



**The Malad
Chamber of
Tax
Consultants**

MNW/I75/2021-23

Total Pages 21

Price ₹ 5/-

41 Years

MCTC Bulletin

"Every Passing Minute is Another Chance to Turn it Around"

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Vol. 1, No. 11

For members & private circulation only

May, 2021



President's Communique

My Dear Professional Colleagues,

I am penning down this communique in the midst of lockdown which has been extended in Maharashtra till the end of this month. Similar is the situation Pan-India and the second wave has hit very badly with more difficulties and casualties. It is in such times of crisis that the leadership qualities are really tested. The intelligence of leadership comes to the fore by gauging the direction of its thought process. Currently, we are witnessing crisis of leadership amongst politicians. Instead of standing together throughout India, we are witnessing "Pandemic Politics" being unleashed with blame game for shortage of vaccines, hospital beds, oxygen supply, etc. There may be lapses on the part of the Centre, but current crisis is an unprecedented one which has taken the whole world by surprise. In such circumstances the opposition parties

should stand shoulder to shoulder at Centre and also at State level to ensure that the time is spent on productive solutions for the pandemic by creating infrastructure at breakneck speed and removing supply side bottlenecks.

During the last one year since the Pandemic started to spread its tentacles, our lives have taken a drastic turn and many new ways of living the life, embracing the future have evolved. The world has changed and whether the changes are for the better or worse will be known with the efflux of time. However, one thing is certain that there have been new and unique experiences through which the mankind has passed in a short passage of one year which otherwise could have taken at least a decade. The concept of WFH i.e. work from home is making the headlines nowadays.

It gives pleasure to announce that MCTC has already conducted two webinars in this month & GST Refund work shop. In almost all of them we received excellent response. The response has been tremendous for all the webinars. I thank every single member who attended the webinars/workshop. It is our aim to spread education and be resourceful which is being harnessed in true sense. Most importantly, I would like to congratulate all speakers of webinars/workshop as well as the complete core team of MCTC who have worked hard to make everyone's quarantine extremely informative.

On 28th April 2021, we conducted 12th Study Circle on Zoom on the Subject, recent amendments in TDS/TCS Provisions by CA Ravi Soni.

The 5th Managing Committee was held on 1st May on Virtual mode. On 2nd May we conducted Virtual Lecture on wealth creation by CA Mukesh Dedhia.

Joint work shop on GST refund is organised with GSTPM, WIRC, BCA, CTC, AIFTP (WZ) & MCTC From 6th May to 14th May 2021, This was a mega event organised by all sister associations, there were approx 400 members enrolment.

I request you to share your ideas, vision & suggestions for future events. As Always Take care, Stay Safe & Remain Healthy.

"Things work out best for those who make the best of how things work out".

— John Worden

Thank You

CA M. D. Prajapati
President

: Forthcoming Events :

22 May at 11:15 a.m. to 1.00 p.m. Saturday

"Relevant provisions of the Income Tax Act, 1961 (including for Preparing Computing Total Income) for assessment year 2021-22" – Faculty : CA Mahendra Sanghvi

**Request: Members please send your Mobile No & Email ID to update list of life members.
Please send message on 7039006655 or email to maladchamber@gmail.com**

For Queries & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

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Life Membership Fees ₹ 2,500



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NOTICE OF ELECTION

To
The Members,
The Malad Chamber of Tax Consultants

The Election of the President and Twelve Members of the Managing Committee for the ensuing year 2021-22 shall take place on Sunday 04th July, 2021 at 10.00 am Virtually on Zoom Platform to transact the following business.

Nominations in the prescribed form should be filed so as to reach not later than 6.00 p.m. on Tuesday, 15th June, 2021.

FOR THE MALAD CHAMBER OF TAX CONSULTANTS

Sd/-

JITENDRA FULIA / KISHORE THAKRAR
(HON. SECRETARIES)

Place: Mumbai

Dated: 1st May 2021

1. Members in arrears of membership subscription shall not be entitled to contest the election or to propose or second any candidate for the election or to vote at the election.
2. Withdrawal of nomination for the elections can be made by the candidate on or before 6.00 p.m. of Saturday, 27th June, 2021.
3. The Managing Committee has appointed Shri J. D. Rawal and Shri Rameshbhai Gandhi as Election Committee members for the election of the President and 12 Managing Committee Members.
4. Nomination for the post of President and Managing Committee Members may please be collected and sent to the office of Shri Brijesh M. Cholera, Shop No. 4, 2nd Floor, The Mall, Station Road, Malad-West, Mumbai-400064.
5. The voting, if required, will commence at 10.00 a.m. and end at 10.30 a.m.



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NOTICE OF ANNUAL GENERAL MEETING

To
The Members,
The Malad Chamber of Tax Consultants

Notice is hereby given that 42nd ANNUAL GENERAL MEETING of THE MALAD CHAMBER OF TAX CONSULTANTS will be held on Sunday, 04th July, 2021 at 10.45 a.m. on Zoom Platform Virtually to transact the following business :

AGENDA

1. To read and confirm minutes of the last Annual General Meeting held on 5th July, 2020.
2. To receive and adopt Audited Statement of Accounts of the Chamber for the year ended 31-03-2021 along with Auditors Report and Annual Report of the Managing Committee for the period from 05.07.2020 to 04-07-2021.
3. To appoint auditors for the year 2021-22 and to fix their honorarium.
4. To declare results of the election of the President and Twelve Members of the Managing Committee for the year 2021-22.
5. To transact any other business with the permission of the Chair.

FOR THE MALAD CHAMBER OF TAX CONSULTANTS

Sd/-

JITENDRA FULIA / KISHORE THAKRAR

(HON. SECRETARIES)

Place: Mumbai

Dated: 1st May 2021

Registered Office: B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (West), Mumbai-400 064.

Notes

1. The report of the Managing Committee, Auditor's Report and Audited Statements of Account will be emailed to all separately and same will be available on our website. However, on request in writing, the same will be sent to the members.
2. If there is no quorum by 10.45 a.m., the meeting will be adjourned for half an hour and the adjourned meeting shall be held at the same place with the same agenda and the members present will form the quorum.
3. The queries, if any, on Accounts and Annual Report should be sent at least 3 days before the day of A.G.M. at the Administrative office c/o: Shri Brijesh Cholera, Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400064
4. Any member desiring to move any resolution at the Annual General Meeting should send the proposed resolution at the above administration office on or before 30th June, 2021.

DIRECT TAX UPDATES

Compiled by CA Rupal Shah



Bhupendra Harilal Mehta vs. PCIT, CBDT and UOI

Citation: [2021] 127 taxmann.com 109, Bombay HC, 27 April 2021

DTVSV applicability on LTCG from alleged penny stocks – Whether amount payable is 100% or 125% of disputed tax demand.

Facts:

Assessee an individual, earned LTCG from selling shares of a listed Company (Lifeline Drugs) and filed his return of income after claiming long term to be taxfree. Based on search operations conducted in case of certain companies in Kolkata city, the long-term capital gains in the company as Bogus capital gains and raised a demand.

On the introduction of Direct Tax Vivad se Vishwas Act, the assessee filed an application for paying the tax demand under above assessment order. An order under DTVSV Act was passed. However, the amount payable as determined by the AO was 125% of tax demand which is payable under Search cases as per provisions of DTVSV Act.

Aggrieved by such order under DTVSV Act, the assessee filed an appeal before High Court.

Held:

As per S. 3 of the DTVSV Act states that 125% of the disputed tax is payable only to those cases where an assessment is made on the basis of a search.

