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BUSINESS ADVISORS

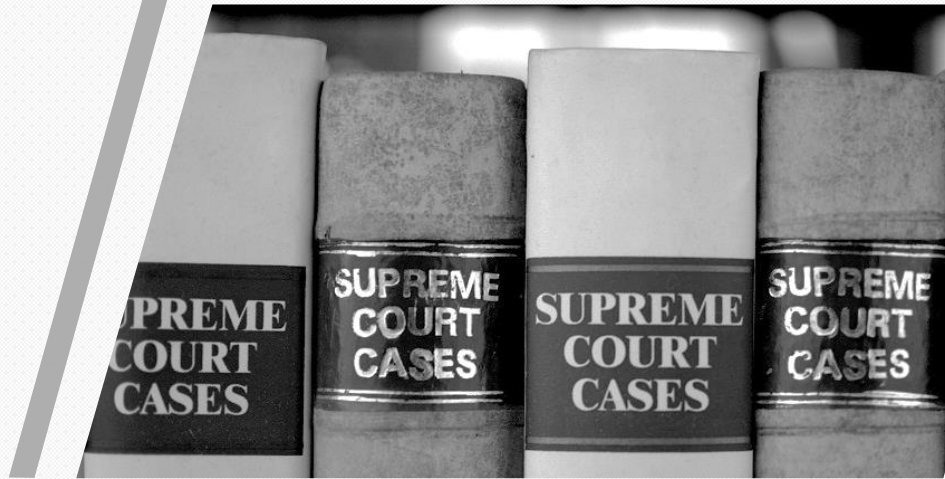
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June - 2018

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Direct Tax Case Laws



Case Law 1

ITAT deletes INR 3200 crore addition based on Department's invoking of 'indirect transfer' provision for resident

Mumbai ITAT deletes INR 3,200 cr. addition on account of capital gains made by AO invoking Explanation 5 to Sec. 9(1) [relating to indirect transfers] in case of resident company ('assessee') for transaction undertaken during AY 2011-12.

ITAT notes that during relevant AY, Singaporean parent had infused INR 148.52 cr. by way of share capital subscription for funding assessee's acquisition of two Indian entities. However, AO linked the purchasing of shares of fifth degree holding company located outside India (for INR 1002 cr) to arrive at the valuation for shares issued by assessee to the Singapore entity, and made addition on account of capital gains.

Firstly, ITAT noticed that the lower authorities failed to establish as to which capital asset was transferred by assessee. ITAT remarks that "The AO and first appellate authority have tried to build a house without laying down foundation i.e. without the existence of capital assets they have tried to tax capital gain." ITAT further remarked that they were not clear as to how the acquisition of shares of fifth degree holding company located outside India can be used for determining the taxability of assessee under the head short term capital gains

The ITAT rejected Revenue's stand that the assessee had transferred the interest/stake in itself outside India to the Singaporean entity. Further, ITAT clarified that the concept of 'creating of interest in any assets in any manner' and transferring 'interest/stake' was not part of the word 'transfer' for the year under consideration and also clarified that it covered only the non-residents and not a resident entity like assessee.

Supermax Personal Care Private Limited vs. ACIT (ITAT Mumbai)

Case Law 2

ITAT: TDS applicable on sub-contracting charges, absent direct employee payment, hence rejecting reimbursement plea

In a recent judgement by Cochin ITAT, assessee's (a software company) contention that payment to its sister concern ('USTIPL') under the sub-contracting agreement amounts to reimbursement of expenses, was rejected and upheld applicability of TDS u/s 194J. Perusing agreement between assessee and USTIPL, ITAT noted that assessee had engaged USTIPL to depute resources and provide other administrative support to manage its project requirements with clients and in consideration, assessee had to reimburse all expenses incurred by USTIPL on the resources deputed to assessee and the apportioned cost of specific support services.

