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BUSINESS ADVISORS

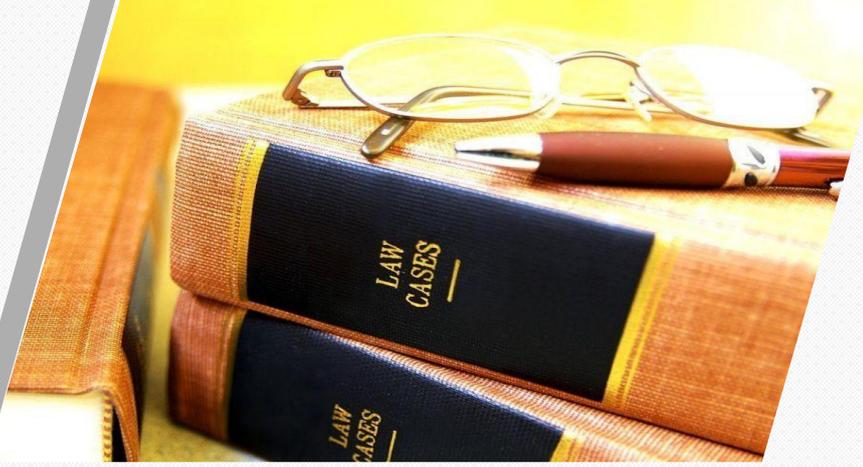
CONNEKT

June - 2020

Content

<u>Direct Tax – Case Laws</u>	3
<u>Direct Tax Notifications</u>	6
<u>Indirect Tax – Case Laws</u>	7
<u>Indirect Tax Notifications</u>	10
<u>Corporate Legal & Regulatory Notifications</u>	11
<u>Column</u>	15
<u>IBA News</u>	17
<u>Compliance Calendar</u>	18
<u>About us</u>	20

Direct Tax Case Laws



Case Law 1:

Set aside addition u/s 68 considering creditor's identity, genuineness established in subsequent penalty proceedings

The assessee had shown the amount of Rs. 2,26,000 as credits in the name of 15 persons as income from creditors and a source of income. The assessee has served with a notice u/s 143(2) of the Act by the AO pursuant to which an assessment order is passed. This Appeal involves addition amounting to Rs. 2,26,000 made under the head "Trading A/C" and "Credit" in the order. AO treated the amount as Cash Credits under section 68 and added the same amount to the income of the assessee. The assessee then preferred the further appeal to ITAT. However, the order relating to the second addition regarding credits came to be upheld.

AO stated that sufficient time and opportunity was granted to prove the veracity of creditors but false/wrong particulars or explanation were submitted by the assessee. In this manner, the credits of Rs.2,26,000/shown in the name of 15 persons, is not correct and any correct proof/evidence has not been produced by assessee with respect to income of creditors and source of income and the said entries are bogus entries. Besides the credits shown is an unexplained income and should be added to income. The amount of Rs. 2,26,000 should be treated as Cash Credits u/s 68 or not?

It has now come on record that the appellant/assessee in penalty proceedings offered explanation and provide affidavits and record statements of the concerned unregistered dealers and established their credentials. CIT(A) had held that the assessee had not made any concealment of income or furnished inaccurate particulars of income. Accordingly, this appeal is allowed. The addition of Rs.2,26,000 by the AO u/s 68 of the Act, towards cash credit amount shown against the names of concerned unregistered dealers is set aside. The rest of the assessment order dated 30.11.2000 as modified by the CIT(A) order, shall remain undisturbed. All pending interlocutory applications are also disposed of.

Basir Ahmed Sisodiya v The Income Tax Officer

Case Law 2:

Where State Government undertaking is engaged in wholesale and retail trade of beverages within State, levy of Gallonage Fee, Licence Fee and Shop Rental (kist) with respect to FL-9 licences granted with respect to wholesale of foreign liquor will clearly fall within purview of Section 40(a)(iib) and, hence, amount paid in this regard is liable to be disallowed while similar amounts paid with respect to FL-1 licences granted with respect to retail business in foreign liquor is not an exclusive levy on appellant and, hence, not liable to be disallowed; Surcharge on sales tax and

Direct Tax : Case Laws

turnover tax is not a 'fee or charge' coming within scope of Section 40(a)(iib) and is not an amount which can be disallowed under said provision.

