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BUSINESS ADVISORS

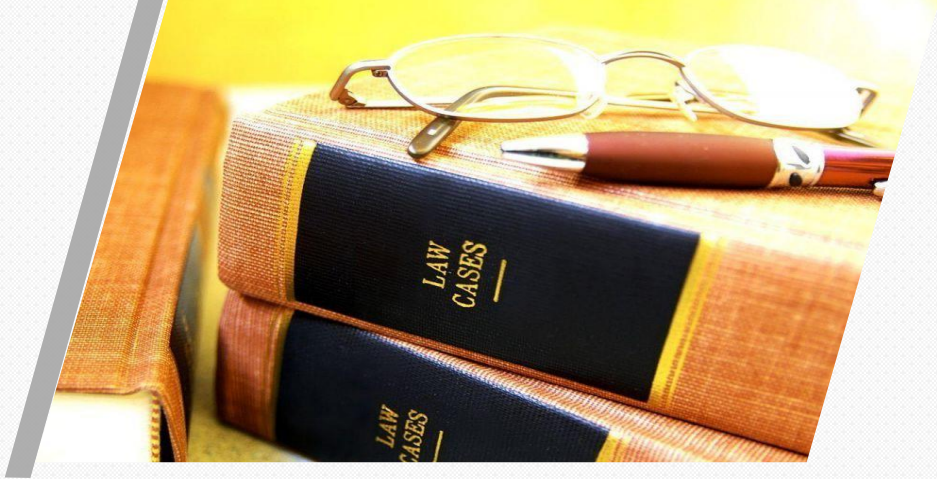
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June - 2021

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Direct Tax Case Laws



Case Law 1:

Where assessee was not carrying on any business independently but was only a partner in a firm, interest and salary received by assessee could not be construed as business income under section 28(v) and accordingly, Assessee's claim of estimating income on presumptive basis under section 44AD with respect to interest and remuneration earned from partnership firm had rightly been denied

The assessee is an individual partner in a partnership firm who filed his return of under consideration admitting a total income of Rs. 43.53 lakhs. While filing the return of income, the assessee had applied the presumptive rate of tax at 8 per cent under section 44AD and returned Rs. 4.68 lakhs as income from the remuneration and interest received from the partnership firm. On scrutiny assessment, this claim made by assessee was disallowed.

As section 44AD is a special provision for computing profits and gains of profession on presumptive basis and uses expression total turnover or gross receipts which pertains to a sales turnover.

Admittedly, the assessee in the instant case was not carrying on any business and has not done any sales nor rendered any services but has been only receiving remuneration and interest from the partnership firm which by itself could never

translate into gross receipts or turnover of a business of being partners in a firm.

It was found that Section 28(v) mentions about section 40(b) stating that only remuneration and salary received from a firm to the extent eligible under section 40(b) would be considered as profits and gains of the business or profession of the recipient partner. Further, it was observed that the language used in the said provision is in the negative as it states that certain amounts shall not be deducted while computing income under the head 'Profits and gains of business or profession'.

Since, any deduction allowable under the provision of sections 30 to 38(1) be deemed to have been already given full effect to and no further deduction under those sections shall be allowed. Thus, conspicuously section 28(v) has not been included in section 44AD (2) which deals with any interest, salary, bonus, commission or remuneration by whatever name called, due to or received by, a partner of a firm from such firm.

Therefore, Assessee's claim of estimating income on presumptive basis under section 44AD with respect to interest and remuneration earned from partnership firm had rightly been denied.

Anandkumar v. Assistant Commissioner of Income Tax

Direct Tax : Case Laws

FFE Minerals India (P.) Ltd. v. Joint Commissioner of Income-tax

Case Law 2:

Where assessee, a proprietary concern, transferred its assets and liabilities to a private limited company and cost of acquisition and full value of consideration received on sale were same figure, no capital gains had accrued or were received by assessee and thus, addition under head capital gains was not warranted and the provisions of section 56(2)(vii)(c) are not applicable when subject matter of transfer is immovable property

The assessee was engaged in the business of trading in stock as a sole proprietor. During AY 2012-13, he had transferred his business to a private Limited Company JST whose all assets and liabilities belonging to assessee had been transferred for a consideration of Rs. 2.71 crores. However, assessee claimed that there was no transfer in view of section 47(xiv), hence transaction was not eligible to levy of tax as capital gains.