Also, FAQ no. 70 to CBDT Circular No. 21/2020 issued on 4 December 2020 under DTVSV Act talks of an assessment order being framed based on a search, and not of an addition being made on the basis of a search. Another Circular no. 4/2021 dated 23 March 2021 was issued to further clarify which order can be regarded as passed in the course of search and hence tax payable will be 125% of the tax demand.

In the statements recorded of the Directors of Kolkata based companies there is no direct reference to the assessee or any material to that effect discovered. Thus, assessee's case cannot be regarded as a search case.

Thus, appeal of the assessee allowed and held that order under DTVSV passed as that against order based on search to be set aside and a fresh order to be passed.

Maria Fernandes Cheryl vs. ITO (International taxation)

Citation: ITA No. 4850/Mum/2019, ITAT Mumbai, 15 January 2021

Increase in safe harbour limit of 5% under section 43CA, 50C and 56 of the Act to 10% - whether prospective or retrospective.

Facts:

The assessee is a non-resident assessee. During the year assessee sold a property for Rs. 75,00,000/-. However, the valuation adopted by stamp duty authorities is Rs. 79,91,500/-.

The market value is 6.5% more than the sale consideration and hence the value adopted for capital gain calculation was 79.91 Lakhs by the ITO.

The assessee contended that the increase is safe harbour limit to 10% vide Finance Act, 2020 shall apply retrospectively and accordingly the actual sale consideration should be adopted for calculation of capital gains.

On first appeal before CIT(A), the assessee did not get any relief. On second appeal the hon'ble ITAT observed as below.

Held:

S. 50C technically, is a provision to address capital gains tax evasion on account of understatement of the sale consideration. However, there can be genuine cases where sale consideration is less than the stamp duty value due to several other criteria and reasons. Thus, until and unless there is some kind of a tolerance band or a safe harbour provision, in respect of such bonafide variations, the assesseees are bound to face difficulties. CBDT Circular no. 8/2018, explaining the reason for the insertion of the third proviso to Section 50C(1), supports the same view.

As per the decisions quoted below, the settled legal position is that an amendment in law, that is curative in nature to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically. Thus, the insertion of proviso must be given retrospective effect from the point of time when the related legal provision was introduced.

Thus 10% increase in safe harbour limit is applicable retrospectively and accordingly sale considerations was to be considered for capital gain calculation.

Decisions relied upon:

Rajeev Kumar Agarwal Vs ACIT [(2014) 45 taxmann.com 555 (Agra)]

Dharmashibhai Sonani Vs ACIT [(2016) 161 ITD 627 (Ahd)]

CIT Vs Vummudi Amarendran [(2020) 429 ITR 97 (Mad)]

BRIEF ANALYSIS OF APPEALS UNDER GST BEFORE APPELLATE AUTHORITY

Compiled by CA Bhavin Mehta



An order passed under CGST Act, 2017 is deemed to be passed under SGST Act, 2017. The taxpayer or department not agreeing with the order passed by the adjudicating authority has right to appeal against such order. Appeal is treated as continuation of original proceedings. The Hon'ble Supreme Court in **V. C. Shukla v. State through CBI – AIR 1980 SC 962**, observed that an appeal, in substance, is in nature of a judicial examination of a decision by a higher court of a decision of any inferior court. The purpose is to rectify any possible error in the order under appeal.

An appeal against the order passed under the CGST Act, shall lie with the CGST officer alone under the CGST Act. Similarly, order passed by State Officer under SGST Act can be appealed under the SGST Act. The right to appeal is statutory right and it can be bounded by the conditions in the grant of such statutory right. The Hon'ble Punjab and Haryana High Court following the decision of Supreme Court in **Anant Mills Co. Ltd. v. State of Gujarat – AIR 1975 SC 1234**, in the case of **Punjab State Power Corporation Ltd. v. State of Punjab (2016) 66 taxmann.com 172 (P & B)** observed “If the statute does not create any right of appeal, no appeal can be filed. Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in judicial and quasi-judicial adjudications”.

The right to appeal under the GST law is provided in Section 107, 112, 117 and 118 of the Act. The hierarchy or level of appeal is given in the table below:

Appeal Level	Order passed by	Appeal to	Section
First	Adjudicating Authority	Appellate Authority	107
Second	Appellate Authority	State or Area Bench or of the Appellate Tribunal	112
Second	Appellate Authority orders passed in cases where one of the issues involved is related to the place of supply	National Bench or Regional Bench of the Appellate Tribunal	112 read with 109(5)
Third	State Bench or Area Bench of Appellate Tribunal	High Court	117
Third	National Bench or Regional Bench	Supreme Court	118
Fourth	High Court	Supreme Court	118

In this note, the author has tried to analysis the provision of Section 107 of the CGST Act, 2017 pertaining to appeals to appellate authority against the order passed by the adjudicating authority. The provisions under SGST Act in this regard are pari materia to the CGST Act. Section 107 of CGST is reproduced below:

SECTION 107. Appeals to Appellate Authority.

- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.
- (2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.
- (3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

- (4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.
- (5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.
- (6) No appeal shall be filed under sub-section (1), unless the appellant has paid —
 - (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees,] in relation to which the appeal has been filed.
- (7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.
- (8) The Appellate Authority shall give an opportunity to the appellant of being heard.
- (9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.
- (10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.
- (11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order :

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.
- (12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.
- (13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed :

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.
- (14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.
- (15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.
- (16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

Analysis of each of the above sub-section of section 107 is attempted below.

- (1) Sub-section (1): Any person (taxable or non-taxable, registered or unregistered person) can file an appeal to Appellate Authority against the order passed by Adjudicating Authority within a period of **three months** from the date of receipt of the order.

(a) **An order passed by the CGST officer, provision of Rule 109A of the CGST Rules will be applicable as under:**

S. No.	Order Passed by	Appeal before
1.	Additional Commissioner	Commissioner (Appeals)
2.	Joint Commissioner	Commissioner (Appeals)
3.	Deputy Commissioner	Joint Commissioner (Appeals)
4.	Assistant Commissioner	Joint Commissioner (Appeals)
5.	Superintendent	Joint Commissioner (Appeals)

(b) **An order passed by State officer, provision of Rule 109A of SGST Rules will be applicable as under:**

S. No.	Order Passed by	Appeal before
1.	Deputy Commissioner	Joint Commissioner (Appeals)
3.	Assistant Commissioner	Deputy Commissioner (Appeals)
4.	State Tax Officer	Deputy Commissioner (Appeals)

- (2) Sub-section (2): It deals with the right of the revenue to file an appeal before the Appellate Authority. The Commissioner on his own motion or upon request from Commissioner of SGST or UGST, call for examination of the record of proceeding in which the adjudicating authority has passed the order. Thereafter the Commissioner may direct the subordinate officer to apply to the Appellate Authority against the order passed by the adjudicating authority within six months from the date of communication of the adjudication order. Department cannot file appeal if amount is below specified limit. [Refer section 120(1) of CGST Act]. The monetary limits specified by CBIC vide instruction issued vide F.No. 390/Misc/116/2017-JC dated 22.08.2019 for **Central Excise and Service Tax** is as under:

S. No.	Appellate Forum	Monetary Limit
1.	CESTAT	Rs.50,00,000
2.	High Court	Rs.1,00,00,000
3.	Supreme Court	Rs.2,00,00,000

No such instruction for GST Appeals is issued till date.