Appellant company, a 'State Government Undertaking' falling within 'Explanation' provided under Section 40(a)(iib), is engaged in wholesale and retail trade of beverages within State of Kerala. Assessee is holding FL-1 Licence with respect to sale of foreign liquor in sealed bottles, without privilege of consumption within premises. They are also having FL-9 Licence for wholesale of foreign liquor, which they are selling to FL-1, FL-3, FL-4, 4A, FL-11, FL-12 licence holders.

Question arose as to whether Gallonage Fee, Licence fee, Shop rental (Kist) and Surcharge on sales tax and turnover tax, with respect to which debits were made by assessee in their Profit and Loss Account, are liable to be disallowed while computing income derived as "profit and gains of business or profession", under Section 40(a)(iib), by treating them as amounts paid by assessee "by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge by whatever name called, which is levied exclusively on" assessee. It was held, that levy of Gallonage Fee, Licence Fee and Shop Rental (kist) with respect to FL-9 licences granted to appellant will clearly fall within purview of Section 40(a)(iib) and amount paid in this regard is liable to be disallowed. Amount of Gallonage Fee, Licence Fee, or Shop Rental (kist) paid with respect to FL-1 licences granted in favour of appellant, with respect to retail business in foreign liquor, is not an exclusive levy on appellant, which is a State Government undertaking.

Therefore, disallowance made with respect to those amounts cannot be sustained.

Surcharge on sales tax and turnover tax is not a 'fee or charge' coming within scope of Section 40(a)(iib) and is not an amount which can be disallowed under said provision. Therefore, no disallowance can be made in this regard.

Kerala State Beverages (Manufacturing and Marketing) Corporation Ltd. v ACIT (HC of Kerala)

Case Law 3:

Where High Court upheld Tribunal's order holding that in absence of any failure on part of assessee to disclose all material facts at time of assessment, AO could not initiate reassessment proceedings after expiry of four years from end of relevant year on ground that construction of housing project had commenced prior to 1-10-1998 and, thus, assessee's claim for deduction under Section 80-IB(10) was wrongly allowed, SLP filed against said order was to be dismissed due to low tax effect.

The issue pertains to the Assessment Year 2004-05. The central question is of the validity of re-assessment proceedings initiated by the Assessing Officer in the context of the assessee's claim of deduction under Section 80IB(10) of the Income Tax Act, 1961 ("the Act" for short). In the return of income filed by the assessee for the said assessment year, the principal claim was of deduction under Section 80IB(10) of the Act arising out of income from development of a housing project. In the assessment carried out by the Assessing Officer, he disallowed a part of the claim after detailed scrutiny. Such assessment was reopened by the Assessing Officer by issuance of notice, which was

Direct Tax : Case Laws

done beyond the period of four years from the end of relevant assessment year. The Assessing Officer of the present assessee, therefore, found that the assessee was not entitled to the deduction since one of the essential requirements of the provision was breached. He noted that these facts were not disclosed by the assessee and not brought to the notice of the Assessing Officer during the assessment. Therefore, there was failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment.

The CIT(A) allowed the appeal. He was of the opinion that during the scrutiny assessment, there was no failure on the part of the assessee to disclose truly and fully all material facts. Even on merits, he was of the opinion that there was no evidence to suggest that the development and construction of the housing project commenced prior to 01.10.1998. On such grounds, the assessee's appeal was allowed.

The Revenue carried the matter in further appeal before the Tribunal. The Tribunal by giving separate independent reasons confirmed the decision of the CIT(Appeals) by the impugned judgment. The Tribunal was of the opinion that in absence of any failure on the part of the assessee to disclose true facts, the reopening of assessment beyond the period of four years was not permissible.

Therefore, as per the court, they did not find any failure on the part of the assessee to disclose truly and fully all relevant facts as correctly held by the CIT(A) and the Tribunal pursuant to the detailed discussion. Hence, no question of law arises.