The Assessing Officer denied such benefit claimed by the assessee and computed the income under the head Income from other sources after valuing allotment of 40,000 shares at a premium i.e, Rs. 400 per share received by the assessee from under rule 11UA by invoking the provisions of section 56(2)(vii)(c).

However, on further appeal the assessee submitted that such provisions could be invoked only when the assessee acquires property other than immovable property for a consideration which is less than the FMV of these properties. In such cases, only the

FMV of the property over and above the sale consideration is assessed as income from other sources.

It was held that with respect to the computation of capital gains, Section 45 specifies for deeming the sale price in the case of equity shares. Such as the value at which the shares or the assets of the company 'A' was taken over by the Limited Liability Partnership firm, would be the sale price and the cost of acquisition thereof is to be as per books of the erstwhile company.

Since the cost of acquisition and the full value received on sale are the same figure, no capital gain has accrued or was received by the assessee.

While computing income under the head 'capital gains', the provisions of section 56(2)(vii)(c), cannot be invoked as it is not applicable on transfer of 'immovable property'. Also, when a value is fixed for a share allotted, it reflects the market value of asset transferred. If the shares are valued on the date of transfer, the value would come to Rs. 10 per share. The Assessing Officer seeks to value the already allotted 40,000 equity shares after the date of transfer at a premium of premium of Rs. 400 per share which gave the company premium of Rs.1.56 crores which is not permissible.

Therefore, both the addition made under the head 'Capital Gain' as well as under the head 'income from other sources' on issue of transfer was deleted.

Ravi Jalan v. Income-tax Officer

Direct Tax : Case Laws

Case Law 3:

Where assessee sold one of its business undertakings with all its assets and liabilities together with all licences, permits, approvals, registration, contracts and other contingent liabilities for a slump price, its case would fall within meaning of section 50B and, thus, profit earned by assessee from said transaction would be taxable as long-term capital gain

During relevant year, assessee sold its sea food business undertaking for a lump-sum consideration as a going concern. The Assessing Officer held that it was a case of slump sale within meaning of section 50B and, thus, profit earned by assessee was taxable as long-term capital gain.

The Commissioner (Appeals) upheld the order passed by Assessing Officer. The assessee filed instant appeal contending that what had been sold represented depreciable assets which had to be treated as business receipts only.

Section 2(42C) defines 'slump sale' to mean the transfer of one or more undertakings as a result of sale for a lump sum consideration, without values being assigned to the assets and liabilities of such a sale. In other words, if an undertaking is transferred as a going concern with all its assets and liabilities, without valuations having been assigned to individual assets such a transaction is to be regarded as a 'slump sale'.

From this, it is clear where the assets and liabilities of an undertaking are sold as a group or lumped together, such a sale would qualify as a slump sale.

As per agreement, the assessee sold sea food business undertaking for a lumpsum consideration as a going concern. On consideration of various stipulations and provisions stated in the agreement, it is clear that the intention of the parties was to sell the entire sea food business undertaking for a lumpsum consideration which is nothing but slump purchase price.

From the reading of various clauses of the sale deed that the assets of the assessee including goodwill, intellectual property rights, trademark were sold for a lumpsum consideration. Since the assets and liabilities of the sea food business undertaking were sold by the agreement the sale will consequently fall in line with the idea of slump sale as per the provisions of section 2(42C). Since the assessee sold the entire undertaking with all its assets and liabilities together with all licences, permits, approvals, registration, contracts, employees and other contingent liabilities also for a slump price, this kind of sale would fall under the purview of section 50B of the Act. In view of the above, the provisions of section 50B are applicable so as to ascertain computation of capital gain in this case and therefore, the ground of appeal of the assessee was dismissed.