Direct Tax : Case Laws

The ITAT further noted that for the assessee, recipient of payment is USTIPL and not its employees, and remarked that since for USTIPL, payment received is not chargeable under the head salary but has been charged under the head business income, such payment will be considered as fees for technical services. The ITAT distinguished assessee's reliance on Bhagyanagar Gas Ltd. ruling wherein the payment was directly made to employees of the contracting company, however, accepted assessee's contention that if the recipient has paid tax on the income received, no disallowance is warranted in view of second proviso to section 40(a)(ia). Accordingly, the matter was remanded back to verify the payment of tax by the recipient

M/S Us Technology Resources P. vs The DCIT (Trivandrum)

Case Law 3

Order passed by ITAT relying only on case law cited by AO couldn't be said to be mistake apparent from records

For Assessment year 2010-11, Assessing Officer made Best Judgment Assessment by applying net rate of 10 percent on gross receipts, Commissioner (Appeals) using his powers of rectification reduced net profit rate applied by Assessing Officer from 10 to 6 percent. On revenue's appeal, Tribunal restored order of assessment made by Assessing Officer.

Assessee subsequently filed an application seeking rectification of order passed by Tribunal on the ground that while passing said order, it failed to take into consideration binding order passed by co-ordinate Bench of Tribunal in another case, of effect that net profit rate of 5 per cent was a reasonable rate. Tribunal rejected the said application of the assessee.

The High Court, while deciding the case, noticed that Tribunal had passed its order in the relevant case on the basis of an order passed by co-ordinate Bench in another case that was relied upon by revenue and had also considered the caselaw relied upon by the assessee for justifying net profit rate of 5 per cent.

Based on above observation, it was held that judicial discretion exercised by Tribunal could not be held to be an error on face of record which could be rectified under section 254(2) of the Income Tax Act.

Therefore, it was held that assessee's application to rectify the order was rightly rejected by Tribunal and hence the decision went in favour of revenue.

Ajay Kapoor vs Commissioner of Income-tax, High Court Of Jammu And Kashmir

Case Law 4

10% penalty under section 271AAB to be levied if assessee admits undisclosed income during Search proceedings

Direct Tax : Case Laws

A search was carried out in Assessment year 2014-15 in case of assessee in which he made a statement admitting certain undisclosed income. Assessing Officer added the said amount to assessee's taxable income. Assessing Officer issued a notice for initiating penalty proceedings to which assessee submitted his replies which were rejected by the Assessing Officer. Subsequently, the Assessing Officer passed a penalty order under section 271AAB.

Tribunal, on presumption that penalty proceedings had been initiated under section 271(1)(c), set aside penalty order under section 271AAB.

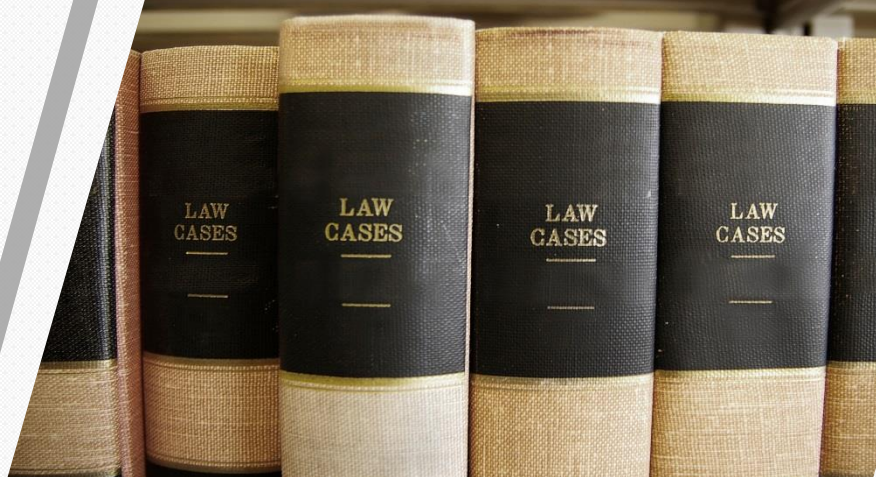
High Court took a view that where assessee in course of search admits undisclosed income and manner in which such income has been derived, then provisions of section 271AAB would automatically attract.

High Court further opined that since opportunity of hearing as prescribed under section 271AAB had been given to assessee, penalty order passed by Assessing Officer was to be restored. On facts it was held that there was no reason for interfering with the order passed by High Court and, therefore, the petition was dismissed.

