACGAAP 6)

The department also conducted a webinar on the 19th of December, 2022 with CMA Seshappa Venkanna as the faculty. The topic of the session was “Direct Tax - Returns, Assessments and Appeals”.

The Tax Research Department is also very much active in conducting various courses, quiz on Taxation etc regularly as per schedule.

Further suggestions/observations are solicited from the esteemed readers for furtherance of the objective of the Department.

Warm Regards

A handwritten signature in blue ink that reads "Ashish Thatte". The signature is written in a cursive style and is underlined with a single horizontal line.

CMA (Dr.) Ashish P. Thatte
Chairman
Direct Taxation Committee
02.01.2023

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Indirect Taxation Committee

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

Please send the articles to

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

RESPITE FROM LITIGATION FOR INPUT TAX CREDIT FOR FY 2017-18 & 2018-19

One of the salient features of GST is the availability of seamless input tax credits across the supply chain. This process will ensure that the end price the consumer pays is less as there is no tax cascading, and this will increase the purchasing power. Once the purchasing power increases, it will have a ripple impact on the economy and will help the country to achieve a \$ 5 trillion economy. But availing of the input tax credit is becoming challenging to registered taxpayers due to multiple challenges. Some of the challenges faced by registered taxpayers are

1. Resistance to change by the taxpayers, the business process has to be changed in GST as it is business reform and not a tax reform
2. As envisaged in the draft reports for GST, the two-way communication between the supplier and the receipt could not be implemented
3. Reluctance from the registered taxpayers for adopting the two-way communication in the initial days but later realized that is the best option
4. Changes in the provisions for availing the input tax credit
5. Interpretation of the provisions related to input tax credit

During the last five years plus of the rollout of GST, we have seen many changes in availing the input tax credit in GST. There was a period when taxpayers were able to take the input tax credits in GSTR-3B directly and then Form GSTR – 2A was introduced, and then we have availing input tax credit on a certain percentage basis, and now, after the rollout of Form GSTR – 2B, the input tax credit has to be availed basis of the same.



CMA B Mallikarjuna Gupta
CFO, GST, Product & Management Consultant



Form GSTR – 9 is the annual return, where the taxpayer can make any changes or rectify the errors which were part of the returns filed during the year. The input tax credit shown/reported in the GSTR- 9 is final for the taxpayer, and if there are any issues detected/identified by the Department Officers during the audit or scrutiny of returns of the registered taxpayers, the officers have issued notices under Section 73 or Section 74 of the CGST Act 2017. The taxpayers were asked to reverse the input tax credit availed being flagged by the officers or pay the same with interest through DRC-03 if there is the credit balance is not available in the Electronic Credit Ledger.

For many Taxpayers, the input tax credit has been claimed, but the challenges were faced in the following areas

- a) The Supplier of Goods or Services or both have not filed GST Returns
- b) The Supplier of Goods or Services or both have filed GST Returns but did not report the tax invoice of the recipient
- c) The Supplier of Goods or Services or both have filed GST Returns but reported them in the next financial year
- d) The Supplier of Goods or Services or both has filed only GSTR – 1 but has not paid the taxes
- e) The Supplier of Goods or Services or both has paid taxes but not filed GSTR – 1
- f) The Supplier of Goods or Services or both has reported the B2B supplies as B2C supplies
- g) The Supplier of Goods or Services or both has entered the GSTIN of the Recipient of the Good or Services or both wrongly
- h) The Supplier of Goods or Services or both has entered the Taxable value of the supply wrongly while filing GSTR -1 and have not made any amendments to rectify the same
- i) The Recipient Goods or Services or both have entered the Taxable value of the supply wrongly while accounting in the books of accounts
- j) The Recipient Goods or Services or both have

entered the GSTIN of the Supplier wrongly while accounting

- k) The Recipient Goods or Services or both have entered the same in his books of account in a different GSTIN of his
- l) The Recipient Goods or Services or both have not accounted in his books of accounts
- m) Matching was not done by the Recipient Goods or Services or both

Over a period of time, these challenges have been addressed by most of the taxpayers, and now it is more or less a settled issue, as the taxpayers have changed their business process by adopting of one or more of the following

- Doing 100% matching or reconciliation every month before the filing of GSTR-3B & GSTR – 9
- Verifying with the supplier for the filing of the returns
- Paying the tax amount to the supplier only on reflection in the GSTR – 2B

Circular No. 26/26/2017-GST, dated 29th Dec 2017

It has been further decided that the time period of filing of FORM GSTR-2 and FORM GSTR -3 for the months of July 2017 to March 2018 would be worked out by a Committee of officers and communicated later.

It is further clarified that the information furnished by the registered person in the return in FORM GSTR-3B would be reconciled by the department's system with the information furnished in FORM GSTR-1 and discrepancies, if any, shall be dealt with in accordance with the relevant provisions of the CGST Act, 2017 and rules made thereunder. Detailed instructions regarding reconciliation of information furnished in FORM GSTR-3B with that contained in FORM GSTR-2 and FORM GSTR-3 will be issued in due course of time.

Press Release dated 18th Oct 2018

It is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility



to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act.

