TAXCONNECT

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TAX CONNECT

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The Bengal Chamber of Commerce & Industry

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INCOME TAX

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Kolkata : 1, Old Court House Corner, "Tobacco House" 1st Floor, R.No.-13 (North), Kolkata-700001
Delhi : B 42 Retreat Apartments, 20 IP Extension, Delhi 110 092
Gujarat : Quarter no. 3/174, Gujarat Refinery Township, Jawaharnagar, Vadodara-391320

Contact : +919331042424; +919831594980; +919830791914; +913322625203
Website : www.taxconnect.co.in
Email : tb.chatterjee@taxconnect.co.in;vivek.jalan@taxconnect.co.in; anindita.chatterjee@taxconnect.co.in

EDITORIAL

Friends,

2nd Explanation to Sec 74 of The CGST Act 2017 is worth taking note of. It has defined the Word "Suppression" for the 1st Time in The Indirect Tax Regime as follows –" **For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return,** statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer." The words highlighted in bold would mean that a non-declaration of any fact/information also in the Return GSTR 3B would tantamount to suppression and hence the Revenue Authorities can invoke the extended period of Limitation of 5 years u/s 74.

In this respect there are two facts/information which we understand is being missed out by Trade and Industry while filing its GSTR 3B –

1. Details of Interest Income under "Exempt" outward supply
2. Details of ITC not availed as it is blocked u/s 17(5) of The CGST Act

Going by the above explanation, these would be "Suppression" and would lead to invoking of Sec 74 of The CGST Act and Sec 132 as far as punishment for suppression is concerned. Further the period of Limitation for issuing SCN u/s 74 for The FY 17-18 ends on 30th June 2023. Hence, filing of returns in the present GST regime should be done with absolute care as the self-assessment provisions u/s 59 of The CGST Act 2017 comes with a big responsibility.

Further, In the case of **ROHIT SAKHUJA & JAGJEET IMPEX VERSUS C.C. -NEW DELHI (ICD TKD) (IMPORT), The Hon'ble CESTAT** has held that Section 28 (1) (A) of the Customs Act, 1962 makes it clear that the same is a beneficial piece of legislation with an intention to reduce the litigation proceedings where the assesse satisfies the condition of the said Section. The language makes it clear that the provisions provide for deemed conclusion of the proceedings against the assesses if the payment as regard the duty, interest and 15% penalty thereof stands made by the assesse within a period of 30 days of the receipt of Show Cause Notice. It is further seen that the provision is applicable even in the cases of demand having been arisen on account of collusion, wilful mis-statement or suppression i.e. even in respect of illegal activity of the assesse, if the same stands accepted by him and the respective duty along with proportionate interest and the required penalty stands paid. It held that The Commissioner(Appeals) has committed an error while giving more emphasis to a clarificatory Circular than to the settled provision of the statute. **The Ruling can be applied in the SCNs issued u/s 74 of The CGST Act 2017 also in cases of alleged Suppression**.

The Niti Aayog has suggested the government **to bring down import duty on gold from the existing 10% and also slash the GST rate from 3%.** For financialisation of gold, it was suggested to revamp the gold monetization scheme and the sovereign gold bond scheme and introduce new gold savings account in banks besides setting up of a gold board and bullion exchanges across the country.

EDITORIAL

In **Income Tax,** reporting under the proposed clause 30C (pertaining to General Anti-Avoidance Rules (GAAR) and proposed clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Tax Audit Report has been kept in abeyance till 31st March, 2019.(For Tax Audit Reports to be furnished in the period 20th August, 2018 till 1st April, 2019).

Further in the case of **US TECHNOLOGY RESOURCES (PVT) LTD. VERSUS THE COMMISSIONER OF INCOME TAX, THIRUVANANTHAPURAM, The Kerala High Court** has held that There can be no dispute that the income generated by the US Company under the agreement entered into with the Indian Company as remuneration for the services provided is brought within the scope of total income under Section 5(2) of the Act. The remuneration received by the US Company for the services offered to the Indian Company being not a technical or consultancy service as defined under the DTAA, would also not be a fee for included services. The remuneration so obtained by the US Company definitely being an income accruing within India would not, hence, be taxable in India under the DTAA.

The non-resident Company only assists the Indian Company in making the correct decisions on such aspects as is specifically referred to in the agreement, as and when such advice is required. There is no transfer of technology or know-how, even on managerial, financial, legal or risk management aspects; which would be available for the Indian Company to be applied without the hands-on advise offered by the US Company. The advice offered on such aspects would have to be on a factual basis with respect to the problems arising at various points of time and there cannot be found any transfer of technical or other know-how to the Indian Company. Consequently no TDS liability u/s 195

AO was directed to consider the claim of expenditure afresh without looking at the application of Section 195(1), which was not applicable.

In Customs, BCD & IGST has been exempted on goods imported for donation for relief & rehabilitation of the people of Kerala affected by the floods up to 31.12.2018.

Please refer to the bulletin further for details.

We do hope that this bulletin adds value to your professional sphere.