Amalgam Foods Ltd. v. Deputy Commissioner of Income-tax

Direct Tax Notifications



1. Extension of time limits of certain compliances to provide relief to taxpayers in view of the severe pandemic

(Circular No. 9/2021 dated May 20, 2021)

The Central Board of Direct Taxes, vide circular No. 9/2021 dated May 20, 2021 has provided various relaxations in time limits, in exercise of its power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), to provide relief to taxpayers in view of the severe pandemic.

Link: https://www.incometaxindia.gov.in/communications/circular/circular_9_2021.pdf

2. In the Income-tax Rules, 1962, the Rule-11UAE is inserted: "Computation of Fair Market Value of Capital Assets" for the purposes of section 50B of the Income-tax Act

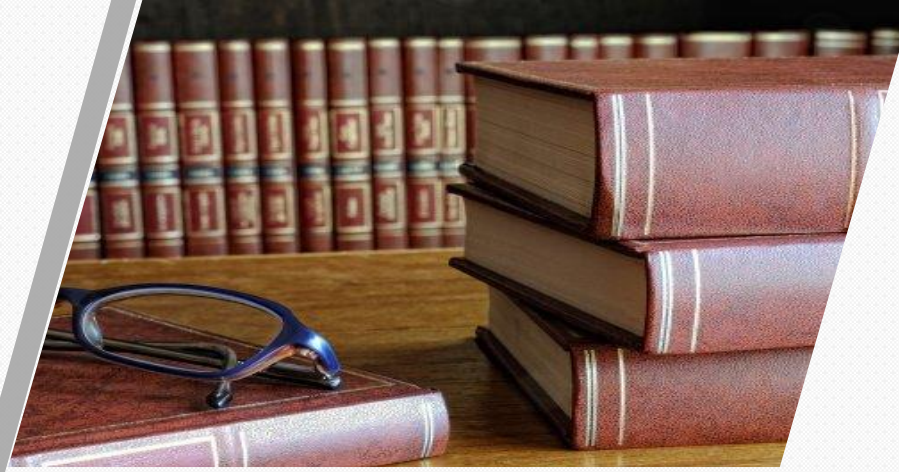
(Notification No.68/2021/F. No.370142/16 /2021-TPL dated May 24, 2021)

In exercise of the powers conferred by Section 50B which provides the mechanism for computation of capital gains arising on slump, the Central Board of Direct Taxes hereby makes further to amendment by inserting Rule 11UAE.

Link:

https://www.incometaxindia.gov.in/communications/notification/notification_68_2021.pdf

Indirect Tax : Case Laws



Case Law 1:

Cancellation of registration due to using bogus E-way bills

The appellant is engaged in the business of selling and purchasing of Clarified Butter (Ghee), Butter and other milk products. In this case, registration of appellant under GST was cancelled on the grounds that they are involved in the practice of downloading E-waybill without transportation of Goods i.e., physical movement of goods not there. The appellant further contended that the said collection of tax and penalty by the respondents is through coercion and threat even though cancellation is covered by all the documents. It is alleged that it is an inter-State sale and the respondents cannot deny the same and demand and collect the tax in the way they have done, which is arbitrary and without jurisdiction. In such circumstances, the impugned order deserves to be set aside. The appellant, in support of his contention, has placed reliance on the judgment of High Court of Kerala in the case of Kannangayathu Metals Vs. Asst. State Tax Officer to contend that as per Section 129 of the CGST Act, there is no mandate for detaining goods merely because driver took an alternate route to reach the destination, if the goods are covered by valid E-way Bill. He further placed reliance on another judgment of High Court of Kerala in the case of Relcon Foundations (P) Ltd. Vs. Asstt. State Tax Officer, in which it is held that detention of the vehicle under Section 129 of GST act is not Justified. In response of the

allegations imposed by the appellant, respondents highlighted that If the material was actually delivered, then why the appellant has failed to present it in front of authorities when demanded. Secondly, Toll plaza receipts were not available with the appellant. As the proper investigation was done by the concerned authorities, therefore decision taken for cancellation stands to continue and should not be set aside.