From the above two references, it is clear that matching is not mandatory for availing the input tax credit, and the same has been echoed by the Madras High Court in the case of *M/s. D. Y. Beathel Enterprises vs. The State Tax Officer (Data Cell)*, it has clearly stated that in case if the supplier has not discharged the tax liability, the action for recovery should be made on the supplier and not on the recipient.

Matching was not mandatory as per law during this period

from June 2017 to September 2018, On 9th of October 2019 saw the addition of sub-rule (4) to Rule 36 of the CGST Rules, 2017, which made it essential to claim ITC based on GSTR-2A. It was not notified as a retrospective in nature. This means that matching is not required for availing input tax credit, but the taxpayers have been issued notices for the differences between the input tax credit claimed in GSTR-3B/GSTR-9 and the amount reflected in GSTR-2A.

The major point of litigation between the taxpayers and the department is for the notices issued for the mismatch for the input tax credit claimed in the GSTR-9 and the

GST IMPLICATION IN CASE OF JOINT DEVELOPMENT AGREEMENT

GST on construction contracts, also known as works contracts, falls under CGST Act- Section 2 (119). Works Contract means “a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.” In this article we will cover only construction relating to Joint Development Agreements.

A Joint Development agreement (otherwise known as JDA) is a contract between a landowner and real estate developer to build a new project on the land of owner. The real estate builder constructs the building and other things. On the contrary, the owner of the land will provide the land to construct the building. There are 2 kinds of Joint Development Agreement (JDA) and they are:

1. Area Sharing Joint Development Agreement (JDA)
2. Revenue Sharing Joint Development Agreement (JDA)

Parties involved in the Joint Development Agreement (JDA)

1. The Land Owner
2. Developer/ Builder

Under this Joint Development Agreement (JDA) the landowner has to transfer its development right to the developer. In return, the landowner gets a continuous supply of construction service from the developer over a period of time. Moreover, the GST is applicable at the time of supplying such construction services.

If it is a commercial project or a residential project (JDA entered before 01-04-2019), the landowner must pay the



CMA Vishwanath Bhat
Practicing Cost Accountant



GST for the transfer of development rights and finally GST on flats to be discharged by developer on construction services provided to the landowner by developer.

If it is a residential project (JDA entered after 31-03-2019), the treatment will be different. Developer has to discharge tax liability under RCM. But at the time of agreement no need discharge the liability if the developer is going to sell the property. But at the time of completion developer has to discharge the liability on unsold flats relating his (Developer) share.

Developer to End Consumer

To provide construction services, the real estate developer enters into construction agreements with homebuyers. On such construction services, the GST is applicable. If the property is under construction, then the GST is applicable on the property transaction otherwise, if the property is fully constructed then no GST is applicable on it. As per 5(b) second schedule of GST construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Taxable events under joint development.

1. Transfer of development rights (TDR) from the landowner to the developer.
2. Service provided by the developer to the landowner in the form of construction of area or flats in lieu of land development rights given.
3. Sale of under-construction flats to the ultimate buyer by the developer.
4. Sale of under construction flats by the landowner to the buyers out of his own share.
5. Services by Contractor (third party/ external contractor)

to Developer for constructing the project.

1. Transfer of development rights (TDR) from the landowner to the developer: GST on TDR – GST on TDR @ 18% (9% CGST plus 9% SGST/UTGST) is payable on –

- (a) commercial apartments and
- (b) unbooked residential apartments as on date of issue of completion certificate or first occupation of the project – FAQ (Part II) No. 7 issued by CBI&C vide circular F No. 354/32/2019-TRU dated 14-5-2019.01-Sept-2022

2. Service provided by the developer to the landowner in the form of construction of area or flats in lieu of land development rights given.

Developer has to discharge the tax liability on or before transferring the property or first occupation whichever is earlier. The rate of tax is 18% on ongoing project & 1% or 5 % depending upon affordable and other than affordable project.

3. Sale of under construction area or flats to the ultimate buyer by the developer

The rate of tax is 18% on ongoing project & 1% or 5 % depending upon affordable and other than affordable project at the time of receipt of advances. (new Scheme).

4. Sale of under construction area or flats by the landowner to the buyers out of his own share.

Land owners sells his share during the construction it is tax taxable. If he sells after completion, it is immovable not in the purview of GST. The rate of tax is 18% on ongoing project & 1% or 5 % depending upon affordable and other than affordable projects at the time of receipt of advances. (new Scheme).

5. Services by Contractor to Developer for constructing the project.



Taxable at 18%.

Taxation Rates for Residential and Commercial Properties (GST on Construction)			
Sr No	Nature of Service	Gross Rate	Effective Rate
1	Affordable residential apartment in an RREP (Commenced on or after 01.04.2019 or ongoing projects opted for new rates) intended for sale	1.5 Percent	1 Percent
2	Residential apartments (other affordable residential apartments) in an RREP (commenced on or after 01.04.2019) or ongoing projects opted for new rates), intended for sale	7.5 Percent	1 Percent
3	Commercial Apartments in an RREP (commenced on or after 01.04.2019 or ongoing projects opted for new rates) intended for sale	7.5 Percent	5 Percent
4	Affordable residential apartment in REP, other than in a RREP (commenced on or after 01.04.2019, or ongoing projects opted for new rates), intended for sale	1.5 Percent	1 Percent
5	Residential apartment (other than affordable residential apartments) in REP other than in a RREP (Commenced on or after 01.04.2019, or ongoing projects opted for new rates) intended for sale	7.5 Percent	5 Percent
6	Ongoing projects in specified schemes (of lower rate of tax) where the promoter has not opted for new rates	12 Percent	8 Percent
7	Commercial Apartments in REP other than in RREP	18 Percent	12 Percent
8	Ongoing Residential apartments as on 31.03.2019 , other than affordable residential apartments, where promoter has chosen to pay at old rates (other than mentioned from 1 to 6 above)	18 Percent	12 Percent