Principal Commissioner of Income Tax v Vaman Estate

Direct Tax Notifications



1. Clarification in respect of residency under section 6 of the Income-tax Act, 1961

In order to avoid genuine hardship in such cases, the Board has decided to amend section 6 to determine the residential status in respect of an individual who has visited India on a visit before 22nd March, 2020 and is stuck in India due to lockdown.

https://www.incometaxindia.gov.in/communications/circular/circular_no_11_2020.pdf

2. Notification dated 8th May 2020

Central Government hereby notifies “SHRI RAM JANMABHOOMI TEERTH KSHETRA” to be place of historic importance and a place of public worship of renown for the purposes of section 80G from the F.Y. 2020-2021.

https://www.incometaxindia.gov.in/communications/notification/notification_24_2020.pdf

3. Amendment of the Income-tax Rules, 1962 to provide Safe Harbour Rules

In exercise of the powers conferred by section 295 read with sub-section (2) of section 92CB of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes some rules further to amend the Income-tax Rules, 1962.

https://www.incometaxindia.gov.in/communications/notification/notification_25_2020.pdf

4. Clarifications in respect of prescribed electronic modes under section 269SU of the Income-tax Act, 1961.

It is hereby clarified that the provisions of section 269SU of the Act shall not be applicable to a specified person having only B2B transactions with some specified exceptions.

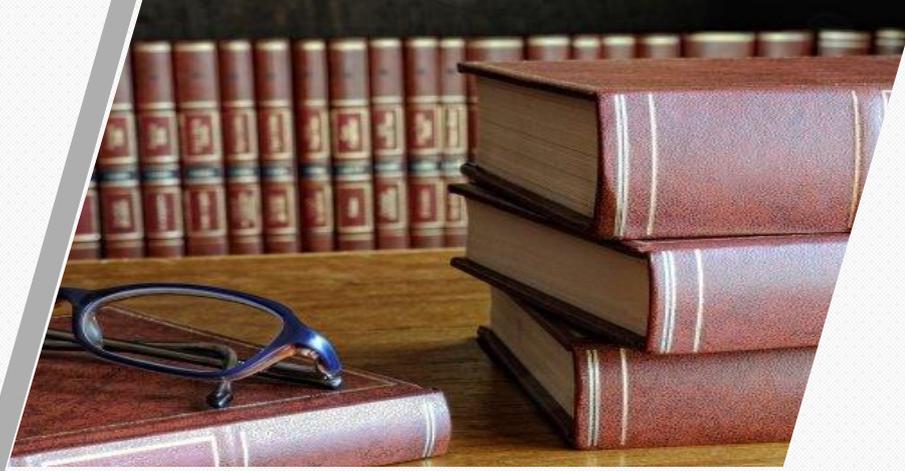
https://www.incometaxindia.gov.in/communications/circular/circular_no_12_2020.pdf

5. Amendment in Section 10 of Income-tax Act, 1961

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961, the Central Government hereby notifies for the purposes of the said clause. This notification shall apply with respect to the assessment years 2019-2020, 2020-2021, 2021-2022, 2022-2023 and 2023-2024.

https://www.incometaxindia.gov.in/communications/notification/notification_26_2020.pdf

Indirect Tax : Case Laws



Case Law 1:

IGST shall be levied on ex-factory supplies wherein movement terminates in another state

The applicant is a limited company engaged in the manufacturing of cement having two cement plants in the state of Telangana. The applicant also occasionally made supply of cement on ex-factory / works basis from their plants and thus have sought a clarification on what tax should be charged by them on ex-factory inter-state sales. The applicant submitted that as per Section 10 of the IGST Act 2017, place of supply shall be where movement of goods terminates and in the instant case when they make ex-factory sales, since delivery terminates at their factory gate itself, hence CGST & SGST should be charged on such supplies. However, the concerned officer opined that since the recipient of such supplies takes the goods to the ultimate destination which is located in states other than Telangana where he is registered, therefore IGST should be charged. The ruling authority observed that as per Section 10 of the IGST Act, where the supply involves movement of goods, the place of supply shall be the location when the delivery of such goods terminates irrespective of the fact movement is made by the supplier or the recipient. Although, there is a scope of inference that the delivery terminates at the factory gate itself, however this is not the point where the actual movement halts since the recipient