- (3) Sub-section (3): In pursuance of application filed by the authorized officer under sub-section (2), the appellate authority shall deal such application as if an appeal is filed by the appellant and the provisions of the Act relating to appeal shall apply to such application.
- (4) Sub-section (4): The appellate authority has power to condone the delay of one month provided the appellant proves there was sufficient cause for delay in filing the appeal. The Appellate Authority cannot condone the delay beyond one month unless empowered by the statute. The Hon'ble Supreme Court in **Om Prakash vs. Ashwini Kumar Bassi, 2010 (258) E.L.T. 5 (S.C.)**, observed that authorities created by statute cannot apply Limitation Act, 1963 unless empowered by that statute. The application was dismissed on grounds of lack of jurisdiction under East Punjab Rent Restriction Act, 1949 and inapplicability of Section 5 of Limitation Act, 1963. The Rent Controller appointed by State Government and being a member of Punjab Civil Services, a persona designata not entitled to apply Limitation Act. No specific provision to vest authority in Rent Controller to extend time for making affidavit and application. Rent Controller being creature of statute, can act only in terms of powers vested by statute. Relevant statute not vesting power to entertain application under Section 5 ibid for condonation of delay.

In the case of CCE vs. Cairn Energy India Pvt. Ltd., 2015 (316) E.L.T. 612 (A.P.), appeal was filed before Tribunal instead of filing before Commissioner (Appeals). On being informed, appeal was filed belatedly by 150 days. Commissioner (Appeals) dismissed the appeal as having been presented beyond 60 days. The Hon'ble Andhra Pradesh High Court upheld the Tribunal decision that the period during which proceedings were pending before Tribunal was required to be excluded under Section 14 of the Limitation Act, 1963 read with Section 35 and 35B of the Central Excise Act, 1944.

- (5) Sub-section (5): The Appeal shall be filed in Form GST APL-01 along with grounds of appeal. Provisional acknowledgment will be issued by the appellate authority. A certified copy of adjudication order appealed against shall be submitted within seven days of filing the appeal. If the certified copy is filed after seven days of filing the appeal, the date of filing the appeal shall be date of submission of certified copy of order. The appellate authority shall issue the final acknowledgement indicating the appeal number in Form GST APL-02.

The application (deemed as appeal) by authorized officer of the department shall be made in Form GST APL-03 with relevant documents. A certified copy of the order appealed against shall be submitted within seven days of filing the application.

- (6) Sub-section (6): No appeal shall be filed under sub-section (1), unless the appellant has paid:
- (a) In full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) A sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, subject to maximum of twenty-five crore rupees (Rs.25 crore for CGST and Rs.25 crore for SGST), in relation to which the appeal has been filed.

Some of the issues in respect of pre-deposit are discussed below:

1) Payment made under protest – whether can be adjusted against the mandatory pre-deposit for admission of appeal.

- (a) In respect of proceedings under Maharashtra Entry Tax Act, 2002, in the case of **Vvf (India) Ltd vs. State of Maharashtra in writ petition no. 8834 of 2018 dated 08.11.2019**, the dealer Vvf (India) Ltd. in response to show cause notice paid tax of Rs.2.32 crore and interest of Rs.1.32 crore under protest and revised its Entry Tax and MVAT returns under protest. The show cause was adjudicated by passing an assessment order with demand of Rs.24,34,11,956 after adjusting the amount paid by dealer under protest. The dealer filed appeal against the assessment order was passed said assessment order, however, the appellate authority insisted 10% pre-deposit of disputed tax assessed. The dealer requested to consider the amount paid under protest for the purpose of mandatory pre-deposit, which was rejected by the appellate authority. The appellant filed writ petition before Bombay High Court. The Hon'ble Bombay High Court held as under:

26. In the present case, the appeal is against an order. That order is an order passed under section 23. If it is that order which is appealable, then, all the sub-sections of section 23 and the assessment proceedings cannot be lost sight of. If already some amounts are paid, albeit under protest, they would be adjusted against the total tax liability and the demand to follow. The order, therefore, is a composite one. In the instant case, that order, copy of which is annexed to the petition, is passed by the Deputy Commissioner of Sales Tax. He had before him the request of the petitioner and the reply to the show cause notice, wherein, he was called upon to complete the VAT/CST assessment along with the entry tax for the financial year 2013-2014. That he completed and passed an order, copy of which is at Exhibit 'H' at page 66 of the paper book. This order must be read in its entirety to appreciate whether and what type of appeal would lie against it. It is, therefore, clear that if the petitioner/ appellant is aggrieved by it, it is an order of wp 8834-18.doc assessment. At the end of the assessment, there is a tax liability. That is crystallised and a notice of demand is issued to the petitioner. When the appeal is against such a tax liability, the petitioner cannot contend that because a paltry amount was deposited under protest prior to the assessment and at the time of investigation, that be adjusted against the pre-deposit contemplated by section 26(6A) of as compliance with

sub-section (6A) of section 26 of the MVAT Act. If this argument of Mr. Sridharan is accepted, it would mean that a payment under protest made at the time of investigation to avoid tax liability or to escape assessment would suffice and on the strength of that, the appeal would be entertained despite there being no proof of payment of the aggregate of the amounts as set out in clauses (a) and (b) of sub-section (6A) of section 26 of the MVAT Act.

The Hon'ble High Court further observed that "In the view that we have taken, the judgment of Madras High Court in the case of *E.I.D. Parry (India) Ltd. v. Assistant Commissioner (CT), Central Assessment Circle-I and Others reported in 2002 (126) STC 449* has no application. While it is true that payment under protest cannot be regarded as acceptance of the tax liability, that principle has no application to the instant case".

- (b) In the case of *Ahluwalia Contracts (India) Ltd., v. State of Punjab (2013) 59 VST 183 (P&H)*, the assessee had paid under protest more than Rs.3 crore. Assessee was served with a demand notice for depositing 25% of the assessed tax of Rs.4 crores by the Appellate Authority under the Punjab Value Added Tax Act, 2005 as a condition for admission of appeal. On failure to do so, the appeal was dismissed, as a result the assessee filed the writ petition under Article 226 of the Constitution of India before the Hon'ble High Court of Punjab & Haryana, raising the plea that more than 3 crores had already been paid and therefore, it could not be said that 25% of Rs. 4 crores was required to be deposited. The provision of the Punjab Value Added Tax Act, 2005 in respect of pre-deposit is similar to GST. The Hon'ble High Court held that since the tax amount of Rs.3 crores had been paid which was more than 25% of the amount of demand of Rs.4 crores, therefore, 25% by way of pre-deposit was not required to be paid and accordingly the matter was remitted back to the Appellate Authority for fresh decision on merits in accordance with the law.

The decision in *Ahluwalia Contracts* (supra) was followed in *State of Punjab and another vs. Novelty Associates Pvt. Ltd. (2013) 59 VST 185 (P&H)*.

- (c) The CBEC issued Circular No.984/08/2014-CX dated 16.09.2014 in respect of quantum of mandatory pre-deposit for admission of appeal. The relevant portion of the said circular is reproduced below:

"2. Quantum of pre-deposit in terms of Section 35F of Central Excise Act, 1944 and Section 129E of the Customs Act, 1962:

2.1 Doubts have been expressed with regard to the amount to be deposited in terms of the amended provisions while filing appeal against the order of Commissioner (Appeals) before the CESTAT. Sub-section (iii) of Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 stipulate payment of 10% of the duty or penalty payable in pursuance of the decision or order being appealed against i.e. the order of Commissioner (Appeal). It is, therefore, clarified that in the event of appeal against the order of Commissioner (Appeal) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeal). This need not be the same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.

2.2 In a case, where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed.

2.3 In case of any short payment or non-payment of the amount stipulated under section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed is liable for rejection.

3. **Payment made during investigation:**

- 3.1 **Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs. 10 crores, can be considered to be deposit made towards fulfillment of stipulation under section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962.** Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.

- 3.2 Since the amount paid during investigation/audit takes the colour of deposit under section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections.
- 3.3 In case of any short-payment or non-payment of the amount stipulated under section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed by the appellant is liable for rejection."