RREP- Residential Real Estate Project.	Notification No.20/2019 CT(Rate)	30.09.2019 In NN 3/2019
REP - Real Estate Project.	Related circulars.	
Related notification.	F. No. 354/32/2019-TRU(FAQs)	07.05.2019 Clarifying various issues.
Notification 3/2019 CT (Rate)	29.03.2020 GST	
Notification 4/2019 CT (Rate)	29.03.2020	F. No. 354/32/2019 (FAQs-II) 14.05.2019 Clarifying various issues.
Notification 5/2019 CT (Rate)	29.03.2020 RCM	
Notification 6/2019 CT (Rate)	29.03.2020	Conclusion:
Notification 7/2019 CT (Rate)	29.03.2020	As a whole while, dealing with GST of builders better analyze whether they are dealing with residential project or commercial project & project is started before or after 1/4/2019. Because if the residential project is started after 1/4/2019 taxpayers has go for new scheme only. However, if the project started before 1/4/2019 (Ongoing project) Taxpayers is having option to go for old scheme with input tax credit.
Notification 8/2019 CT (Rate)	29.03.2020	
RDO No.04/2019-Central Tax	29.03.2019	
Notification 5/2019 Central (Rate)	30.09.2019 NN.4/2018	

NOTIFICATIONS & CIRCULARS

Indirect Tax

Notifications Customs

Notification No. 62/2022- Customs Dated 26th December 2022

The Central Government Seeks to give effect to the first tranche of tariff concessions under India Australia ECTA

G.S.R..... (E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts,

- (i) goods of the description as specified in column (3) of the TABLE I appended below and falling under the Tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entries in column (2) of the said TABLE, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in the corresponding entries in column (4) of the said TABLE
- (ii) goods of the description as specified in column (3) of the TABLE II appended below and falling under the Tariff heading or Tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entries in column (2) of the said TABLE, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in the corresponding entries in column (4) of the said TABLE and from so much of the Agriculture Infrastructure and Development Cess (AIDC) leviable under section 124 of the Finance Act, 2021 (13 of 2021), as is in excess of the amount calculated at the rate specified in the corresponding entries in column (5) of the said TABLE
- (iii) goods of the description specified in column (3) of the TABLE III appended below, and falling within the Tariff item of the First Schedule to the Customs Tariff Act, 1975, as are specified in

the corresponding entries in column (2) of the said TABLE, in such quantity of total imports of such goods in a year, as specified in column (5) of the said TABLE, from so much of that portion of the applied rate of duty of customs leviable thereon as is specified in the corresponding entries in column (4) of the said TABLE, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entries in column (6) of the said TABLE; Explanation. -For the purposes of this condition, "applied rate of duty" means the sum of the standard rate of duty specified in the First Schedule to the Customs Tariff Act, 1975 and Agriculture Infrastructure and Development Cess leviable under section 124 of the Finance Act, 2021 (13 of 2021) in respect of the goods specified in the said TABLE, read with any other notification for the time being in force, issued in respect of such goods under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962)

- (iv) goods of the description specified in column (3) of the TABLE IV appended below, and falling within the Tariff item of the First Schedule to the Customs Tariff Act, 1975, as are specified in the corresponding entry in column (2) of the said TABLE, in such quantity of total imports of such goods in a year, as specified in column (4) of the said TABLE, from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate as specified in the corresponding entry in column (5) of the said TABLE and from so much of the Agriculture Infrastructure and Development Cess (AIDC) leviable under section 124 of the Finance Act, 2021 (13 of 2021), as is in excess of the amount calculated at the rate as specified in the corresponding entry in column (6) of the said TABLE (hereinafter referred to as the 'In-quota AIDC rate'), subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (7) of the said TABLE



when imported into Republic of India from Australia.

Provided that the exemption shall be available only if importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of Australia, in terms of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 and rules as may be notified in this regard by the Central Government by publication in the official Gazette.

2. This notification shall come into force with effect from the 29th day of December, 2022

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009583/ENG/Notifications>

**Notifications
Customs**

**Notification No. 63/2022- Customs
Dated 27th December 2022**

The central Government seeks to give effect to the fourteenth and final tranche of tariff concessions under India ASEAN Trade in Goods Agreement

G.S.R..(E).—In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No.46/2011-Customs, dated the 1stJune, 2011,published in the Official Gazette, Extraordinary , Part II, Section 3, Sub-section(i), vide number G.S.R. 423 (E), dated the 1stJune, 2011, namely

In the said notification, in the Table, -

- (i) against serial number 80, in column (5), for the entry, the entry “45.0” shall be substituted;
- (ii) against serial number 81, in column (5), for the entry, the entry “45.0” shall be substituted;
- (iii) against serial number 83, in column (5), for the entry, the entry “50.0” shall be substituted;

(iv) against serial number 124, in column (5), for the entry, the entry “37.5” shall be substituted;

(v) against serial number 125, in column (5), for the entry, the entry “45.0” shall be substituted.