subsequently assumes the charge for transportation of goods up to the destination. Thus, the place where the movement finally terminates becomes the place of supply and since the location of supplier is in different state, hence it qualifies as an inter-state supply. Accordingly, it was held that IGST shall be charged in respect of ex-factory inter-state supplies made by the applicant.

**AUTHORITY FOR ADVANCE RULINGS –
TELANGANA IN M/S PENNA CEMENT
INDUSTRIES LIMITED [ADVANCE RULING
NO. TSAAR ORDER NO. 03/2020 DATED 2nd
MARCH 2020]**

Case Law 2:

Supply of Ice-cream along with various services taxable as ‘restaurant-service’

The applicant is a partnership firm and the distributors of “SCOOPS” ice cream. The applicant is engaged in supplying ice cream products to sub-distributors, hotels, party orders and retail outlets in Hyderabad. The applicant sought for rulings with regard to the applicability of provisions of Notification No. 46/2017-CT(R), dated 14.11.2017 and contended that the ice cream/ milk shakes are for human consumption and therefore, the applicable rate of tax would be 5% without credit of input tax as per item no.1 of Notification No. 46/2017-CT(R), dated 14.11.2017.

Indirect Tax : Case Laws

The ruling authority noticed that Notification No, 46/2017-CT(R), dated 14.11.2017 is only an amending notification which amends the basic Notification No.11/2017-CT(R), dated 28.06.2017 and the relevant part of the amendment was inserted under Sl. No. 7 of the said notification. As such the applicability has to be reckoned with reference to Notification No.11/2017-CT(R), dated 28.06.2017 (Sl. No. 7). After analysing the points raised by the applicant in the light of legal/statutory provisions enumerated in the latter notification, the ruling authority held out that the Ice cream and allied products sold in parlour along with certain service activities such as sitting, serving, air conditioning facility etc., parlour would fall within the term 'eating joint' and supply of ice cream along with the service activities would fall under the definition of 'restaurant service' which attracts 5% GST. Also, supplying of bulk ice creams to caterers do not involve any service and therefore the same has to be reckoned as supply of goods and hence provisions of the said notification are not applicable to such supplies. Further, serving ice creams as per the guest requirements or taste to party orders fall under the category of 'outdoor catering' service which attracts 5% GST. Yet, supplying ice cream products to pushcart vendors do not involve element of service and hence provisions of the said notification are not applicable.

**AUTHORITY FOR ADVANCE RULINGS –
TELANGANA IN M/s SRI VENKATESHWARA
AGENCIES (TSAAR Order No.2/2020, Dated
02.03.2020)**

Article-1

The Appellant is a private limited company engaged in providing shared workspace/Office Space to the freelancers, start-ups, small businesses, and large enterprises. Goods and services are procured from various contractors for fitting-out of the workspaces and applicable GST on such procurements has been paid. The said workspace being provided on rent, to various companies and individuals as sharing workspaces.

It was submitted that as per section 16(1) of the CGST Act, Input tax credit is available on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business. However, as per Section 17(5)(d) of the CGST Act, a restriction is imposed on eligibility of Input tax credit where goods and services or both received by the taxable person used for construction of an immovable property. For this purpose, the term 'construction' has been defined to include 're-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.'

The appellant sought an advance ruling (Ruling number No. KAR/ADRG 106/2019 dated 30th Sept 2019) in respect of eligibility of Input tax credit on detachable sliding and stacking glass partition which is movable in nature and capitalized as "furniture and fixture" and not as an immovable property. In advance ruling, it was ruled that the input tax credit of GST is not available on the detachable sliding and stacking glass partitions giving reasons that the fixing of sliding and stacking glass partitions amounts to addition or alteration to an immovable

Indirect Tax : Case Laws

property and used for the construction of an immovable property. The Appellant filed an appeal against this advance ruling.