Sandeep Chandak vs Principal Commissioner of Income-tax, Kanpur, Supreme Court of India

Indirect Tax :

Case Laws



Case Law 1

Violation of Import Condition

The appeal was filed by M/s Arkema Catalyst India Pvt. Ltd. against the order of Commissioner demanding Customs duty, confiscating goods, imposing redemption fine and penalties. The Appellant had obtained DEEC license. It was detected that the Appellant had consumed lesser quantity than the prescribed under the standard norms for manufacture of their export product and as a result the quantity of inputs imported duty free saved in the process, became the issue of dispute. Revenue demanded duty and sought to confiscate the goods. It was submitted by the Appellant that they had not violated the terms of the related notification. The advance license was issued to the Appellant. Also, the Appellant had complied with the terms of the advance license. It was also submitted the revenue where-ever it desired that when inputs are imported based on the norms and the inputs have been allowed based on a percentage content in the inputs with the export product with some wastage or on net to net basis or on net plus wastage basis, the exporter shall account for the quantity allowed for import minus the wastage permitted, if any, in the product exported. In other words, a provision has been made for accounting. However, no such provision was made in this case. Further, there were identical cases referring to which the Appeal was consequently allowed.

M/S ARKEMA CATALYST INDIA PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (EXPORT), MUMBAI [2018 (5) TMI 1479 - CESTAT MUMBAI

Case Law 2

Levy of GST on the value of freight in case of works contract or composite contract

The Applicant M/s EMC Limited is a supplier of material and allied services for erection of towers, testing and commissioning of transmission lines and setting up sub-stations collectively called the Tower Package. The question of the Applicant is related to the contracts obtained mainly from M/s Power Grid Corporation of India(Contractee). The contractee awards the Applicant contracts for supply of Tower Packages split up into two separate sets of contracts – one for supply of materials at exfactory price (First Contract), and the other for supply of allied services like survey and erection of towers, testing and commissioning of transmission lines etc (Second Contract), which also includes inland/local transportation, in-transit insurance, loading/unloading for delivery of materials and storage of them at the contractee's site. The contractee agrees to reimburse the actual GST payable, except on the price component for inland/local transportation, in-transit insurance and loading/unloading. The applicant raises separate freight bills on the contractee as per the rate schedule annexed to the Second Contract.

Indirect Tax : Case Laws

It was immediately apparent that the First Contract cannot be executed independent of the Second Contract. There cannot be any 'supply of goods' without a place of supply. As the goods are to be supplied under the First Contract involve movement and/or installation at the site, the place of shall be the location of the goods at the time when movement of the goods terminates for delivery to the recipient or moved to the site for assembly or installation. It was held that the applicant supplies works contract service, of which freight and transportation is merely a component and not a separate and independent identity, and GST is to be paid at 18% on the entire value of the composite supply, including supply of materials, freight and transportation, erection, commissioning etc.

[2018 (5) TMI 964 - AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL IN RE : EMC LTD.]

Case Law 3

Hotel Accommodation and restaurant services provided inside the premises of the hotel to the employees and guests of SEZ units not to be treated as supply of goods and services to SEZ units

The Applicant is engaged in hotel business which provides hotel accommodation and restaurant services. They are providing services to the employees & guests of some of the units in SEZ, in addition to the regular customers and are charging CGST & SGST at the applicable rates.

The SEZ units contended that the services are being rendered to SEZ units only and hence rate of GST is 'NIL' as per provisions of Section 16(1)(b) of IGST Act 2017. Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit are treated as 'Zero Rated Supply'. Referring to Section 16(1)(b) of IGST Act 2017 and Rule 46 of the CGST Rules supplies of goods or services or both towards the authorised operations only shall be treated as supplies to SEZ Developer / SEZ Unit. Place of supply of services as per Section 12 of the IGST Act 2017, for lodging accommodation by a hotel shall be the location at which the immovable property (hotel) is located and for restaurant and catering services shall be the location where the services are performed. Since the applicant is located outside the SEZ and services rendered by it are neither the part of authorised operations nor consumed inside the SEZ, therefore the above services provided by the applicant cannot be treated as supply of goods & services to SEZ units and hence taxable as 'Intra state supply'

[2018(5) TMI 759-AUTHORITY FOR ADVANCE RULINGS - KARNATAKA, IN RE:M/S GOGTE INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED]

Case Law 4

Services relating to coaching provided by private institute to its students for entrance examination will come under the ambit of Goods and Service Tax (GST)

Indirect Tax : Case Laws

The applicant is engaged in providing coaching services to the students through its private institute. This activity prepares the students for entrance examinations related to MBBS, Engineering and other science related examinations. Applicant contested that the said activity is covered by the Notification No.12/2017-Central Tax (Rate) which states exemption granted in respect of services provided to and by an educational institution. Education services are covered under the Heading '9992' and taxed at the rate 9 percent. Since the private institute does not have any specific curriculum and does not conduct any examination or award any qualification recognized by any law, therefore it is not covered in the definition of Educational Institution. Education services provided in the given case is taxable at the rate of 9 percent under CGST and 9 percent under SGST Act.