[Writ Appeal No.1823/2019, Judgment dated 07.04.2021, M/s Om Trading Company Vs. Deputy Commissioner of State Tax]

Case Law 2:

HC Directs Revenue to revive incorrectly cancelled GST-registration

GST Registration of the Petitioner was cancelled due to non-filing of return for continuous 6 months. In response, Petitioner made two applications u/s 30 for the revival of registration. Both were rejected; first, due to non-compliance by petitioner of notice issued by assessing officer and second, due to outstanding interest on belated payment of tax and for allegedly wrongful claim of ITC. After filling all the returns, petitioner made an appeal before appellate authority which was rejected on the ground of availing ineligible ITC. Subsequently, writ petition was filed in Madras H.C. The Authority

Indirect Tax : Case Laws

observes that the contention of AAR that revival of registration is conditional upon petitioner satisfying tax dues and substantiating claim of ITC is misconceived. Court clarifies that the petitioner sought revival of registration only, and in the guise of considering application for revocation, AAR cannot embark on the process of assessment. Court remarks that. Reject the revival of registration on the grounds of incorrectly availed ITC would be 'putting the cart before the horse'. The court also states that since petitioner has filed all monthly compliances from January 2017 to September 2020 and annual returns for FY 2017-2018 and 2018-2019 along with late fees for belated returns, which are the only conditions to be satisfied for revocation of registration, Thus, Court firmly opines that the cancellation of registration in this case is "incorrect and improper". The Court hence directs the SGST officer to pass an order reviving the registration of the assessee and grants liberty to take up the matters afterwards of assessment in terms of applicable provisions.

[W.P. NO. 15081 of 2020, Ramkrishna Mahalingam Vs. State Tax officer dated 30.04.2021]

Indirect Tax

Notifications & Circulars



1. Extension of Due-Dates of Compliances

Amidst the current situation of pandemic, CBIC vide Notification No. 27/2021 – Central Tax, Notification No. 26/2021 – Central Tax, Notification No. 25/2021 – Central Tax, Notification No. 24/2021 – Central Tax, Notification No. 17/2021 – Central Tax, Notification No. 14/2021 – Central Tax & Notification No. 12/2021 – Central Tax has extended due dates of various compliances by taxpayers. The details are summarized below:

❖ **Filing of FORM GSTR-1/IFF :**

Return Type(Form)	To be filed by	Tax period	Previous Due Date	Extended Due Date
Form GSTR-1 (Monthly)	Normal Taxpayer filing Monthly returns	May 2021	June 11, 2021	June 26, 2021
Form IFF (optional)	Normal Taxpayers under QRMP Scheme		June 13, 2021	June 28, 2021

❖ **Filing of returns by Composition, NRTP, ISD, TDS & TCS Taxpayers:**

Return Type(Form)	To be filed by	Tax period	Previous Due Date	Extended Due Date
GSTR-4	Composition Taxpayers (Annual Return)	FY 2020-21	May 31, 2021	July 31, 2021
GSTR-5	Non Resident Taxpayers (NRTP)	March/April /May, 2021	June 11, 2021	June 30, 2021
GSTR-6	Input Service Distributors (ISD)	April/May, 2021	May/June,13, 2021	
GSTR-7	Tax Deductors at Source (TDS deductors)	-	May/June 10, 2021	
GSTR-8	Tax Collectors at Source (TCS collectors)	-		

❖ **Filing of FORM ITC-04 :**

The due date for filing of Form GST ITC-04 (to be filed by Principal/Manufacturer for goods sent/received/supplied from Job Worker) for the quarter Jan-March,2021, has been extended till June 30, 2021.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-27-central-tax-english-2021.pdf>

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-26-central-tax-english-2021.pdf>

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-25-central-tax-english-2021.pdf>

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-24-central-tax-english-2021.pdf>

Indirect Tax

Notifications & Circulars



<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-17-central-tax-english-2021.pdf>

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-14-central-tax-english-2021.pdf>

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-12-central-tax-english-2021.pdf>

2. Lowering of Interest Rate under scheme of monthly filing of GST returns and QRMP for the tax periods March,2021 to May,2021 :

CBIC vide Notification No. 18/2021 – Central Tax seeks to provide relief to the taxpayers by lowering of interest rate for the tax period March,2021 to May,2021