The appellate authority observed that the intent of fixing the glass partitions is only to provide the clients a certain sense of privacy and for the purpose of demarcation of workspace area. There is no permanency in affixing such partitions as the same can be dismantled and re-fixed to signify a change in the dimensions of the workspace. The fixing of the partitions to the ground using nuts and bolts only serves to give a false sense of permanency while in reality it is not so. The detachable sliding and stackable glass partitions are movable property and addition /fixing of glass partitions does not amount to construction of immovable property. Therefore, the procurement of detachable sliding and stackable glass partitions will be eligible for input tax credit and will not be hit by the provisions of Section 17(5)(d) of the CGST Act.

[In reference to WeWork India Management Private Limited (GST AAAR Karnataka) Appeal/Order No. KAR/AAAR-17/2019-20 Dated 06th March 2020]

Indirect Tax

Notifications & Circulars



S. No Notifications

1. Seeks to bring into force Section 128 of Finance Act, 2020 in order to bring amendment in Section 140 of CGST Act w.e.f. 01.07.2017.

CBIC vide Notification No. 43/2020 – Central Tax hereby appoints 18-05-2020 when the provisions of section 128 of the CGST Act, shall come into force.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-43-central-tax-english-2020.pdf>

2. Seeks to extend the due date for furnishing of FORM GSTR 9/9C for FY 2018-19 till 30th September 2020.

CBIC vide Notification No. 41/2020 – Central Tax has sought to extend the time limit for furnishing of the GSTR-9 & 9C, for the financial year 2018-2019 till the 30th September 2020

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-41-central-tax-english-2020.pdf>

Corporate Legal & Regulatory Notifications



S. No Notifications

1. THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2020

(Ordinance dated June 5, 2020)

Insolvency and Bankruptcy Board of India (IBBI) vide its Ordinance dated June 05, 2020 has amended the Insolvency and Bankruptcy Code, 2016 (“Code”) to include provisions of Section 10A and Section 66(3). The said amendment has been made in view of the lockdown imposed to combat the COVID-19 pandemic and disruption caused by it on the normal business operations.

The following changes have been brought about by the said amendment:

- Inclusion of Section 10A- the said provision has been included to state that no application shall be filed against any corporate debtor under Section 7 (Initiation of corporate insolvency resolution process by financial creditor), 8 (Insolvency resolution by operational creditor) and 9 (Application for initiation of corporate insolvency resolution process by operational creditor) of the Code for any default arising on or after March 25, 2020 for a period of six months or such further time period, not exceeding one year from such date, as may be notified in this behalf.
- Inclusion of Section 66 (3)-the said provision has been included to state that an application under Section 66(2) shall not be filed by a resolution professional seeking contribution to the assets of the corporate debtor from a director or partner of the corporate debtor, in respect of default against which initiation of corporate insolvency resolution process is suspended under section 10A.

<https://www.ibbi.gov.in/uploads/legalframework/741059f0d8777f311ec76332ced1e9cf.pdf>

2. CLARIFICATION ON DISPATCH OF NOTICE U/S 62(2) OF COMPANIES ACT, 2013 BY LISTED COMPANIES FOR RIGHTS ISSUE OPENING UP TO JULY 31, 2020

(MCA circular dated May 11, 2020)

Ministry of Corporate Affairs (MCA) vide its General circular dated May 11, 2020 has issued clarification on mode of issue of notice referred in Section 62(1)(a)(i) read with Section 62(2) of Companies Act, 2013.

MCA has examined various representations of stakeholders regarding difficulty faced by companies in sending notices through postal or costal services on account of threat caused by COVID-19. Further, MCA also considered the circular issued by SEBI on May 06, 2020 vide circular no. SEBI/HO/CFD/DIL2/CIR/P/2020/78.

As per the said clarification MCA clarifies that, Listed Companies which comply the aforementioned SEBI circular dated May 06, 2020, facing the inability to dispatch the notice

Legal & Regulatory

referred in para 1 of the said circular through registered post or speed post or courier would not be viewed as violation of Section 62(2) of Companies Act, 2013.