The circular very clear states that payment made during the investigation or audit can be considered to be mandatory pre-deposit required for filing the appeal.

(d) On the basis of the above circular dated 16.09.2014, the Hon'ble Delhi High Court in the case of **Santani Sales Organisation vs. CESTAT, (2018) 55 GSTR 364 (Delhi)** observed as under:

"Paragraph 3 stipulates that the pre-deposit would include deposits or payments made prior to the passing of the order-in-original. This is relevant. Deposits made during the pendency of the proceedings, or even after the order-in-original is passed, have to be taken into consideration for determining and deciding whether condition of pre-deposit of 7.5% or 10% has been satisfied. Earlier deposits do not get obliterated and are not to be treated as inconsequential. Equally pertinent is the second sentence in paragraph 3.1, which states that any shortfall from the amount stipulated in the Section shall have to be paid before filing of an appeal before the appellate authority."

It appears the Hon'ble Bombay High Court has not appreciated that the pre-deposit of certain percentage of duty or penalty to be deposited with the appeal petition is neither a levy nor a collection of tax but adhoc recovery. The condition of pre-deposit should not be so burdensome and harsh so as to amount to an unreasonable restriction, resulting the right of appeal illusory.

In the background of above discussion, in the opinion of author, deposit made during the pendency of proceeding have to be considered while determining the mandatory pre-deposit for admission of appeal.

2) Waiver of pre-deposit

The High Courts has power to granted waiver of pre-deposit in deserving and appropriate cases. The Hon'ble Punjab and Haryana High Court in the case of **Punjab State Power Corporation Limited v. State of Punjab [2016] 66 taxmann.com 172 (Punjab & Haryana)**, while considering whether the condition of 25% pre-deposit for hearing first appeal as per provision of section 62(5) of the Punjab Value Added Tax Act, 2003, is onerous, harsh and unreasonable and therefore, violative of Article 14 of the Constitution of India? The Hon'ble High Court held as under:

"24. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal does not nullify the right of appeal. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the provision is to keep balance between the right of appeal and the right of the revenue to speedy recovery of the amount. The conditions imposed including prescription of a pre-deposit are meant to regulate the right of appeal and the same cannot be held to be violative of Article 14 of the Constitution of India unless demonstrated to be onerous or unreasonable.....

33. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid.....

3) Whether pre-deposit can be made through ITC (Electronic Credit Ledger)

In *Dell International Services India Pvt. Ltd. vs. Commissioner of Central Taxes, Bangalore, 2019 (365) E.L.T. 813 (Tri.-Bang.)*, the registry raised objection to appellant making payment of mandatory pre-deposit of 7.5% of duty demanded (Central Excise/Service Tax) through CGST credit. The appellant relied on Circular No. 58/3/2018-CGST dated 04.09.2018 and Circular No.42/16/2018-CGST dated 13.04.2018 and submitted that the Circular very clearly states that the arrears of Central Excise duty, Service Tax or wrongly availed Cenvat credit under the existing law is permissible to be paid through the utilization of amounts available in the electronic credit ledger. The Department representative also accepted the legal position that mandatory pre-deposit can be made through CGST Credit. The Tribunal set aside the objection raised by the registry and directed it to take the appeal on record.

4) Impact in case of change in law, whereby conditions/additional condition are incorporated for filing appeal.

The Hon'ble Supreme Court in the case of *Hoosein Kasam Dada (India) Ltd. vs. State of Madhya Pradesh and Others 1983 (13) E.L.T. 1277 (S.C.)* observed as under:

“In our view the above observation is apposite and applies to the case before us. The true implication of the above observation as of the decisions in the other cases referred to above is that the pre-existing right of appeal is not destroyed by the amendment if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purpose of supporting the pre-existing right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right. The argument that the authority has no option or jurisdiction to admit the appeal unless it be accompanied by the deposit of the assessed tax as required by the amended proviso to Section 22(1) of the Act overlooks the fact of existence of the old law for the purpose of supporting the pre-existing right and really amounts to begging the question. The new proviso is wholly inapplicable in such a situation and the jurisdiction of the authority has to be exercised under the old law which so continues to exist. The argument of Sri Ganapathy Aiyar on this point, therefore, cannot be accepted.

- (7) Sub-section (7): Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.
- (8) Sub-section (8): The Appellate Authority shall give an opportunity to the appellant of being heard. The grant of hearing would be essential in adherence to the principles of natural justice.
- (9) Sub-section (9): The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing. However, the appellate authority power to grant the adjournment is restricted to three times.
- (10) Sub-section (10): The Appellate Authority may, at the time of hearing, allow appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

As per Rule 112 of CGST Rules, 2017, the appellant shall not be allowed to produce before the Appellate Authority any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority except in the following circumstances:

- (a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or
 - (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority;
- or

- (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or
- (d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Additional evidence shall be admitted only after the Appellate Authority records in writing the reasons for its admission. The appellate authority shall not take additional evidence unless the adjudicating authority or officer authorised in this behalf by the said authority has been allowed a reasonable opportunity (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant. The Appellate Authority shall have power to direct the production of any document, or examination of witness, to enable it to dispose of the appeal.

Therefore, it is very important for noticee to cover all factual aspect with evidence in its reply for which allegation is levelled in the show cause notice. Normally most of the allegation levelled in the show cause notice gets confirmed by the adjudicating authority, therefore, it is important for the noticee to cover all the factual aspect with evidence on which it relies. Reply and submission to show cause notice is foundation to any matter taken up for adjudication.

The Act does not provide any restrictions on **accepting additional grounds** at appellate stage. The Hon'ble Supreme Court in the case of **Jute Corporation of India Ltd. vs. CIT 1991 (51) E.L.T. 176**, observed as under:

"The Act does not contain any express provision debarring an assessee from raising an additional ground in appeal. In absence of statutory provision, the general principle relating to amplitude of appellate authority's power being co-terminus with that of initial authority should normally apply. There may be several factors justifying raising of a new plea, and each case has to be considered on its own facts. Of course, while permitting assessee to raise an additional ground, the authority should exercise his discretion in accordance with law and reason. He must be satisfied that the ground raised was bona fide and that the same could not be raised earlier for good reasons. The satisfaction of appellate authority depends upon facts and circumstances of each case and no rigid principles or any hard and fast rule can be laid down

The Supreme Court in the case of **CIT v. Mahalaxmi Textiles Mills Ltd. (1967) 66 ITR 710 (SC)**, held that there are no restrictions on powers of Tribunal in relation to questions that can be determined. All questions, whether of law or of fact, which relate to assessment may be raised before the Tribunal.

- (11) Sub-section (11): The Appellate Authority shall pass the order, as he thinks just proper, confirming, modifying or annulling the decision or order appealed against but cannot remand the case back to the adjudicating authority.

The first proviso to sub-section (11) gives power to Appellate Authority to enhance, fee, fine or penalty or enhance tax or disallow input tax credit providing appellant has been given a reasonable opportunity of showing cause against the proposed order.

The second proviso to sub-section (11) provides that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

- (12) Sub-section (12): The order of the Appellate Authority shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

It may be noted that order passed without reasoning can be considered as non-speaking order, which can be considered ex-facie erroneous and wholly perverse. In **Commissioner of Central Excise, Allahabad**

vs.U.P. State Sugar Corpn. Ltd., (2013) 30 taxmann.com 8 (SC), the issue that were raised before High Court were not discussed and dealt with by High Court except saying that case was not fit case to be interfered. The Hon'ble Supreme Court held as not proper disposal of the appeal and accordingly set aside the order

- (13) Sub-section (13): The Appellate Authority to hear and decide every appeal, **where it is possible to do so**, within a period of one year from the date on which it is filed. The phrase "where it is possible to do so" suggest the time limit of one year for disposal of the appeal is not mandatory. However, where issuance of order is stayed by the Court or Tribunal, such period of stay shall be excluded in computing the period of one year.
- (14) Sub-section (14): The Appellate Authority shall communicate the order passed by him to the appellant, respondent and to the adjudicating authority.
- (15) Sub-section (15): The Appellate Authority shall also be sent the copy of the order to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of SGST/UTGST or the authority designated by him.
- (16) Sub-section (16): Every order passed under this section shall, subject to the provisions of section 108, 113, 117 or 118 be final.