Tax Period	Class of Taxpayers	Lowering of Interest Rate
March 2021	Taxpayer having an aggregate turnover of more than Rs. 5 crores in the preceding financial year.	9% for the first 15 days from the due date i.e., April 20, 2021 and 18% thereafter.
	Taxpayer having an aggregate turnover up to Rs. 5 crores in preceding financial year and have opted for monthly filing of returns.	Nil for the first 15 days from the due date i.e., April 20 ,2021, 9% for the next 45 days, and 18% thereafter.
	Taxpayer having an aggregate turnover up to Rs. 5 crores in the preceding financial year and have opted for QRMP scheme.	Nil for the first 15 days from the due date i.e., due date for making challan payment – April 25,2021, 9% for the next 45 days, and 18% thereafter.
April 2021	Taxpayer having an aggregate turnover of more than Rs. 5 crores in the preceding financial year.	9% for the first 15 days from the due date i.e., May 20 ,2021 and 18% thereafter.
	Taxpayer having an aggregate turnover up to Rs. 5 crores in preceding financial year and have opted for monthly filing of returns.	Nil for the first 15 days from the due date i.e., May 20,2021, 9% for the next 30 days, and 18% thereafter.
	Taxpayer having an aggregate turnover up to Rs. 5 crores in the preceding financial year and have opted for QRMP scheme.	Nil for the first 15 days from the due date i.e., due date for making challan payment – May 25,2021, 9% for the next 30 days, and 18% thereafter.
May 2021	Taxpayer having an aggregate turnover of more than Rs. 5 crores in the preceding financial year.	9% for the first 15 days from the due date i.e., June 20,2021 and 18% thereafter.

Indirect Tax

Notifications & Circulars



May 2021	Taxpayer having an aggregate turnover up to Rs. 5 crores in preceding financial year and have opted for monthly filing of returns.	Nil for the first 15 days from the due date i.e., June 20,2021, 9% for the next 15 days, and 18% thereafter.
	Taxpayer having an aggregate turnover up to Rs. 5 crores in the preceding financial year and have opted for QRMP scheme.	Nil for the first 15 days from the due date i.e., due date for making challan payment – June 25,2021, 9% for the next 15 days, and 18% thereafter.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-18-central-tax-english 2021.pdf>

3. Rationalization of Late fees for delay in filing of various GST Returns:

CBIC vide Notification No. 19/2021 – Central Tax seeks to rationalize late fee for delay in filing of FORM GSTR-3B for the tax periods March,2021 to May,2021

- Rationalization of Late fees for delay in filing of FORM GSTR-3B

Tax Period	Class of Taxpayers	Waiver of Late fee
March 2021	Taxpayer having an aggregate turnover of more than Rs. 5 crores in the preceding financial year.	Fifteen days from the due date of furnishing return i.e., April 20,2021.
	Taxpayer having an aggregate turnover up to Rs. 5 crores in preceding financial year and have opted for monthly filing of returns.	Sixty days from the due date of furnishing return i.e., April 20 ,2021
April 2021	Taxpayer having an aggregate turnover of more than Rs. 5 crores in the preceding financial year.	Fifteen days from the due date of furnishing return i.e., May 20, 2021.
	Taxpayer having an aggregate turnover up to Rs. 5 crores in preceding financial year and have opted for monthly filing of returns.	Forty-five days from the due date of furnishing return i.e., May 20 ,2021.
May 2021	Taxpayer having an aggregate turnover of more than Rs. 5 crores in the preceding financial year.	Fifteen days from the due date of furnishing return i.e., June 20 ,2021.

Indirect Tax

Notifications & Circulars



May 2021	Taxpayer having an aggregate turnover up to Rs. 5 crores in preceding financial year and have opted for monthly filing of returns.	Thirty days from the due date of furnishing return i.e., June 20 ,2021.
January-March 2021	Taxpayer having an aggregate turnover up to Rs. 5 crores in the preceding financial year and have opted for QRMP scheme.	Sixty days from the due date of furnishing return i.e., Apr 22, 24 2021

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-19-central-tax-english-2021.pdf>

❖ Rationalization of Late fees for delay in filing of FORM GSTR-4 :

CBIC vide Notification No. 21/2021 – Central Tax seeks to rationalize late fee for delay in filing of FORM GSTR-4 for the financial year 2021-22 and onwards.