Link for MCA circular: http://www.mca.gov.in/Ministry/pdf/Circular21_11052020.pdf

Link for SEBI circular: https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing_46652.html

3. AMENDMENT IN SCHEDULE VII

(MCA notification dated May 26, 2020)

The Ministry of Corporate Affairs (MCA) vide its notification dated May 26, 2020 has inserted contribution to the PM CARES Fund as a permissible CSR activity.

The notification shall be deemed to have come into force on March 28, 2020.

Link: http://www.mca.gov.in/Ministry/pdf/Notice_27052020.pdf

4. EXTENSION OF TIME PERIOD FOR NAMES RESERVED AND RESUBMISSION OF FORMS

The Ministry of Corporate Affairs (MCA) has provided the extension to the companies and LLPs in relation to the names reserved and resubmission of forms.

The extension has been provided on case to case basis beyond May 31, 2020 for the below mentioned cases, if the due date is expiring between March 15, 2020 to May 31, 2020:

1. In case of company/ LLP incorporation, name which is already approved by the authority would get extension of 20 days beyond May 31, 2020 if the name is expiring any day between March 15, 2020 to May 31, 2020.
2. In case of change of name by the company, name which is already approved by the authority would get extension of 60 days beyond May 31, 2020 if the name is expiring any day between March 15, 2020 to May 31, 2020.
3. In case of any SRNs for company/ LLP where last date of Resubmission (RSUB) is expiring between March 15, 2020 to May 31, 2020, an extension of 15 days beyond May 31, 2020 would be allowed. However, for SRNs already marked under not to be taken on record (NTBR), an extension would be provided on case to case basis.
4. IEPF-5 SRNs where last date of filing e-Verification Report (for both Normal as well as Resubmission filing) falls between March 15, 2020 to May 31, 2020, would be allowed to file the form till September 30, 2020. However, for SRNs already marked under 'Pending for Rejection u/r 7(3)' and 'Pending for Rejection u/r 7(7)', extension would be provided on case to case.

Link: http://www.mca.gov.in/Ministry/pdf/Extension_22042020.pdf

Legal & Regulatory

5. UPWARD REVISION OF MSME DEFINITION

(MSMED notification dated June 01, 2020)

Ministry of Micro, Small and Medium Enterprises (MSMED) vide Gazette ID no. CG-DL-E-01062020-219680 and S.O. 1702(E) dated June 01, 2020 has further notified criteria for classification of micro, small and medium enterprises shall come into effect from July 01, 2020.

The revised definition is mentioned as below:

Classification	MSME Classification (valid up to 30th June 2020)	Revised MSME Classification (valid w.e.f. July 01, 2020)
	Manufacturing & Services	Manufacturing & Services
Micro	Investment < Rs. 1 cr. and Turnover < Rs.5 cr.	Investment < Rs. 1 cr. and Turnover < Rs.5 cr.
Small	Investment < Rs. 10 cr. and Turnover < Rs.50 cr.	Investment < Rs. 10 cr. and Turnover < Rs.50 cr.
Medium	Investment < Rs. 20 cr. and Turnover < Rs.100 cr.	Investment < Rs. 50 cr. and Turnover < Rs.250 cr.

Link: <http://egazette.nic.in/WriteReadData/2020/219680.pdf>

6. SEBI FURTHER RELAXES VARIOUS COMPLIANCES FOR COMPANIES DUE TO COVID-19 PANDEMIC

(SEBI circular dated May 12, 2020)

Securities and Exchange Board of India (SEBI) vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020 has issued notification in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 101 of the SEBI (LODR) Regulations, 2015. It shall come into force with immediate effect.