**[2018(5) TMI 648- AUTHORITY FOR
ADVANCE RULING- MAHARASHTRA, IN RE :
SIMPLE RAJENDERA SHUKLA]**

Indirect Tax Notification



1. Waiver of late fees for delayed filing of GSTR-3B for the months of April,2017 to March,2018

Central Government vide its Notification no. 22/2018 dated 14th May 2018 have waived the late fees payable under section 47 of CGST Act, 2017 for the failure to furnish return in Form GSTR 3B by the due date for the months from October 2017 to April 2018 for the class of registered persons whose declaration in Form GST TRAN-1 was submitted but not filed on the common portal on or before 27th December 2017. Provided that such persons have filed Form GST Tran-1 on or before 10th May 2018 and Form GSTR-3B for the months mentioned above on or before 31st May 2018.

file:///C:/Users/User/Desktop/Notification-22-2018-central_tax-English.pdf

2. Extension of due date for filing GSTR 3B

Central Government vide its Notification no.23/2018 dated 18th May 2018 have extended the due date for filing return in the Form GSTR-3B from 20th May 2018 to 22nd May 2018.

file:///C:/Users/User/Desktop/Notification-23-2018-central_tax-English.pdf

3. Extension of due date for filing GSTR 6

Central Government vide its Notification no.25/2018 dated 31st May 2018 have extended the due date for filing return in the Form GSTR-6 for Input Service Distributors from 31st May 2018 to 31st July 2018.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-25-2018-central_tax-English.pdf

Corporate Legal & Regulatory Notifications



COMMENCEMENT NOTIFICATION

(MCA Notification dated May 07, 2018)

The Ministry of Corporate Affairs has notified various provisions of The Companies (Amendment) Act, 2017 which shall come into force on May 07, 2018. The sections which are notified are as follows:

Section no. of the Companies (Amendment) Act, 2017	Corresponding section of the Companies Act, 2013
Section 2 [clauses (i) and (xiii)]	Section 2(6)- Definition of associate company Section 2(87)- Definition of subsidiary company
Section 8	Section 26- Matters to be stated in Prospectus
Section 13	Section 54- Issue of Sweat Equity Shares
Section 18	Section 77- Duty to register charges, etc.
Section 19	Section 78- Application for Registration of charge
Clauses (i) and (ii) of section 21	Section 89- Declaration in respect of beneficial interest in any share
Clauses (iii) and (iv) of section 23	Section 92- Annual Return
Section 30	Section 117- Resolutions and Agreements to be filed
Section 31	Section 121- Report on annual general meeting
Section 33	Section 129- Financial Statement
Section 39	Section 137- Copy of Financial Statement to be filed with Registrar
Section 40	Section 139- Appointment of Auditors
Section 46	Section 149- Company to have Board of Directors
Section 49	Section 157- Company to inform Director Identification Number to Registrar
Section 52	Section 164- Disqualifications for appointment of director
Section 54	Section 167- Vacation of office of director
Section 55	Section 168- Resignation of director
Section 56	Section 173- Meetings of Board
Section 57	Section 177- Audit Committee

Corporate Legal & Regulatory Notifications



Section 58	Section 178- Nomination and remuneration Committee and Stakeholders Relationship Committee
Section 61	Section 185- Loan to directors, etc.
Section 62	Section 186- Loan and investment by company
First proviso to clause (i) and clause (ii) of section 80	Section 403- Fee for Filings, etc.
Section 83	Section 410- Constitution of Appellate Tribunal
Section 86	Section 435- Establishment of Special Courts
Section 87	Section 438- Application of Code to proceedings before Special Court
Section 88	Section 439- Offences to be non-cognizable
Section 89	Section 440- Transitional provisions