2.This notification shall come into force with effect from the 1stday of January, 2023

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009586/ENG/Notifications>

**Notifications
Customs**

**Notification No. 64/2022- Customs
Dated 29th December 2022**

The Central Government seeks to give effect to the second tranche of tariff concessions under India Australia ECTA

G.S.R. .(E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.62/2022-Customs, dated the 26thDecember, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 904(E), dated the 26th December, 2022. In the said notification the government make changes in the BCD (basic customs duty) rates.

For more details, Please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009587/ENG/Notifications>

**Notifications
Customs**

**Notification No. 65/2022- Customs
Dated 29th December 2022**

The Central government seeks to amend notification Nos. 48/2021 and 49/2021 - Customs, both dated 13.10.2021, in order to extend the existing concessional import duties on specified edible oils and lentils up to and inclusive of the 31st March, 2024



G.S.R.(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 124 of the Finance Act, 2021 (13 of 2021), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby amends

the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, to the extent specified in the corresponding entries in column (3) of the said Table, namely

TABLE

S. No	Notification No.and Date	Amendments
(1)	(2)	(3)
1.	48/2021-Customs, dated the 13th October, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 733(E), dated the 13th October, 2021	In the said notification, in paragraph 2, for the figure “2023”, the figure “2024” shall be substituted
2.	49/2021-Customs, dated the 13th October, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 734(E), dated the 13th October, 2021	In the said notification, in paragraph 2, for the figure “2023”, the figure “2024” shall be substituted

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009588/ENG/Notifications>

**Notification
Customs (N.T.)
Notification No. 111/2022-Customs (N.T.)
Dated 20th December 2022**

The Central Government seeks to makes amendment
to Postal Export (Electronic Declaration and Processing)
Regulations, 2022

G.S.R.....(E). - In exercise of the powers conferred by sub-section (2) of section 151B of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following

amendment in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 58/2021 – Customs (N.T.), dated the 1st July, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), vide number G.S.R. 467(E), dated the 1st July 2021, namely,

In the said notification, in the table, -

1. After S.no 9 and the entries relating thereto, the following S. No and entries shall be inserted, namely: -

S.No	Name of Contracting State	Agreement or Arrangements on Cooperation and Mutual Administrative Assistant (CMAA) in Customs matters
(1)	(2)	(3)
“9A	Japan	Implementing agreement between the Government of the Republic of India and The Government of Japan pursuant to Article 13 of the Comprehensive Economic Partnership Agreement between the Republic of India and Japan, and Practical Agreement on Information Exchange for the implementation of the Chapter on Customs procedures of the Comprehensive Economic partnership Agreement between the Republic of India and Japan.

S.No	Name of Contracting State	Agreement or Arrangements on Cooperation and Mutual Administrative Assistant (CMAA) in Customs matters
(1)	(2)	(3)
“19A	Republic of the Philippines	Agreement between the Government of the Republic of India and The Government of the Republic of the Philippines on Co-Operation and mutual Assistant in Customs Matters

For more, details please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009580/ENG/Notifications>

Notification Customs (N.T.)

Notification No. 112/2022-Customs (N.T.) Dated 22nd December 2022

The Central Government 2022 makes amendment of Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules.

G.S.R.(E).- In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules, namely: -

1. Short title and commencement. - (1) These rules may be called the Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022.

(2) They shall come into force on the 29th day of December, 2022.

For more details, please visit.

<https://taxinformation.cbic.gov.in/view-pdf/1009582/ENG/Notifications>

Notification Customs (ADD)

Notification No. 31/2022-Customs (ADD) Dated 20th December 2022

The Central Government Seeks to impose Anti-Dumping duty on Stainless-Steel Seamless Tubes and Pipes originating in or exported from China PR for a period of 5 years in pursuance of fresh final findings issued by DGTR

G.S.R. --- (E).-Whereas in the matter of ‘Stainless-Steel Seamless Tubes and Pipes’ (hereinafter referred to as the subject goods) falling under chapter heading 7304 of

the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from China PR (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings, vide notification No.6/13/2021-DGTR, dated the 23rd September, 2022, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 23rd September, 2022, read with corrigendum notification No. of even number, dated 30th September, 2022, has come to the conclusion that—

- the subject goods have been exported to India from the subject countries below normal values;
- the domestic industry has suffered material injury on account of subject imports from subject countries;
- the material injury has been caused by the dumped imports of subject goods from the subject countries,

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

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act read with rules 18, 20 and 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entries in column (2), originating in the countries as specified in the corresponding entries in column (4), exported from the countries as specified in the corresponding entries in



column (5), produced by the producers as specified in the corresponding entries in column (6), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entries in column (7), in the currency as specified in the corresponding entries in column (9) and as per unit of measurement as specified in the corresponding entries in column (8), of the said Table

2. The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette, and shall be payable in Indian currency.

Explanation.-For the purposes of this notification, rate of exchange applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Act

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009579/ENG/Notifications>

Notification

Central Tax

Notification No. 26/2022-Central Tax

Dated 26th December 2022

The Central Government seeks to make fifth amendment (2022) to CGST Rules

G.S.R... (E). –In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. Short title and commencement. — (1) These rules may be called the Central Goods and Services Tax (Fifth Amendment) Rules, 2022.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the

Official Gazette.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009584/ENG/Notifications> Circular

Central Tax

Circular No. 183/15/2022-GST

Dated 27th December 2022

The Central Government make Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19—reg.