The relaxations issued by SEBI through this Circular is mentioned below:

A. Relaxations necessitating out of MCA circulars

The Ministry of Corporate Affairs (MCA), vide circulars dated April 8, 2020 and April 13, 2020 provided certain relaxations for companies, including conducting Extraordinary General Meeting (EGM) through Video Conferencing (VC) or through other audio visual means (OAVM) (hereinafter referred to in this circular as 'electronic mode'). Further, vide circular dated May 5, 2020, MCA also extended these relaxations to AGMs of companies conducted during the calendar year 2020; the circular has also dispensed with the printing and dispatch of annual reports to shareholders.

Accordingly, the following related provisions of the LODR are relaxed:

Legal & Regulatory

Sr. No.	SEBI (LODR) Regulations, 2015	Relaxations
1.	Requirement of sending physical copies of annual report to shareholders	The requirements of Regulations 36 (1)(b) and (c) and Regulation 58 (1)(b) &(c) of the LODR are dispensed with for listed entities who conduct their AGMs during the calendar year 2020 (i.e. till December 31, 2020)
2.	Requirement of proxy for general meeting	The requirement under Regulation 44 (4) of the LODR is dispensed with temporarily, in case of meetings held through electronic mode only. This relaxation is available for listed entities who conduct their AGMs through electronic mode during the calendar year 2020 (i.e. till December 31, 2020).
3.	Requirement of dividend warrants/cheques	The requirements of Regulation 12 which prescribes issuance of 'payable at par' warrants or cheques in case it is not possible to use electronic modes of payment, will apply upon normalization of postal services. In cases where email addresses of shareholders are available, listed entities shall endeavour to obtain their bank account details and use the electronic modes of payment specified in Schedule I of the LODR.

B. Relaxation from publication of advertisements in the newspapers.

Sr. No.	SEBI (LODR) Regulations, 2015	Relaxations
1.	Regulation 47 - publication of advertisements in newspapers	Exemptions from publication of advertisements in newspapers are extended for all events scheduled till June 30, 2020

C. Relaxation from publishing quarterly consolidated financial results under Regulation 33(3)(b) of the LODR for certain categories of listed entities:

Sr. No.	SEBI (LODR) Regulations, 2015	Relaxations
1.	Consolidated financial results under Regulation 33(3)(b)	Listed entities which are banking and / or insurance companies or having subsidiaries which are banking and / or insurance companies may submit consolidated financial results under Regulation 33(3)(b) for the quarter ending June 30, 2020 on a voluntary basis. However, they shall continue to submit the standalone financial results as required under Regulation 33(3)(a) of the LODR. If such listed entities choose to publish only standalone financial results and not consolidated financial results, they shall give reasons for the same

Link:

https://www.sebi.gov.in/legal/circulars/may-2020/additional-relaxation-in-relation-to-compliance-with-certain-provisions-of-sebi-listing-obligations-and-disclosure-requirements-Regulations-2015-covid-19-pandemic_46661.html

Column



Goods Transport Agency under GST

By –Abhishek Manchanda

IBA

The levy of Service Tax on Road Transportation Service has always been a contentious issue. Road transporters have been retaliating levy of tax on road transportation service ever since the government charged service tax on goods transport operators. As a consequence, service tax levied on the services of transportation of goods by road were exempted under the service tax regime (except the services GTA)

The legal position prevailing under Service Tax on Road Transportation Service is being continued under the GST regime. The services of mere transportation of goods by road, unless it is a service rendered by a goods transportation agency (GTA), is exempt from GST.

Who is a GTA – Goods Transport Agency? :

Under the GST laws, as per clause (ze) of notification no.12/2017-Central Tax (Rate) dated 28.06.2017

“goods transport agency” means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called

Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA.

Charge of GST :

A GTA has the following options to pay tax under the GST regime per the given conditions-

Service by a GTA	GST rate
Carrying- agricultural produce milk, salt and food grain including flour, pulses and rice organic manure newspaper or magazines registered with the Registrar of Newspapers relief materials meant for victims of natural or man-made disasters defence or military equipment	0% (Exempt items)