Legal & Regulatory

S.no	Notifications
2	<p>COMPANIES (MEETINGS OF BOARD AND ITS POWERS) AMENDMENT RULES, 2018.</p> <p><i>(MCA Notification dated May 07, 2018)</i></p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated May 07, 2018 has amended Companies (Meetings of Board and its Powers) Amendment Rules, 2018. The key amendments are as follows:</p> <ul style="list-style-type: none">• Director may participate through video conferencing or other audio-visual means if there is quorum in a meeting through physical presence of directors, in case of matters related to restricted items.• The Special Resolution passed at a general meeting in terms of section 186(3) to give any loan or guarantee or investment or providing any security or the acquisition under section 186(2) shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition. <p>http://www.mca.gov.in/Ministry/pdf/CompaniesBoardsPowersRules_07052018.pdf</p>
3	<p>COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2018</p> <p><i>(MCA Notification dated May 07, 2018)</i></p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated May 07, 2018 has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014. Through this amendment MCA has omitted Rule 3, Rule 4, Rule 5 and Rule 6 of the said rules which prescribed the contents to be mentioned in the Prospectus.</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesProspectusRules_07052018.pdf</p>

Legal & Regulatory

S.no	Notifications
4	<p>COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) SECOND AMENDMENT RULES, 2018</p> <p><i>(MCA Notification dated May 07, 2018)</i></p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated May 07, 2018 has amended The Companies (Appointment and Qualifications of Directors) Rules, 2014. Through this amendment MCA has clarified the meaning of independent director provided in section 149 which state that:</p> <p>None of the relatives of an independent director -</p> <ul style="list-style-type: none">i) should be indebted to the company, its holding subsidiary or associate Company or their promoters, or directors; orii) has given a guarantee or provided any security in connection with indebtedness of any third person to its holding, subsidiary or associate company or their promoter or directors of such holding company <p>for an amount of Rs. 50 Lakhs at any time during the two immediately preceding financial years or during current financial year.</p> <p>http://www.mca.gov.in/Ministry/pdf/AppointmentDirectorsRules_07052018.pdf</p>
5	<p>COMPANIES (AUDIT AND AUDITORS) AMENDMENT RULES, 2018</p> <p><i>(MCA Notification dated May 07, 2018)</i></p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated May 07, 2018 has amended The Companies (Audit and Auditors) Rules, 2014. The key amendments are as follows:</p> <ul style="list-style-type: none">• The requirement of ratification of appointment of Auditor at every annual general meeting (AGM) has been removed.• Rule 9 of the said rules has been omitted which stated that in case of criminal liability of any audit firm, the liability other than fine, shall devolve only on the concerned partner or partners, who acted in a fraudulent manner or abetted or as the case may be.• The Audit Report should specify the internal financial control with reference to financial statements instead of internal financial control in general. <p>http://www.mca.gov.in/Ministry/pdf/AuditAuditorsRules_07052018.pdf</p>

Legal & Regulatory

S.no	Notifications
6	<p>COMPANIES (SPECIFICATION OF DEFINITION DETAILS) AMENDMENT RULES 2018</p> <p><i>(MCA Notification dated May 07, 2018)</i></p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated May 07, 2018 has amended The Companies (Specification of Definitions Details) Rules, 2014 wherein the MCA has omitted the definition of “Total Share Capital” owing to the replacement of term “Total Share Capital” with the term “Total Voting Power” in the Companies (Amendment) Act, 2017.</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesSpecificationRules_07052018.pdf</p>
7	<p>COMPANIES (SHARE CAPITAL AND DEBENTURES) 2ND AMENDMENT RULES, 2018</p> <p><i>(MCA Notification dated May 07, 2018)</i></p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated May 07, 2018 has amended the Companies (Share Capital and Debentures) Rules, 2014 wherein the MCA has allowed the Companies to issue Sweat Equity shares without waiting for a period of one year from incorporation.</p> <p>http://www.mca.gov.in/Ministry/pdf/CompaniesShareCapitalRules_07052018.pdf</p>
8	<p>CLARIFICATION-CONDONATION OF DELAY SCHEME, 2018</p> <p><i>(MCA Notification dated May 17, 2018)</i></p> <p>The Ministry of Corporate Affairs(MCA) vide its notification dated May 17, 2018 has clarified that in in the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN shall be re-activated only after NCLT order of revival subject to the company having filing of all overdue documents.</p> <p>It, is therefore directed that in such cases the Registrar(s) of Companies shall raise a ticket through Change Requirement Form (CRF) on MCA21 portal along with copy of NCLT order and E-governance shall activate DIN of the directors of such struck off companies that have been revived through NCLT to file e-CODS, 2018. However, the ROC before raising CRF has to ensure that CRFs are raised only for struck off companies and after thorough scrutiny of the NCLT orders and ensuring that such struck off companies had filed overdue documents before filing e-CODS, 2018 and had filed petitions before the NCLT during the validity of CODS Scheme.</p> <p>http://www.mca.gov.in/Ministry/pdf/CODSCircular_17052018.pdf</p>