Other important points in relation to appeals.

1. An order would attain finality if any order is not contested or challenged in superior courts/appellate forum. In such circumstances, the party is prohibited from taking a different stand with alike orders. In *Boving Fouress Ltd. vs. CCE, Chennai, 2006 (202) ELT 389 (SC)*, the Supreme Court observed as under:

"This Court in a catena of decisions has held that where the department accepts the principle laid down by the Tribunal in one case and let it become final, then the department is not entitled to raise the same point in other cases. The department cannot pick and choose. [See : The decisions of this Court in Union of India & Others v. Kaumudini Narayan Dalal & Another - (2001) 10 SCC 231; Collector of Central Excise, Pune v. Tata Engineering & Locomotives Co. Ltd. - 2003 (158) E.L.T. 130 (S.C.); Birla Corporation Ltd. v. Commissioner of Central Excise -2005 (186) E.L.T. 266 (S.C.); and Jayaswals Neco Ltd. v. Commissioner of Central Excise, Nagpur - 2006 (195) E.L.T. 142 (S.C.). It has been held in all these cases that if no appeal is filed against an earlier order or the earlier appeal involving the identical issue was not pressed by the Revenue, the Revenue is not entitled to press the other appeals involving the same question".

However, in *C. K. Gangadharan vs. CIT, Cochin, 2008 (228) E.L.T. 497 (S.C.)*, the Hon'ble Supreme Court held merely because in some cases the revenue has not preferred appeal that does not operate as a bar for the revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher Court when divergent views are expressed by the Tribunals or the High Courts.

2. Section 115 of the CGST Act provides interest on refund amount paid for admission of appeal. Where the appellant has paid mandatory pre-deposit under section 107(6) or under section 112(8) is required to be refunded consequent to order of the Appellate Authority or of the Appellate Tribunal, the appellant shall be entitled to interest @6% p.a. from the date of payment of such deposit amount till the date of refund of such amount.
3. Section 116 – Appearance by authorized representative means following person:
 - (a) Appellant relative or regular employee; or
 - (b) Advocate entitled to practice; or
 - (c) Chartered Accountant, Cost Accountant or Company Secretary who holds certificate of practice; or
 - (d) Retired officer of commercial tax department of any State or UT who has not worked below the post of Grade-B Gazetted officer for not less than two years; or
 - (e) Person who is authorized to act as a goods and service tax practitioner.
4. Non-appealable decisions or orders (section 121):
 - (a) An order of Commissioner or other authority empowered to direct transfer the proceedings from one officer to another officer; or
 - (b) An order pertaining to the seizure or retention of books of account, register and other documents; or
 - (c) An order sanctioning prosecution under this Act; or
 - (d) An order passed under section 80 (order granting payment of tax or other amount in instalment on application by a taxable person).

GST CHARCHA

Additional Time for GST compliances due to Second Wave of COVID-19

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Various GST related due dates and reliefs have been announced on 01.05.2021 for which notifications have been issued on 01.05.2021. The immediate reliefs related to GST considering the effect of second wave of COVID-19 are as follows:

1. Revocation of Cancellation of Registration
2. GSTR 3B Interest & Late Fees Waiver - March 2021 & April 2021 & January 2021 to March 2021
3. Deferment of ITC Restriction - April 2021
4. GSTR 1 Extension of Due Date – April 2021
5. GSTR 04 Extension of Due Date – April 2020 to March 2021
6. ITC 04 Extension of Due Date – January 2021 to March 2021
7. Other Due Dates Extensions

Each of these reliefs are discussed in detail below.

1. Revocation of Cancellation of Registration:

Many tax payer's registration has been cancelled by proper officer as assessee did not filed their returns for a continuous period of six months or assessee has obtained voluntary registration but unable to commence his business within six months from the date of registration and so on. The **circular Number P/35/2021-ADC (RC AND M)-CCT-CTD dated 07.04.2021** has been issued by the Principal Commissioner of Commercial Taxes directing all the Joint Commissioner to instruct the proper officer to follow the instruction of the said circular for revocation of cancelled registration.

As per the circular, while calculating the limitation period of 30 days for an application to be made by the assessee for revocation of registration shall exclude the period of 15.03.2020 to 14.03.2021 and accordingly registrations shall be revoked after considering the merits of the case. The circular also provides for the various other situation and asking the officer to consider and follow the order of the **Hon'ble Supreme Court passed Suo-Motu in the Writ Petition (Civil) No. 3 of 2020 dated 08.03.2021**. It is also to be noted that thereafter again considering the second wave of COVID-19, Hon'ble Supreme Court has extended all the period of limitations ending on 14.03.2021 till further orders. However, since the said circular was issued prior to this second order of the Supreme Court, it is not discussing on it. However, assessee can take the shelter of this circular and apply even now for the revocation of their registration if 30 days from the cancellation are falling during the period 15.03.2020 to 14.03.2021.

2. GSTR 3B Interest & Late Fees Waiver - March 2021 & April 2021 & January 2021 To March 2021:

In December 2018, notification number 76/2018-Central Tax dated 31.12.2018 was issued for reduction of late fees under GST. As per the notification, late fees for delayed filing of GSTR 3B was reduced to Rs. 25 per day, where there is a tax payment and in case tax payment is nil, late filing fees was reduced to Rs. 10 per day. Hence, effectively late fees are Rs. 50 (25 CGST + 25 SGST) where there is tax payment and Rs. 20 (10 CGST + 10 SGST) for nil tax payment.

On 03.04.2020 by issuance of notification number 32/2020-Central Tax, third proviso was added for conditional waiver of late fees for the period February 2020, March 2020 and April 2020, where waiver was granted based on the aggregate turnover of the previous year. Thereafter, again on 24.06.2020 notification number 52/2020-Central Tax was issued and third proviso to the original notification number 76/2018 substituted for the conditional waiver of late fees.

Now again, by issuance of Notification number 09/2021 – Central Tax dated 01.05.2021 the late fees have been waived for the limited period of 15 days for the month of March 2021 and April 2021 for the assessee whose aggregate turnover in the preceding financial year is above Rs. 5 Crore. The late fees have been waived for the limited period of 30 days for the month of March 2021 and April 2021 for the assessee whose aggregate turnover in the preceding financial year is upto Rs. 5 crore and not opted for the Quarterly Return Monthly Payment (QRMP) Scheme. The late fees have been waived for the limited period of 30 days for the quarter January 2021 to March 2021 for the assessee whose aggregate turnover in the preceding financial year is upto Rs. 5 crore and opted for the Quarterly Return Monthly Payment (QRMP) Scheme.

Similarly, for interest payment by notification number 08/2021-Central Tax dated 01.05.2021, interest has been waived or reduced by insertion of new serial numbers 4 to 7 in first proviso of the notification.