<i>Carrying-</i> goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750	0%
Transporting any other goods (GST paid by GTA)	GST charged @ 5%- but no ITC shall be available by the recipient
	<i>Or</i> GST Charged @ 12%- and ITC available to the recipient
Transporting goods of 7 specified recipients- -Factory registered under the Factories Act,1948; -A society registered under the Societies Registration Act, 1860 or under any other law -A co-operative society established under any law; -A GST registered person -A body corporate established by or under any law; or -A partnership firm whether registered or not (including AOP) -Casual taxable person	GST Charged @ 12 %- and ITC available to the recipient (Forward Charge)
	<i>or</i> if GTA Charges 5%, RCM applies and recipient must deposit tax and ITC cannot be availed

In addition to this, the GST Council inserted a new clause 21A via Notification No. 32/2017-Central Tax (Rate) dated 13th Oct 2017. As per this clause, services provided by a GTA to an unregistered person, including an unregistered casual taxable person, are exempted from GST.

Eligibility of Input Tax Credit :

As mentioned above, there are two options through which a GTA can pay GST.

- **5% GST :** As highlighted in the above table, if the GTA opts for the 5% tax charge, it dismisses the option to avail any ITC on such transaction
- **12% GST :** As mentioned above, if the GTA opts for the 12% tax charge, ITC shall be available to the recipient to avail and take benefit from- irrespective of the class of the recipient

Conclusion :

The above discussion shows that not all transport of goods by road is by a GTA. To qualify as services of GTA, the GTA should be necessarily issuing a consignment note. Only services provided by a GTA are taxable under GST. Services of transportation of goods by a person other than GTA are exempt. Moreover, in cases where the service of GTA is availed by the specified categories of persons in the taxable territory, the recipients who avail such services are the ones liable to pay GST and not the supplier of services unless the GTA opts for collecting and paying taxes @ 12%. In all other cases where GTA service is availed by persons other than those specified, the GTA service supplier is the person liable to pay GST. The GTA service supplier is not entitled to take ITC on input services availed by him if tax is being charged @ 5%. In case the GTA service supplier hires any means of transport to provide his output service, no GST is payable on such inputs.

In a nutshell, the GST law continues the provisions prevailing under the Service Tax regime. In respect of those who provide agency services in transport, the liability is cast on the recipients in most of the cases or unless option to pay under forward charge has been exercised by the GTA

Beating Lockdown Blues



Our team members effectively utilized this lockdown period and shared their experience. Enjoyed family time, relished good dishes, tried hands at cooking, executed domestic chores, revived their hobbies, focused on their well-being.

Started with New Normal



Brave is finding a new normal. We are back at our workplace with zeal. We thank our employees for their courage and commitment

Upcoming Compliances

Date	Compliance
June 11, 2020	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 2020
June 13, 2020	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of May 2020.
June 15, 2020	Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2020
	First instalment of advance tax for the assessment year 2021-22
	Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during Financial Year 2019-20
June 20, 2020	Due date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover of more than 5 Crore the month of May 2020.
June 22, 2020	Due Date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover up to 5 crore and principal place of business in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep
June 24, 2020	Due Date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover up to 5 crore and principal place of business in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi

Upcoming Compliances

NOTES :

1. The CBDT vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31-03-2020 has extended all respective due dates, falling during the period from 20-03-2020 to 29-06-2020, till June 30, 2020.

The benefit of extended due date shall not be available in respect of payment of tax. However, any delay in payment of tax which is due for payment from 20-03-2020 to 29-06-2020 shall attract interest at the lower rate of 0.75% for every month or part thereof if same is paid after the due date but on or before 30-06-2020.

2. **The due dates listed above are the dates as prescribed in the GST Acts. However,**

- **For taxpayers having aggregate turnover of up to INR 5 crores in the preceding FY:**

All late fees, interests, and penalties for late filing of GST returns have been dismissed till 30th June 2020

- **For taxpayers having aggregate turnover of more than INR 5 crores in the preceding FY:**

All late fees and penalties for late filing of GST returns have been dismissed if the returns are filed by 24th June 2020, however Interest on late filing of GSTR-3B would still be applicable @ 9% p.a. instead of 18% p.a. if the return is filed by 24th June 2020 (which shall be applicable only 15 days after the original due date for GSTR-3B)

Editorial Team



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IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

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