The total amount of late fee payable for financial year 2021-22 onwards, by the registered persons who fail to furnish the return in FORM GSTR-4 by the due date, shall stand waived –

- (i) which is in excess of two hundred and fifty rupees where the total amount of central tax payable in the said return is nil;
- (ii) which is in excess of one thousand rupees for the registered persons other than those covered under clause (i)

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-21-central-tax-english-2021.pdf>

4. Other Extensions:

CBIC vide Notification No. 24/2021 – Central Tax has extended the due date for completion or compliance of any action, by any authority or by any person, which falls between April 15,2021 and June 29, 2021, has been extended up to June 30, 2021.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-24-central-tax-english-2021.pdf>

5. Seeks to appoint 01.06.2021 as the day from which the provisions of section 112 of Finance Act, 2021, relating to amendment of section 50 of the CGST Act, 2017 shall come into force.

Indirect Tax

Notifications & Circulars



CBIC vide Notification No.16/2021- Central Tax appoints 1st day of June 2021 on which provision of section 112 of the Finance Act, 2021 shall come into force which provides that interest, in respect of supplies made during a tax period and declared in the return for the said period after the due-date, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-16-central-tax-english-2021.pdf>

6. Seeks to make fourth amendment (2021) to CGST Rules, 2017

CBIC vide Notification No. 15/2021 – Central Tax makes the following rules to amend the Central Goods and Services Tax Rules, 2017 :-

✓ **Revocation of cancellation of registration:**

CBIC vide the said notification provides that the registered person may submit an application for revocation of cancellation of registration, to proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration “or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30”.

✓ **Refund:**

CBIC vide the said notification provides that the time period, from the date of filing of the refund claim till the date of communication of the deficiencies, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies."

CBIC also provides that the applicant, at any time before issuance of provisional/final refund sanction order or payment order or refund withhold order or notice in prescribed form respectively, withdraw the said application for refund.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-15-central-tax-english-2021.pdf>

Legal & Regulatory Notifications



S. No Notifications

1. Spending of CSR funds for 'Creating Health Infrastructure for Covid Care', 'Establishment of Medical Oxygen Generation and Storage Plants' etc. Are eligible for CSR activities

(MCA circular dated May 05, 2021)

MCA vide Circular No. 09/2021 dated May 05, 2021 has clarified that spending of CSR funds for 'Creating health infrastructure for COVID care', 'Establishment of medical oxygen generation and storage plants', 'Manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or similar such activities are eligible CSR activities under Schedule VII of the Companies Act, 2013.

Link: http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo5_22042021.pdf

2. Companies can offset the excess CSR amount spent towards 'PM Care Fund' against the mandatory CSR obligation for FY 2020-21

(MCA circular dated May 20, 2021)

MCA vide its circular dated May 20, 2021 has clarified where a company has contributed any amount to 'PM CARES Fund' on 31.03.2020, which is over and above the minimum prescribed amount (i.e. 2% of average net profit) for FY 2019-20, and such excess amount or part thereof is offset against the mandatory CSR obligation for FY 2020-21 in terms of the MCA appeal uploaded on 31.03.2020, then the same shall not be viewed as a violation subject to the conditions that:

- The amount offset as such shall have factored the unspent CSR amount for previous financial years, if any;
- CEO shall certify that the contribution to "PM CARES Fund" was indeed made on March 31, 2020 in pursuance of the MCA appeal and the same shall also be so certified by the statutory auditor of the company; and
- The details of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board's Report for FY 2020-21.

Link: <https://mca.gov.in/bin/ebook/dms/getdocument?doc=14175&type=download>

Legal & Regulatory

3. Change in format of business responsibility reporting by listed entities

(SEBI circular dated May 10, 2021)

SEBI vide its circular dated May 10, 2021 has amended the format of Business responsibility reporting (BRR). Through this amendment, SEBI has introduced new reporting requirements known as Business Responsibility and Sustainability Report (BRSR). The format of BRSR along with the guidance note on the same is given in Annexure I and II of the circular respectively.