Section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, during the financial years 2017-18 and 2018-19, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the

Page 2 of 5 ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have



been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1003135/ENG/Circulars>

**Circular
Central Tax
Circular No. 184/16/2022-GST
Dated 27th December 2022**

Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017—reg.

Attention is invited to sub-section (8) of section 12 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”) which provides for the place of supply of services by way of transportation of goods, including by mail or courier, where location of the supplier as well as the recipient of services is in India. As per clause (a) of the aforesaid sub-section, the place of supply of services by way of transportation of goods, including by mail or courier, to a registered person shall be the location of such registered person. However, the proviso to the aforesaid sub-section which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods. In such cases, as the place of supply of services, as per the proviso to sub-section (8) of section 12 of IGST Act, is the concerned foreign destination and not the State where the recipient is registered under GST, doubts are being raised regarding the availability of input tax credit of the said services to the recipient located in India.

2. In order to clarify this issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby

clarifies the issues.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1003136/ENG/Circulars>

**Circular
Central Tax
Circular No. 185/17/2022-GST
Dated 27th December 2022**

Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation –reg

Attention is invited to sub-section (2) of section 75 of Central Goods and Services Tax Act, 2017 (herein after referred to as “CGST Act”) which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as “noticee”), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of section 73.

2. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of section 73, specially in cases where time limit for issuance of order as per sub-section (10) of section 73 has already been over. Further, doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of section 73. 3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1003137/ENG/Circulars>



**Circular
Central Tax
Circular No. 186/18/2022-GST
Dated 27th December 2022**

Clarification on various issue pertaining to GST-reg.

Representations have been received from the field formations seeking clarification on certain issues with respect to –

Taxability of No Claim Bonus offered by Insurance companies;

ii. Applicability of e-invoicing w.r.t an entity.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under
 1. Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)?
 2. Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?
 3. Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?
- It is requested that suitable trade notices may be issued to publicize the contents of this Circular.
4. Difficulty, if any, in implementation of this Circular

may please be brought to the notice of the Board.
Hindi version would follow.

**For more details, please follow,
<https://taxinformation.cbic.gov.in/view-pdf/1003138/ENG/Circulars>**

**Circular
Central Tax
Circular No. 187/19/2022-GST
Dated 27th December 2022**

Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016-reg

Attention is invited to Circular No.134/04/2020-GST dated 23rd March, 2020, wherein it was clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as ‘operational debt’ and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

2. Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “IBC”) with respect to demand for recovery against such corporate debtor under Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC

**For more details, please follow
<https://taxinformation.cbic.gov.in/view-pdf/1003139/ENG/Circulars>**

**Circular
Central Tax
Circular No. 188/20/2022-GST
Dated 27th December 2022**

The Central government prescribes manner of filing an application for refund by unregistered persons-reg



Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act') may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

Further the central government in order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the following

Filing of refund application

Relevant date for filing of refund.

Minimum refund amount

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1003140/ENG/Circulars>

TB



NOTIFICATIONS & CIRCULARS

Direct Tax

Circular
Direct Tax
Circular no 25/2022
Dated 30th December 2022

Clarification for the purposes of clause (c) of Section 269ST of the Income-tax Act, 1961 in respect of dealership/distributorship contract in case of Co-operative Societies – reg

Section 269ST inter-alia prohibits receipt of an amount of two lakh rupees or more (herein after referred to as 'the prescribed limit ') by a person, in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.

2. References have been received in respect of Milk Producers' Cooperative as to whether under the provisions of Section 269ST of the Act, receipt(s) in cash in a day of bank holiday/closure of bank day within 'the prescribed limit' from a distributor against sale of milk

when payments were through bank on all other days is to be considered as a single transaction or whether all such receipts in cash in a previous year would be aggregated in respect of transactions with a distributor to treat it as one event or occasion.

3. With respect to the reference at Para 2 above, it is clarified that in respect of Co-operative Societies, a dealership/ distributorship contract by itself may not constitute an event or occasion for the purposes of clause (c) of Section 269ST. Receipt related to such a dealership/ distributorship contract by the Co-operative Society on any day in a previous year, which is within 'the prescribed limit' and complies with clause (a) as well as clause (b) of Section 269ST, may not be aggregated across multiple days for purposes of clause (c) of Section 269ST for that previous year

For more details, please follow

<https://incometaxindia.gov.in/communications/circular/circular-25-2022.pdf>

TD



JUDGEMENT

INDIRECT TAX

Additional payments of Registration, Road Tax, RTO charges recovered would form part of value of taxable supply of leasing service: AAR

Facts of the case - Authority for Advance Rulings, Tamilnadu Sundaram Finance Ltd., In re - [2022] (AAR - TAMILNADU)

The applicant was NBFC and also involved in business of leasing of machines, commercial and non-commercial vehicles. It filed an application for advance ruling to determine whether additional payments of Registration, Road Tax, RTO charges recovered from service recipients would form part of value of taxable supply of leasing service.