Therefore, notification number 08/2021 and 09/2021 have been issued for waiver of Late fees and waiver or reduction of interest for the month of March 2021 and April 2021 and quarter January 2021 to March 2021. It is to be noted that due date has not been extended for the filing of GSTR 3B. The bifurcation has been made into three categories based on the aggregate turnover of previous year. The term "aggregate turnover" has not been defined under the notification and therefore same meaning shall be given as it has provided under section 2 (6) of CGST Act, 2017 which reads as under:

"2 (6) "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;"

Hence, aggregate turnover is PAN India turnover of the assessee and includes all taxable supplies, exempt supplies, export of goods, export of service but excludes CGST, SGST, UTGST, IGST and Cess. It is to be noted that it includes PAN India turnover and not GSTIN wise turnover.

The three categories for which different conditions are provided for waiver of late fees and interest or reduced rate of interest is based on the aggregate turnover are as follows:

- 2.1 Tax payer having aggregate turnover of MORE THAN 5 CRORE in the preceding financial year
- 2.2 Tax payer having aggregate turnover of UPTO 5 CRORE in the preceding financial year and opted for monthly filing of GSTR 3B
- 2.3 Tax payer having aggregate turnover of UPTO 5 CRORE in the preceding financial year and opted for Quarterly Return Monthly Payment Scheme (QRMP) for filing of GSTR 3B

It is necessary to discuss frequently asked questions with respect to the "aggregate turnover" considering the practical difficulties faced by the assessee.

Query 1 : Company having presence across the country and their total turnover of all state cumulatively is exceeding INR 5 crore but individually in few states company's turnover is less than 5 crores.

Company is falling under which category?

Reply : As per the definition of aggregate turnover, PAN India turnover shall be taken into consideration and not the turnover as per GSTIN wise. Hence, in all the states for all GSTIN company shall follow the conditions of the assessee having turnover more than 5 crore.

Query 2 : Total turnover of the company as per their financial is 4.50 crore but as per GST their turnover is INR 5.50 Crore which includes stock transfers and cross charge to a branch situated in other states.

Company is falling under which category?

Reply : The definition of aggregate turnover has been provided under CGST Act, 2017 which is applicable under GST and as per GST provisions branch transfer and cross charge is taxable supply. Hence, while determining the category in the present case turnover including the stock transfer and cross charge shall be taken into consideration which is more than 5 Crore. Therefore, company shall follow the conditions of the assessee having aggregate turnover more than 5 Crore.

Query 3 : Company is having two business verticals in same state for which they are having two separate registrations as business verticals. The total turnover of one business vertical is INR 4 crore and the total turnover of other business vertical is INR 1.50 crore.

Company is falling under which category?

Reply : As per the definition of aggregate turnover PAN India turnover shall be taken into consideration and not the turnover as per GSTIN wise even when it is a separate business vertical. Hence, in the present case total turnover of the company including both the business vertical is more than 5 crore and therefore, company shall follow the conditions of the assessee having aggregate turnover more than 5 crore.

The conditional waiver of late fees and waiver of interest or reduced rate of interest as provided under all the three categories are as follows:

2.1 Tax payer having aggregate turnover of MORE THAN 5 CRORE in the preceding financial year

It is applicable for GSTR 3B to be filed for the month of March 2021 and April 2021. It is to be noted that due date for filing of GSTR 3B has not been extended only waiver from the levy of late fees has been provided, if return has been filed within a period of 15 days from the original due dates. 100% relief has not been provided on the interest payment and only interest rates has been reduced which is at the rate of 9% for the delayed period of 15 days. After 15 days of delay, late fees will be leviable and interest will also be payable at the rate of 18% from the 16th day till the date of filing of return.

The same has been explained in the table below:

Month	Due Date	100% Interest Waiver	9% rate of interest	18% rate of interest	100% waiver of late fees
(1)	(2)	(3)	(4)	(5)	(6)
Mar 21	20.04.2021	N.A.	9% 21.04.21 to 05.05.21	18% 06.05.21 till date of filing of return	05.05.2021
Apr 21	20.05.2021	N.A.	9% 20.05.21 to 04.06.21	18% 05.06.21 till date of filing of return	04.06.2021

Frequently asked questions in respect of delay in compliances in various situations have been discussed below.

Query 1 : What are the benefits or consequences, if company is filing GSTR 3B for the month of March 2021 on 05.05.2021?

Reply : In this case company is filing GSTR 3B within 15 days from the due date (20.04.2021) of filing of GSTR3B for the month of March 2021. Hence, interest will be payable at the rate of 9% instead of 18% on the delay of first 15 days on the net cash liability and 100% waiver is granted on the payment of late fees.

Query 2 : What are the benefits or consequences, if company is filing GSTR 3B for the month of March 2021 on 06.05.2021?

Reply : In this case company is filing GSTR 3B on 16th day from the due date (06.04.2021) of filing of GSTR3B for the month of March 2021. Hence, company is entitled for concessional rate of interest at the rate of 9% for the first delay of 15 days and from 16th day interest will be payable at the rate of 18% for 1 day of delay. Further, as company is filing GSTR 3B after 05.05.2021, company will be liable for the payment of late fees for 1 day as 100% waiver on delayed filing of GSTR 3B is applicable only till 05.05.2021.

2.2 Tax payer having aggregate turnover of UPTO 5 CRORE in the preceding financial year and opted for monthly filing of GSTR 3B

It is applicable for GSTR 3B to be filed for the month of March 2021 and April 2021. It is to be noted that due date for filing of GSTR 3B has not been extended.

100% relief has been provided on the applicability of interest, if it is filed within the specified period of 15 days and thereafter for further period of 15 days interest is applicable at the rate of 9% and thereafter interest is

applicable at the rate of 18%. Further, benefit of 100% waiver from late fees is eligible to the tax payer, if return has been filed within the period of 30 days from the original due dates.

Month	Due Date	100% Interest Waiver	9% rate of interest	18% rate of interest	100% waiver of late fees
(1)	(2)	(3)	(4)	(5)	(6)
Mar 21	20.04.2021	NIL 21.04.21 to 05.05.21	9% 06.05.21 to 20.05.21	18% 21.05.21 till date of filing of return	20.05.2021
Apr 21	20.05.2021	NIL 20.05.21 to 04.06.21	9% 05.06.21 to 19.06.21	18% 19.06.21 till date of filing of return	19.06.2021

2.3 Tax payer having aggregate turnover of UPTO 5 CRORE in the preceding financial year and opted for Quarterly Return Monthly Payment Scheme (QRMP) for filing of GSTR 3B

It is applicable for GSTR 3B to be filed for the quarter January 2021 to March 2021. It is to be noted that due date for filing of GSTR 3B has not been extended. 100% relief has been provided on the applicability of interest, if it is filed within the specified period of 15 days and thereafter for further period of 15 days interest is applicable at the rate of 9% and thereafter interest is applicable at the rate of 18%. Further, benefit of 100% waiver from late fees is eligible to the tax payer, if return has been filed within the period of 30 days from the original due dates.

The due dates for such tax payers have been announced in staggering manner.

Therefore, the same has been explained by way of two different table as per the states.

CLASS 1 - Tax payer having an aggregate turnover of UPTO 5 CRORE in the preceding financial year and OPTED FOR QRMP SCHEME and whose principal place of business is in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh or Union territories of Daman & Diu & Dadra & Nagar Haveli, Puducherry, Andaman & Nicobar Islands and Lakshadweep.

Month	Due Date	100% Interest Waiver	9% rate of interest	18% rate of interest	100% waiver of late fees
(1)	(2)	(3)	(4)	(5)	(6)
Jan 21 to Mar 21	22.04.2021	NIL 23.04.21 to 07.05.21	9% 08.05.21 to 22.05.21	18% 23.05.21 till date of filing of return	22.05.2021

CLASS 2 - Tax payer having an aggregate turnover of UPTO 5 CRORE in the preceding financial year and OPTED FOR QRMP SCHEME and whose principal place of business is 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 or Delhi.