BRSR shall be mandatory for top 1000 listed entities with effect from the financial year 2022-23

Key highlights of BRSR:

- Disclosures from listed entities on their performance against the nine principles of the 'National Guidelines on Responsible Business Conduct' (NGBRCs) and reporting under each principle is divided into essential and leadership indicators
- The essential indicators are required to be reported on mandatory basis while the reporting of leadership indicators is on a voluntary basis
- The BRSR shall have quantitative and standardized disclosures on Environment, Social and Governance (ESG) parameters to enable comparability across companies, sectors and time.
- The listed entities that are already preparing and disclosing sustainability reports based on the internationally accepted reporting frameworks (such as GRI, SASB, TCFD or integrated Reporting) can cross-reference the disclosures made under such framework to the disclosures sought under the BRSR.

Link:

https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

4. Format of compliance report on corporate governance by listed entities

(SEBI circular dated May 31, 2021)

SEBI vide its circular dated May 31, 2021 has amended the format of Corporate Governance Report. As per the regulation 27(2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015; a listed entity is required to submit report on Corporate Governance and this amendment shall be effective from financial year 2021-22.

Legal & Regulatory

Through this amendment, half yearly disclosures with respect to the loans/ guarantees/ comfort letters/ securities etc. is required to be made as per the format provide in Annex IV of the circular. The disclosures in particular shall be with respect to the following:

- a) Any loan or any other form of debt advanced by the listed entity directly or indirectly to promoter, promoter group, directors (including relatives) or KMPs or any other entity controlled by them.
- b) Any guarantee/ comfort letter (by whatever name called) provided by the listed entity directly or indirectly, in connection with any loan(s) or any other form of debt availed by promoter, promoter group, directors (including relatives) or KMPs or any other entity controlled by them.
- c) Any security provided by the listed entity directly or indirectly in connection with any loan(s) or any other form of debt availed by promoter, promoter group, directors (including relatives) or KMPs or any other entity controlled by them.

Link:

https://www.sebi.gov.in/legal/circulars/may-2021/format-of-compliance-report-on-corporate-governance-by-listed-entities_50338.html



Analysis of the Indirect Taxes applicable when donating COVID Relief Material

By – Akanksha Arora

IBA

Amidst the raging pandemic, despite the tough situation being faced by all, help is pouring in from all corners of the world. Organisations and corporates from across the globe are doing their bit, and supplying the much-needed medical equipment, pharmaceutical supplies and oxygen apparatus to hospitals and relief agencies across the country.

Duties and Taxes applicable while donating :

Generally, when importing any goods into the country, a set of duties and taxes are payable to the government on the transaction value of the goods. Such Duties & taxes comprise mainly of Basic Custom Duty, Cess and IGST payable by the recipient of the goods at the time of clearance of such goods. In order to ease the burden of such liability on the importer, CBIC, vide various notifications, has announced many exemptions for taxpayers supplying the said donations in order to provide relief from many statutory charges.

Any donation made can be by way of two major transactions :

1. Importing the Goods from outside India, and donating to the hospitals
2. Buying the Goods from domestic market and donating to hospitals.

A. Importing Goods and donating to the hospitals :

In case of such transactions when such relief is being Imported, the recipient of such goods will be liable to pay first- the custom duties applicable, and second- the IGST computed on such goods; at the time clearance.

❖ In case of the Custom Duties :

CBIC vide Notification No. 31/2021-Cus and 32/2021-Cus, has extended an exemption to the taxpayer for the custom duties payable for the specified list of goods, including the medical

equipment essential for COVID treatment. Thus, the taxpayer will not pay any custom duty or accompanying cess on import of COVID relief items.