Decision of the case :

- ★ The Authority for Advance Ruling (AAR) observed that the base price of vehicle of leased vehicle would be calculated by adding cost of registration and road tax also known as 'On road component' services, which shall be capitalized in books of account of applicant. However, it was submitted by the applicant that services related to 'on road component' services would be provided by it in capacity of pure agent.
- ★ But it was observed by AAR that 'On road component' services would be procured on account of applicant which would enable vehicle to be used on road and subsequent lease. Therefore, it would be in nature of incidental expenses in relation to leasing of vehicles and can't be considered as procured in capacity of 'pure agent' by applicant. Thus, it was held that these payments would be included in value of supply of leasing services.

Writ not maintainable in absence of breach of fundamental rights and violation of principles

of natural justice: HC

Facts of the case - Tanushree Logistics (P.) Ltd. v. State of Rajasthan - [2022] (Rajasthan)

In this case, the petitioner filed writ petition against the assessment order and submitted that adequate opportunity to file reply to show cause notices was not granted and no specific date of hearing was intimated. However, the department submitted that three adjournments were granted to the petitioner to submit reply to show cause notices but the petitioner didn't submit any reply.

Decision of the case :

The Honorable High Court noted that a detailed inquiry was made against petitioner and summons under Section 70 were issued to petitioner on several occasions and opportunity was granted to provide information. However, the petitioner didn't appear before authority and didn't seek disclosure of any documents or record and only avoided to file reply. Therefore, principle of natural justice was not violated and in absence of breach of fundamental rights, the writ petition was not maintainable. The Court also directed petitioner to avail right of appeal as provided under section 107 for correctness of order of assessment.

Refund claim should not be rejected due to deficiency of GST network: HC

Facts of the case - Aartos International LLP v. Deputy Commissioner (Customs) - [2022] (Gujarat)

The petitioner had exported goods and refund was granted to two out of three shipping bills filed but refund on account of one shipping bill was rejected. The department contended that third shipping bill was showing "Permanent Cancellation by PAO for transaction" as per ICEGATE Scroll status and refund was not paid by bank on account of mismatch in name of firm of petitioner. The petitioner filed



petition seeking refund along with interest before the High Court.

Decision of the case :

The Honorable High Court noted that shipping bills are deemed as refund application when goods are exported with payment of tax and therefore, department should have sanctioned 90 percent of amount claimed in said bills. The Court also noted that the refund was not granted due to deficiency of GST network and it is duty of GSTN to enquire if there is any difficulty at level of mismatch or processing of claim of refund. Thus, the Court directed GSTN/concerned authority to introduce a feature in GST portal to communicate problems faced by assessee directly instead of officers pleading their seniors through GSTN. The Court also directed department to sanction refund with interest at rate of 6 percent.

HC dismisses writ petition against SCN in view of alternative remedy to contest the notice before adjudication authority

Facts of the case - Ashoo Road Lines v. Union of India - [2022] (Madhya Pradesh)

The petitioner was engaged in the business of transportation of goods. During search, total 10 trucks were found in office premises of the petitioner loaded with Vimal Brand Pan Masala, VI Brand Tobacco, Raw Tobacco Sacks, Mix Compound, Vimal Elaichi etc. The drivers of the petitioner informed that the said vehicles are being used for transportation of Pan Masala without invoices. Therefore, goods and conveyance were seized.

It filed writ petition and contended that it was not in a position to use the said trucks which were purchased by way of loans from the bank and unable to repay the loan.

Decision of the case :

The Honorable High Court noted that a show cause notice has been issued to the petitioner in which the validity of the

panchnama is under consideration. Hence the petitioner would have efficacious remedy to contest the show cause notice before the adjudicating authority. Therefore, it was held that writ petition was not maintainable at the stage of show cause notice in view of alternative remedy to contest the notice before the adjudicating authority.

Parts and accessories of hearing aids falling under heading 9021 90 10 are taxable at 18% under GST: AAAR

Facts of the case - Appellate Authority for Advance Ruling, Karnataka Sivantos India (P.) Ltd., In re - [2022] (AAAR-KARNATAKA)

The appellant was engaged in business of trading of hearing aids and their parts and accessories. It approached Authority for Advance Ruling (AAR) for classification of parts and accessories of hearing aids and AAR ruled that parts and accessories of hearing aids would be covered specifically under heading 9021 9010 and 18% GST would be applicable. The appellant filed appeal against the order of AAR and submitted that parts and accessories would be covered under Entry No 142 of exemption notification i.e. Notification No. 02/2017 Central Tax (Rate) which includes HSN 902140 and HSN 902190 and would be exempt from GST.

Decision of the case :

The Appellate Authority for Advance Ruling noted that parts and accessories of hearing aids falling under tariff item 9021 90 10 were not specifically mentioned in any of entries of exemption Notification No. 02/2017 Central Tax (Rate) and it can't be assumed that indication of a chapter or heading in an entry would automatically cover all goods under that chapter or heading and ignore description of goods specified in said entry. Therefore, the ruling of AAR was upheld and 18% GST would be applicable.