Month	Due Date	100% Interest Waiver	9% rate of interest	18% rate of interest	100% waiver of late fees
(1)	(2)	(3)	(4)	(5)	(6)
Jan 21 to Mar 21	24.04.2021	NIL 25.04.21 to 09.05.21	9% 10.05.21 to 24.05.21	18% 25.05.21 till date of filing of return	24.05.2021

In view of the above, it is to be noted that due date for filing of GSTR 3B to be filed for the month of March 2021, April 2021 and for the quarter January 2021 to March 2021 has not been extended only late fees have been waived for a period of 15 days or 30 days, as the case may be. 100% waiver of interest is not applicable to the assessee having aggregate turnover of preceding financial year more than 5 crore and they are entitled for

the only reduced rate of interest benefit for the first delay of 15 days. The assessee having aggregate turnover upto 5 Crore are entitled for the 100% waiver from the payment of interest for the first 15 days and thereafter for a further delay of 15 days at the rate of 9% and thereafter interest will be applicable at the rate of 18%.

(Reference Notification Number 08/2021-Central Tax dated 01.05.2021)

(Reference Notification Number 09/2021-Central Tax dated 01.05.2021)

3. Deferment of ITC Restriction - April 2021:

As per Rule 36 (4) of CGST Rule, 2017 Input Tax Credit for availment of unmatched invoices / debit notes has been restricted and only 5% of ITC can be availed in excess of matched invoices / debit notes to the extent it has been unmatched. This is required to be done while availing the ITC on monthly basis.

The relief has been provided and this provision has been deferred for the month of April 2021. Therefore, relief has been provided from this provision for the month of April 2021 and assessee can avail the ITC available with him without matching it with GSTR 2A report while filing GSTR 3B for the month of April 2021. The ITC is required to be matched cumulatively while filing GSTR 3B for the month of May 2021.

In other words, while filing GSTR 3B of May 2021, assessee is required to match the ITC for the month of April 2021 and May 2021 with GSTR 2A and unmatched ITC needs to be reversed, if it goes beyond 5% of matched ITC of the said period.

(Reference Notification Number 13/2021-Central Tax dated 01.05.2021)

4. GSTR 1 Extension of Due Date – April 2021:

The due date for filing of GSTR 1 for the month of April 2021 has been extended till 26.05.2021 for all the assessee who are filing GSTR 1 on monthly basis.

The assessee opted for QRMP Scheme and want to upload the invoices for the month of April 2021 availing the Invoice Furnishing Facility (IFF) can upload the same during the period 01.05.2021 to 28.05.2021.

(Reference Notification Number 12/2021-Central Tax dated 01.05.2021)

(Reference Notification Number 13/2021-Central Tax dated 01.05.2021)

5. GSTR 04 Extension of Due Date – April 2020 to March 2021:

The annual return under form GSTR 04 is required to be filed by the Composition tax payers. The due date for filing of form GSTR 04 for the period April 2020 to March 2021 has been extended till 31.05.2021.

(Reference Notification Number 10/2021-Central Tax dated 01.05.2021)

6. ITC 04 Extension of Due Date – January 2021 to March 2021:

The return under form ITC 04 is required to be filed for the inputs or capital goods sent to the job worker and received back from a job worker on quarterly basis. The due date for filing of form ITC 04 for the period January 2021 to March 2021 has been extended till 31.05.2021.

(Reference Notification Number 11/2021-Central Tax dated 01.05.2021)

7. Other Due Dates Extension:

7.1 Extension for submission of Appeal or Reply to Show Cause Notice and other Returns:

Time limit for filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, which is required to be filed under GST provisions and such due date is falling during the period 15.04.2021 to 30.05.2021 has been extended upto 1.05.2021.

In view of the above, the time limit for submission of appeal or reply to Show Cause Notice which is due between the period 15.04.2021 to 30.05.2021 has been extended upto 31.05.2021.

In view of this, the due dates for other returns which is falling during the period 15.04.2021 to 30.05.2021 and not specifically provided has also been extended to 31.05.2021. For example, it is also applicable to the following returns.

Due Date	Return and Purpose
31.05.2021	GSTR 06 – Return to be filed by Input service Distributor
31.05.2021	GSTR 07 – Return for Tax Deducted at Source
31.05.2021	GSTR 08 – Return for Tax Collection at Source
31.05.2021	GSTR 05 - Return to be filed by Non-Resident Taxable Person

This extension is not applicable to-

- ❖ Time limit for issuance Tax invoice
- ❖ Registration
- ❖ Filing of GSTR 1 and GSTR 3B returns
- ❖ Levy & Late fees, Waiver of late fees
- ❖ E-way bills
- ❖ Interest, penalty & other amounts
- ❖ Power to arrest
- ❖ Detention, seizure and release of goods & conveyances in transit, etc.

(Reference Notification Number 14/2021-Central Tax dated 01.05.2021)

7.2 Extension of Due Dates for Authority or Commission or Tribunal:

Time limit for completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the GST Act has been extended to 31.05.2021, if such due date is falling during the period 15.04.2021 to 30.05.2021.

(Reference Notification Number 14/2021-Central Tax dated 01.05.2021)

7.3 Extension of time for issuance of refund order and submission of reply:

As per the GST provisions, officer shall issue refund order within a period of 60 days from the date of receipt of complete refund application. The cases where due dates are falling within the period 15.04.2021 to 30.05.2021, time for submission of reply to notices has been extended till 31.05.2021 and therefore, time for issuance of refund order by officer has also been extended by 15 days after receipt of reply to notice or 31.05.2021 whichever is later.

(Reference Notification Number 14/2021-Central Tax dated 01.05.2021)

7.4 Extension of time for issuance of registration certificate and verification of application:

As per Rule 9 of CGST Rules, 2017 the registration shall be granted within 7 working days from the date of submission of application. If there are any deficiency, officer shall issue notice to the applicant under form GST REG 03 within a period of 7 working days and thereafter applicant shall submit a reply under form GST REG 04 within 7 working days. The extension has been granted for this entire registration process which is falling during the period 01.05.2021 to 31.05.2021 and it can be completed within the extended period till 15.06.2021.

(Reference Notification Number 14/2021-Central Tax dated 01.05.2021)

Conclusion:

Overall, these are the immediate reliefs, which has been announced considering the second wave of COVID-19. Isn't it unfair, if no reliefs are announced for the worst affected sectors such events & tour industry, Hospitality Industry and Restaurant Industry???



STUDENTS' CORNER

SURVIVORSHIP BIAS

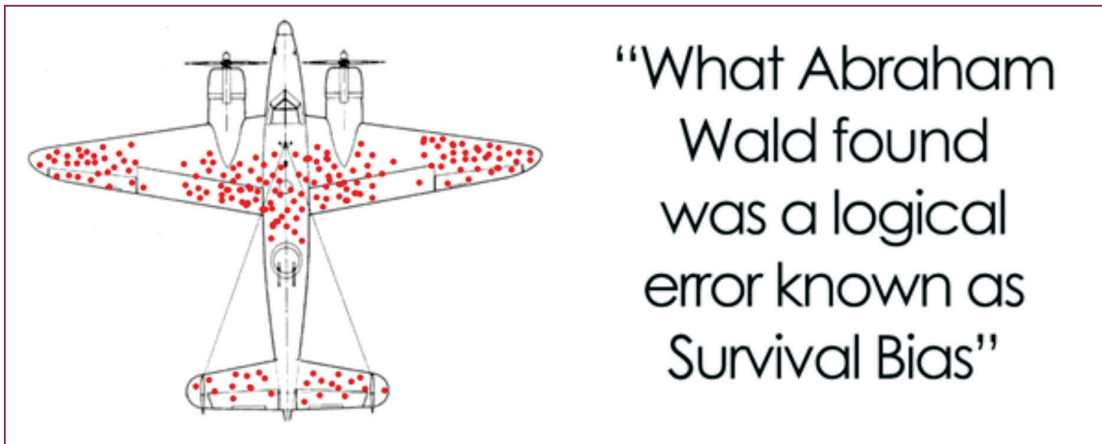
Compiled by Neel Randeria



This is an attempt from my side to explain the term- Survivorship Bias in an extremely lucid manner. Use of jargons or complex terminologies will be avoided. There is no way one can undermine the importance of this concept. This write-up will dissect the concept in three logical parts. In the first one, there is a case which will explain the backdrop of the concept. The second part, is a brief analysis of the case. The third part, which is of extreme significance is the use of this concept in our day-to-day life. Let's get started-