Just to reiterate that we remain available over telecom or e-mail.

Truly Yours

Timir Baran Chatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
FCA, LL.B, B. Com (H)

Anindita Chatterjee
CS, BA L.LB(BANGALORE)

SYNOPSIS

TAX CALENDAR

Due date	COMPLIANCES FROM29th JULY, 2018 to 31st AUGUST, 2018	Description
30th August 2018	Form No. 26QB	Due date for furnishing of challan-cum-statement in respect of tax deducted under section for the month of July, 2018
30th August 2018	Form No. 26QC	Due date for furnishing of challan-cum-statement in respect of tax deducted under section in the month of July, 2018
31stAugust 2018	Income Tax	Income Tax Return for A.Y 2018-19 for all assessee other than (a) corporate assessee or (b) non corporate assessee (whose books of accounts are required to be audited) or (c) working partner of a firm whose accounts are required to audited or an assessee who is required to furnish a report under section 92E

GST: CGST/IGST/SGST/UTGST

NOTIFICATIONS/CIRCULARS

DUE DATE FOR FILING OF FORM GSTR-3B FOR THE MONTH OF JULY, 2018 EXTENDED TO 24.08.2018

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India **Notification No. 35 /2018 – Central Tax dated 21st August,** 2018 has extended the time limit for filing of FORM GSTR-3B electronically through the common portal, for the month of July, 2018 till 24th August, 2018.

CONSTITUTION OF STANDING COMMITTEE UNDER RULE 97(4) OF CGST RULES, 2017

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India **Order no. 3/2018-Central Tax dated 16th August,**2018 has constituted the requisite Standing Committee.

The Committee shall consist of the following members:

a. **Chairman of the committee:** The Secretary, Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution

b. **Vice-Chairman of the committee:** Secretary, Department of Expenditure in the Ministry of Finance or the Financial Adviser, Department of Consumer Affairs in the Ministry of Consumer Affairs, Food and Public Distribution

c. Chairman, Central Board of Indirect Taxes and Customs or an officer not below the rank of a Joint Secretary in the Department of Revenue of the Ministry of Finance;

d. Member (GST) of the Central Board of Indirect Taxes and Customs;

e. Secretary/ Joint Secretary/ Economic Advisor, Department of Rural Development;

f. Chief Executive Officer, Food Safety and Standards Authority of India (FSSAI);

g. Secretary or his nominee not below the rank of Joint Secretary, Ministry of Information and Broadcasting;

h. Secretary or his nominee not below the rank of Joint Secretary, Department of Higher Education, Ministry of HRD;

i. Director General/ Additional Director General, Bureau of Indian Standard; and

j. The Additional Secretary/ Joint Secretary in charge of Consumer Welfare Fund in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution who shall also be the Member Secretary of the Committee.

ANALYSIS

CLARIFICATION REGARDING REMOVAL OF RESTRICTION OF REFUND OF ACCUMULATED ITC ON FABRICS

<u>**OUR COMMENTS:**</u> The Department of Revenue, Ministry of Finance, Government of India **Circular No.56/30/2018-GST dated 24th August,** 2018 has clarified with respect removal of restriction of refund of accumulated ITC on fabrics

Earlier, **Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017** notified the items on which refund of accumulated ITC on account of inverted duty structure is not allowed. Among others it covers a total 10 categories of fabrics (Please refer the notification for the categories).

In the 28th GST Council meeting, it was decided to remove the above restriction with prospective effect on the input supplies received after the date of issue of notification. It was also decided to lapse the accumulated ITC, lying unutilised, for the past period, after the payment of GST for the month of July, 2018.

To give effect to this decision, the **notification No. 20/2018-Central Tax (Rate)** has been issued to make these changes effective from the 1 st day of August, 2018.

Following doubts has been raised, with reference to the above notification as follows:

(1) Whether this notification seeks to lapse all the ITC lying unutilised after payment of tax upto the month of July. 2018?

In terms of amended notification, the ITC on account of inverted duty structure lying in balance after payment of GST for the month of July (on purchases made on or before the 31st July, 2018) shall lapse. For calculating the amount that would lapse the formula as prescribed in rule 89 (5) of the CGST rules shall mutatis mutandis apply as it applies for determination of refundable amount for inverted duty structure.

(2) Whether unutilised ITC in respect of services and capital goods shall also be disallowed?

As the notification No. 5/2017-Central Tax (Rate) does not put any restriction in respect of ITC on input services and capital goods, therefore the proviso inserted vide notification No. 20/2018 does not affect the ITC availed on input services and capital goods.

(The application of formula prescribed in rule 89(5) ensures that ITC relating to capital goods and input services does not lapse.)

(3) Implication to fabrics like cotton and silk where there was no inverted duty structure?

The said condition of lapsing of ITC would apply only if input tax credit on inputs has been accumulated on account of inverted duty structure. Hence, no implication.

(4) Whether accumulated ITC in respect of exports shall also be lapsed?