JUDGEMENT

DIRECT TAX

Recovery of bad debts of Companies that got merged is taxable u/s 41(1) in assessee's hand: HC

Facts of the case - Sundaram Finance Ltd. v. JCIT - [2022] (Madras)

During the relevant assessment year, the assessee recovered certain bad debts of the companies, which got amalgamated with the assessee. The assessee contended that the bad debts recovered belonged to a non-existent company and hence not taxable in its hands as it was not an assessee for the purpose under section 41.

AO treated such recovery as income of the assessee and concluded the assessment proceedings accordingly. Aggrieved by the order, the assessee filed an appeal to CIT(A) but with no success which was further affirmed by the Madras Tribunal. The assessee preferred the appeal to the Madras High Court.

Decision of the case :

- ★ The Court held that section 41 should be considered as a complete code as far as the changeability of profit is concerned. Section 41(1) cannot be read in isolation with 41(4).
- ★ The recovery of debt is a right that is transferred along with other rights as part of the transfer process. If the law allows the transferor (the person transferring the debt) to treat the debt as irrecoverable and claim a deduction for it, it makes sense that the transferee (the person receiving the debt) should also have the same right.
- ★ Therefore, the court upheld the order of lower authorities and dismissed the assessee's appeal. Thus, the recovery of such bad debts will be taxable in the hands of the assessee.

HC grants relief to 'Xiaomi'; set-asides provi-

sional attachment made by AO on mere apprehension of huge tax demand

Facts of the case - Xiaomi Technology India Private Limited v. DCIT - [2022] (Karnataka)

Assessee-company engaged in the business of procurement, supply, and distribution of Xiaomi products in India including mobile phones, accessories, computers, etc. It was required to pay royalty to Qualcomm and Beijing Xiaomi software company Ltd.

During the period from 2019 to March 2022, there were proceedings between the assessee and the Assessing Officer (AO) in relation to the alleged payment of income tax. Meanwhile, an order was passed by Enforcement Directorate (ED) under FEMA seizing the bank account of the assessee.

Subsequently, AO issued a notice and an order was passed, under section 281B, provisionally attaching the fixed deposits of the assessee on the ground that huge tax demands are likely to be raised upon completion of the assessment.

Aggrieved by the attachment order, the assessee filed writ petition before the Karnataka High Court.

Decision of the case :

- ★ The High Court held that the order passed for provisionally attaching the deposits is arbitrary reflecting a premeditated conclusion without even recording any reason for attaching the same. The doctrine of proportionality implicates the need for the purpose and the necessity of provisional attachment provides the direct nexus between the need for attachment and the purpose that the attachment secures.
- ★ A mere apprehension that huge tax demands will



be raised is not a sufficient reason for passing a provisional attachment order. The order can be executed only after forming a reasonable opinion only on the tangible basis that attachment is required to secure the interest of revenue.

- ★ In the instant case, the attachment order was passed not because the assessee was likely to defeat the demand but it is based on borrowed satisfaction i.e., the opinion of AO seems to be influenced by the findings of other departments, and no independent opinion was formed.
- ★ Therefore, based on the absence of mandatory pre-conditions of provisional attachment of property, it was considered that there were no appropriate reasons to believe. Thus, considering the provisional attachment order to be arbitrary and contrary to law, the Court quashed the attachment order and allowed the assessee's appeal.

Furnishing evidence in form of delivery challans, and purchase bills are sufficient to discharge burden of proof: HC

Facts of the case - PCIT v. Jagdish Thakkar - [2022] (Bombay)

Assessee was a proprietor engaged in the business of resale of industrial goods. During the assessment proceedings, the Assessing Officer (AO) made additions under section 69C on the ground that the assessee purchased goods in cash from the market and sales bills were obtained through hawala dealers.

On appeal, CIT(A) held that all the purchases couldn't be treated as bogus. Thus, it restricted the disallowance to 10% of such purchases. The Tribunal upheld the order of CIT (A). Aggrieved-assessee preferred an appeal to the Bombay High Court.

Decision of the case :

- ★ The High Court held that AO concluded that the assessee had purchased goods, but not from the sellers listed on the bills. Based on affidavits submitted to the Sales Tax Authorities, the AO believed that the goods were bought with cash from the market and fake bills were obtained from illegal

money brokers for that purpose.

However, there was no evidence to support the AO's assertion that the assessee purchased the goods from the market or with unexplained cash.

- ★ Further, the purchases were made and paid for with account payee cheques that have been cleared through normal banking channels. The assessee provided bills and delivery challans for the purchases and they were properly recorded in the assessee's books. The Commissioner (Appeals) found that there was no evidence that the purchases were made for cash or that the purchasers returned cash corresponding to the cheque payments received from the assessee.
- ★ These were all findings of fact for which the Tribunal was the last fact-finding authority and the Tribunal upheld the order of CIT(A) on the ground that assessee had discharged initial burden or onus of providing details of parties. Thus, the order passed by Tribunal did not give rise to any substantial question of law.