❖ **In case of the IGST payable**

CBIC vide Ad Hoc Exemption Order No. 04/2021 and No. 05/2021, has extended an exemption to the taxpayer from payment of such IGST as is applicable on the import of a specified list of items for the purpose of free distribution to help with the pandemic. However, to qualify for such exemption, the four conditions as mentioned in the Ad Hoc Exemption order must be satisfied by the taxpayer, which are-

- The goods are imported free of cost for the purpose of Covid relief by a State Government or, any entity, relief agency or statutory body, authorised in this regard by any State Government.
- The goods are received from abroad for free distribution in India for the purpose of Covid relief
- Before clearance of the goods, the importer produces to the Deputy or Assistant Commissioner of Customs, a certificate from a nodal authority, appointed by a State Government, that the imported goods are meant for free distribution for Covid relief, by the State Government, or the entity, relief agency or statutory body, as specified in such certificate.
- The importer produces before the Deputy or Assistant Commissioner of Customs, at the port of import within a period of six months from the date of importation, or within such extended period not exceeding nine months from the said date as that Deputy or Assistant Commissioner of Customs may allow, a statement containing details of goods distributed free of cost duly certified by the said nodal authority of the State Government.

If both these exemptions can be availed by the recipient, he shall only have to bear the cost of the goods supplied to the hospitals, and none of the additional statutory charges. These exemptions may prove to be a honeypot in garnering more donations from corporations and business houses for Covid relief

B. Purchasing local and donating to hospitals :

In cases where the Covid relief items are being procured from the domestic market, the only liability for the recipient shall be the GST applicable on the same. At present, the GST rate applicable on sale of medical equipment including oxygen and other respiratory apparatus is 12%. Sadly, no exemption has been provided by the CBIC on such transactions.

Additionally, because these items will ultimately be donated, no ITC will be eligible to be availed on the purchase of such items as per section 17(5) of the CGST Act. Hence, it will eventually be the burden of the taxpayer to bear the additional cost of the taxes payable on the purchase of such items when donating them.

❖ **Main Challenge :**

The lack of availability of ITC is proving to be a huge additional expense to the taxpayers at this time, when donations are being provided in crores of rupees. Ultimately, it is the taxpayer that will bear this cost. The lack of ITC here might not deter the corporations from donating, but the availability of the same will encourage hundreds more at this time.

❖ **When a Company is required to donate :**

In case of a company which is eligible as per section 135 of the Companies Act, 2013 to carry out corporate social responsibility, any donations made by the such entity can be termed as expenses incurred in the course and furtherance of business and will be eligible for claiming ITC as per the recent ruling of M/s Dwarikesh Sugar Industries Limited (GST AAR Uttar Pradesh). Thus, no burden of tax shall remain on such taxpayer

Nevertheless, as a hopeful prospect, in the recent 43rd GST council meeting held on 28th May 2021, a GoM (Group of Ministers) has been formed to analyse each Covid relief item individually to ascertain an alternate tax treatment, if any. A report for the same will have to be prepared and submitted to CBIC by the GoM latest by 8th June 2021. However, the authorities have once again refused to comment in the possible temporary eligibility of ITC to be claimed upon donation of Medical equipment and other supplies.

Happiness is mandatory !



Organized a fun loving exercise “Happy Hours” full of games, quiz, fun tasks etc., These moments of rejoicing help us feel more connected to each other, they lift our spirits and add some scheduled fun to our calendar.

Upcoming Compliances

Date	Compliance
June 15, 2021	Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2021
	First instalment of advance tax for the assessment year 2022-23
June 20, 2021	Due Date for filing of FORM GSTR-3B for the month of May 2021 for the registered taxpayers who have opted for monthly filing of GST Returns
June 25, 2021	Due Date for making challan payment for the month of May 2021 for the registered taxpayers who have opted QRMP scheme
June 26, 2021	Due Date for filing of FORM GSTR-1 for the month of May 2021 for the registered taxpayers who have opted for monthly filing of GST Returns
June 28, 2021	Due Date for filing IFF for the month of May 2021 for the registered taxpayers who have opted the QRMP scheme
June 30, 2021	Due date for linking of Aadhaar number with PAN
	Payment of tax under the Direct Tax Vivad se Vishwas Act, 2020 without additional charge
	Quarterly statement of TDS deposited for the quarter ending March 31, 2021
	Return in respect of securities transaction tax for the financial year 2020-21

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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