CASE:

During World War II, a team was asked the best place to fit armour to a plane. The planes that came back from battle had bullet holes everywhere except the engine and cockpit. Thus, the team decided that it should place armour where the planes are getting shot the most i.e. wingtips of plane. This sounds logical, right? But no, it is not. A statistician named Abraham Wald, had a different version to the same issue. He said that engine and cockpit should be armoured because the planes whose engine and cockpit were getting shot were so severely damaged that they could not even return.



ANALYSIS:

If we try analyzing the above case, then we can get amazing insights about the concept of survivorship bias. Firstly, the team was wrong because it reached to the conclusion of armouring the wings by studying an incomplete set of data. Why is this the concept called Survivorship Bias? The answer is simple. It is because here we try taking a decision only on the basis of survivors and not complete data.

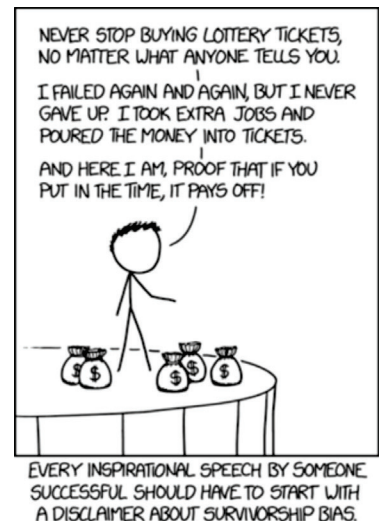
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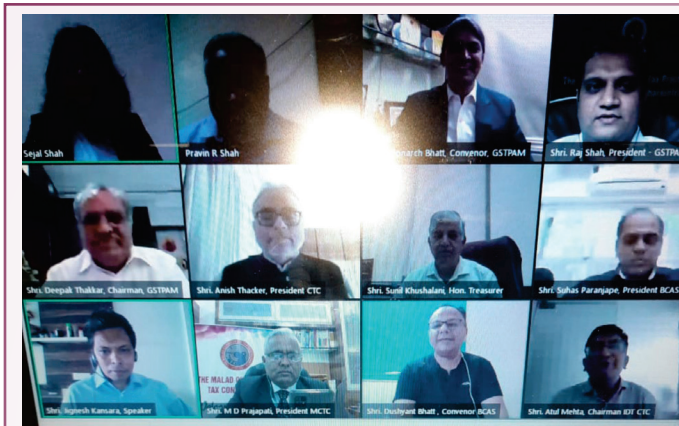
I consider the concept of survivorship bias as a tool of decision making in my routine life. This concept will help you understand how to declutter your mind from vague claims.

“Steve Jobs was a dropout but then went on to be founder of Apple” This does not mean that if you dropout, you are going to be successful. There are many dropouts who fail to succeed in life. But just because we know only about Steve Jobs, does not mean all dropouts are successful. Here, survivorship bias reminds us that we should not take decisions on the basis of incomplete or biased set of data.

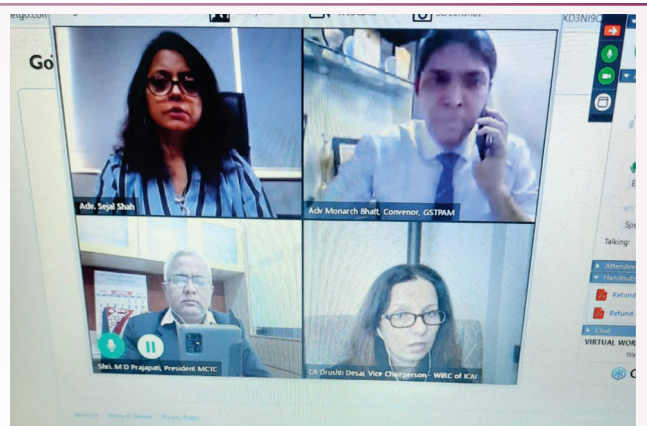
“Start-ups are the trendiest thing. They grow into a billion dollar company. Let's start one” Such a claim has no truth to it because what we see are only the successful ones like Flipkart, and not the ones who went bankrupt. In reality, majority of start-ups fail.

I hope that this article would help you in rejecting logicless claims of people who are just trying to emotionally manipulate you by extrapolating outliers.

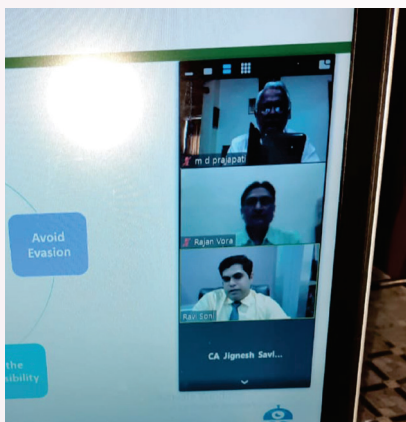




Refund Work Shop held on 10th May, 2021

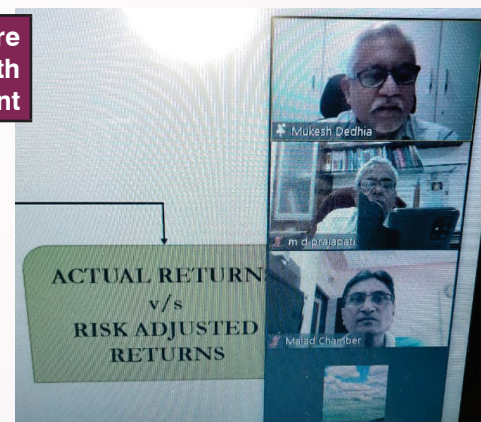


Refund Work Shop held on 10th May, 2021



TDS Lecture

Lecture on wealth management



Disclaimer : Though utmost care is taken about the accuracy of the matter contained herein, the Chamber and/or any of its functionaries are not liable for any inadvertent error. The views expressed herein are not necessarily those of the Chamber. For full details the readers are advised to refer to the relevant Acts, Rules and relevant Statutes.

Printed by Kishor Dwarkadas Vanjara published by Kishor Dwarkadas Vanjara, on behalf of The Malad Chamber of Tax Consultants, and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400 013. Tel. Nos.: 2496 1685/2496 1605 Fax No.: 24962297 and published at The Malad Chamber of Tax Consultants B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai-400 064. Adm. Off. Tel. 022-2889 5161

• Editor : Shri Kishor Vanjara

Associate Editor of MCTC Bulletin : Shri Brijesh M. Cholera

Posted at Malad ND (W) Post Office, Mumbai-400 064

Date of Publishing 3rd Week of Every Month
Date of Posting : 20th & 21st May, 2021

To

If undelivered, please return to :

The Malad Chamber of Tax Consultants,
B/6, Star Manor Apartment, 1st Floor,
Anand Road Extn., Malad (W),
Mumbai-400 064