Repeal of Sec. 144B(9) by FA 2022 with retrospective effect isn't unconstitutional: High Court

Facts of the case - Sapna Flour Mills Ltd. v. Union of India - [2022] (Allahabad)

Assessee-company was engaged in the business of running a Flour mill, manufacturing Flour from Wheat. The assessee filed a writ petition before the Allahabad High Court on the grounds that the omission of sub-section (9) of Section 144B of the Income Tax Act was unconstitutional, being ultra-vires to the Constitution.

Sub-section (9) of section 144B provided that the assessment proceedings would be invalid if the specified procedure of faceless assessment was not followed. The Finance Act, 2022 had omitted the provisions of sub-section (9) of Section 144B with retrospective effect, i.e. from 1.4.2021, i.e. from the date of its inception.

It was argued that the omission of Section 144B(9) makes the entire Section 144B unconstitutional, since, the omission of the check/safeguard would result in an arbitrary, whimsical, capricious decision-making process.



Decision of the case :

- ★ The High Court held that sub-section (9) of Section 144B was omitted to streamline the faceless assessment process and address legal and procedural issues that arose during the implementation of this section, which was introduced in 2020.
- ★ The amendments made by the Finance Act of 2022, which are the subject of this challenge, are procedural in nature and are intended to simplify the process and resolve any issues that have arisen.
- ★ The omission of sub-section (9) of Section 144B was with various new measures for checks and balances having been provided in the procedure prescribed under Section 144B.
- ★ For instance, under the pre-amendment version of Section 144B, an assessee could request a personal hearing and this request would only be granted if the Chief Commissioner or Director General believed the request met certain criteria. However, the amendments made by the Finance Act of 2022 to Section 144B have changed this process and personal hearing is allowed without any approval.
- ★ Sub-section (9) of Section 144B, which is a procedural statute, did not give the taxpayer any rights, including substantive rights. It only outlined a procedure for conducting an assessment and stated that if the assessment was not conducted in accordance with this procedure, it would be considered invalid.
- ★ The purpose of sub-section (9) of section 144B was to place a burden on the department rather than granting rights to the taxpayer. The inclusion of this subsection has caused numerous technical legal disputes due to difficulties in implementing the faceless assessment process, as noted in the amendment bill.
- ★ Thus, the challenge to the amendment brought by the Finance Act, 2022 in the omission of sub-section (9) of Section 144B cannot be sustained.

AO can't proceed u/s 179 if non-recovery of 20% of demand from Co. isn't due to director's negli-

gence: HC

Facts of the case - Devendra Babulal Jain v. ITO - [2022] (Gujarat)

Petitioners were a director of a private limited company. During the year, the Assessing Officer (AO) passed the assessment order, making additions to the company's total income. Further, a recovery notice was issued on the company to which the company preferred a stay application before the AO.

However, such stay application was rejected by the AO without providing the opportunity of being heard and attached the bank account of the company. Pursuant to the notice, AO issued a show cause notice for recovery of demand under section 179 on the directors of the company.

Aggrieved by the order of AO, a writ petition was filed by the director to the Gujarat High Court. The petitioners argued that they should not be considered negligent for not being able to deposit 20% of the demand in order to obtain a stay, and therefore, the provisions of Section 179 should not be invoked.

Decision of the case :

- ★ The High Court held that the Assessing Officer must take steps to recover the unpaid amounts from the private limited company that has failed to pay the outstanding demand. In the instant case, the directors of the company presented evidence that the non-payment of outstanding dues cannot be attributed to any gross negligence, wrongdoing, or breach of duty on their part as directors.
- ★ The Assessing Officer did not take into account the fact that the directors explained and argued that they have appealed the assessment order to the appellate authority and had not been negligent or engaged in any wrongdoing or breach of trust.
- ★ AO didn't satisfy the requirements of section 179, and his actions are therefore without jurisdiction, particularly since the petitioners were shown that they have not been negligent in regard to the non-recovery of outstanding dues.
- ★ Therefore, it cannot be said that the directors were negligent, and the Assessing Officer therefore cannot invoke jurisdiction under section 179. TB



Tax Calendar

Indirect tax

Returns	Due Date
GSTR-1 (Oct-Dec, 2022)	Jan 13th, 2023
RFD-10	18 Months after the end of quarter for which refund is to be claimed

Tax Calendar

Direct tax

Returns	Due Date
7 January 2023	Due date for deposit of Tax deducted/collected for the month of December, 2022. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
7 January 2023	Due date for deposit of TDS for the period October 2022 to December 2022 when Assessing Officer has permitted quarterly deposit of TDS under 192, 194A, 194D or 194H
14 January 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of November, 2022
14 January 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of November, 2022
14 January 2023	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of November, 2022
15 January 2023	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of December, 2022 has been paid without the production of a challan
15 January 2023	Quarterly statement of TCS for the quarter ending December 31, 2022.
15 January 2023	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending December, 2022
15 January 2023	Due date for furnishing of Form 15G/15H declarations received during the quarter ending December, 2022



E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

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

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Notes

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TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

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

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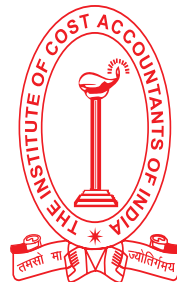
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