The refund of such ITC on exports is separately determined under rule 89 (4). Application of formula, as prescribed in rule 89(5), ensures that accumulated ITC on exports does not lapse as this formula excludes zero rated supplies.

Further notification No. 5/2017-Central Tax(Rate) does not impose any restriction of refunds on zero rated supplies. Accordingly, accumulated ITC on zero rated supplies shall not lapse. This is ensured by application of formula.

Procedure: A taxable person, whose ITC is liable to be lapsed in terms of said notification, shall calculate it as specified above and be furnished in his GSTR 3B return for the month of August, 2018. The amount shall be furnished in column 4B (2) of the return [ITC amount to be reversed for any reason (others)]. Verification of accumulated ITC amount so lapsed and a detailed calculation sheet shall be prepared at the time of filing of first refund (on account of inverted duty structure on fabrics).

INCOME TAX

NOTIFICATIONS/CIRCULARS

CLARIFICATION ON THE IMMUNITY PROVIDED U/S 270AA

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 5/2018 dated 16.08.2018** has issued clarification on the immunity provided u/s 270AA of the Income-tax Act, 1961.

Section 270AA provides that w.e.f. 1st April, 2017, the Assessing Officer, on an application made by an assessee, may grant immunity from imposition of penalty under section 270A (not being penalty for misreporting) and initiation of proceedings under section 276C or section 276CC, subject to the conditions specified therein.

It is clarified that where an assessee makes an application for immunity u/s 270AA of the Act, it shall not preclude such assessee from contesting the same issue in any earlier assessment year.

And the Income-tax Authority, shall not take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act in earlier assessment years merely on the ground that the assessee has acquiesced on the issue in any later assessment year by preferring an immunity on such issue under section 270AA of the Act.

REPORTING OF IN FORMATION REGARDING GAAR AND GST DEFERRED FOR 3CD

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 6/2018 dated 176.08.2018** has it has decided that reporting under the proposed clause 30C (pertaining to General Anti-Avoidance Rules (GAAR) and proposed clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Tax Audit Report shall be kept in abeyance till 31st March, 2019.

Hence, for Tax Audit Reports to be furnished in the period 20th August, 2018 till 1st April, 2019, the tax auditors will not be required to furnish details under said clause 30C and clause 44 of the Tax Audit Report.

CUSTOMS

NOTIFICATIONS/CIRCULARS

BCD & IGST EXEMPTED ON GOODS IMPORTED FOR DONATION FOR RELIEF & REHABILITATION OF THE PEOPLE OF KERALA AFFECTED BY THE FLOODS UPTO 31.12.2018

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 59/2018-Customs dated 21.08.2018 has exempted**

(a) the BCD under the First Schedule of Customs Tariff Act; and
(b) the IGST u/s 3(7) of the said Customs Tariff Act,

subject to the following conditions:

(i) the intention of import is certified by the importer on the relevant clearance documents
(ii) that imported goods are sent to the Central Government, the Government of Kerala, the relief agencies of the Central Government or the Government of Kerala or agencies approved by them

(iii) that the importer produces before the Deputy Commissioner or the Assistant Commissioner of Customs a certificate from the District Magistrate of the affected area in the State of Kerala that the said goods have been donated for use for the aforesaid purpose within six months/such extended period as the said officer may allow,

The notification shall remain in force upto and inclusive of the 31st December, 2018.

CUSTOMS (FINALISATION OF PROVISIONAL ASSESSMENT) REGULATIONS, 2018

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 73/2018-Customs (N.T.) dated 14.08.2018 has** hereby made the Customs (Finalisation of Provisional Assessment) Regulations, 2018 which shall apply to the provisional assessments ordered on and after the enforcement of these regulations.

Please refer to the notification for details.

AMEND NOTIFICATION NO. 82/2017-CUSTOMS (N.T.), DATED THE 24TH AUGUST, 2017 WITH RESPECT TO APPOINTMENT OF COMMISSIONERS, ADDITIONAL OR JOINT COMMISSIONERS AND DEPUTY OR ASSISTANT COMMISSIONERS OF CUSTOMS

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 75/2018-Customs (N.T.) dated 21.08.2018 has** made further amendments in the notification No. 82/2017-Customs (N.T.), dated the 24th August, 2017 with respect to Appointment of Commissioners, Additional or Joint Commissioners and Deputy or Assistant Commissioners of Customs.

IN STAND

SECTION WISE COMMENTARY ON GST UPDATED TILL 10th AUGUST 2018

(Including ALL Amendments by 29th GST Council Meeting on 04th August 2018)

ABOUT THE BOOK: This book provides an insight into the following:

1. Incorporating all amendments
2. Section wise commentary
3. Linkages to Rules, Notifications, Circulars, Orders, Advance Rulings, Court Decisions relevant to the Sections
4. Rules, Notifications, Circulars, Orders Referencer
5. Practical Illustrations

Authors:

Timir Baran Chatterjee

M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
FCA, LL.B., B.Com (Hons.)

Published by:

BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
Website :www.bookcorporation.com

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TAX CONNECT ACADEMY
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