Legal & Regulatory

S.no	Notifications
9	<p>CLARIFICATION WITH REGARD TO PROVISIONS UNDER SECTION 135 (5) OF THE COMPANIES ACT, 2013.</p> <p><i>(MCA Notification dated May 28, 2018)</i></p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated May 28, 2018 has clarified that provisions of section 135 (5) regarding preference to the local area and areas around it where company operates, for spending the amount earmarked for Corporate Social Responsibility activities has to be complied in letter and spirit.</p> <p>http://www.mca.gov.in/Ministry/pdf/GeneralCircular2805_29052018.pdf</p>
10	<p>Insolvency Professionals to Act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018</p> <p><i>(IBBI Guideline dated May 31, 2018)</i></p> <p>Under section 16(3)(a) of IBC it is required that the Adjudicating Authority (AA) to make reference to the Board for recommendation of an Insolvency Professional who can act as an Interim Resolution Professional (IRP) in the case an Operational Creditor has made an application and has not proposed any IRP. The Board within 10 days of the receipt of the reference from the AA, is required under section 16(4) of the Code to recommend the name of the IP to AA against who no disciplinary proceedings are pending.</p> <p>http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/May/31st%20May%202018%20Insolvency%20Professionals%20to%20act%20as%20Interim%20Resolution%20Professionals%20or%20Liquidators%20(Recommendation)%20Guidelines%202018_2018-05-31%2011:16:31.pdf</p>
11	<p>GENERAL DATA PROTECTION REGULATION (GDPR)</p> <p><i>(With effect from May 25, 2018)</i></p> <p>EU General Data Protection Regulation (GDPR) was adopted on 27 April, 2016 by EU. It has come into effect on 25 May 2018. It strengthens and unifies data protection for individuals within the EU as well as address the export of personal data outside the European Union (EU), which means it protects the misuse of personal identifiable information (PII) of any kind of EU citizens.</p> <p>https://gdpr-info.eu/</p>



REFUND OF UNUTILIZED INPUT TAX CREDIT DUE TO “INVERTED DUTY STRUCTURE” under Goods and Service Tax

By – Sudhakar Jha – Indirect Tax

Goods and Services Tax regime (GST), India's biggest tax reform since independence, was rolled out last year in July 2017 to merge various indirect taxes levies into single tax i.e. GST. GST has been introduced with the intent to simplify the indirect tax procedures and compliances in hands of various taxpayers. Indirect Tax being a major source of tax revenue in India, Government must look on various matters in relation to providing ease of doing business to taxpayers and boosting the Indian economy from tax collection thereof.

With the motto of providing ease of doing business to tax payers government has incorporated various provisions in GST law with reference to refund of unutilized input tax credit (or “ITC”).

The refund of unutilized tax credit can be arisen in following two situations:

- a) Zero-rated Supplies made without payment of GST i.e. export without payment of GST;
- b) Supplier having inverted duty structure.

In this article we would be analysing the provisions of refunds under GST for the suppliers having the inverted duty structure. First, lets understand what is “inverted tax structure”, it is a situation where rate of tax on inputs is higher than the rate of tax on outward supplies-goods/services.

This situation can arise only in following two categories of taxpayers;

- Manufacturer supplier of goods (not trader supplier);
- Supplier of services.

Let’s understand the above situation with the help of an illustration:

GST rate on product X is 18% and product Y is 5%, product X is used as input for manufacture of product Y. [Readmore...](#)

Upcoming Compliances

Date	Compliance
June 10, 2018	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of more than 1.5 crore for the month of May-2018
June 15, 2018	First instalment of advance tax for the AY 2019-20
	Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2018
	Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during 2017-18
June 20, 2018	Due date for filing consolidated return in the Form GSTR-3B for the month of May-2018
July 31, 2018	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of up to than 1.5 crore for the quarter of April to June-2018

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