



**The Malad
Chamber of
Tax
Consultants**

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MCTC Bulletin

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

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President's Communique

Dear Friends

World economy is again on tenterhooks now due to the Russian invasion of Ukraine. There was a light of hope of its recovery as the corona pandemic is on the wane but the war disrupted it again. Let's hope things get back to normalcy at the earliest.

Relieved from the Tax audit filing dates, the chamber organised two study circles in the previous month. Rajubhai Choksi Oration Fund Study Circle Meeting was held on 20th February 2022. The meeting had two sessions – CA Nihalchand Jain spoke about the issues faced in GST Input Credit availability and CA Jayprakash Tiwari, Past President of the Chamber, introduced block chain technology and crypto currency to the participants. A session on Opportunities in MSME was held on 06th March 2022 wherein Central Council Member of ICAI, CA Dr. Rajkumar Adukia enlightened the participants of the various ways in which they can explore opportunities in the MSME. Both the meetings were very educative and were well received by the participants.

I consider myself very fortunate that I am president of the chamber in the year in which TAXCON was revived. The conference was held on 18th and 19th February 2022 at the Mumbai office of WIRC at BKC. It was held in hybrid format and had 8 very successful and interactive sessions over the two days. I congratulate the 5 sister organisations, namely WIRC, CTC, BCAS, AIFTP WZ and GSTPAM, for a very successful event and hope that the event will now be organised on a regular basis.

I request you to kindly take advantage of the opportunity of joining the three study circles formed by the chamber – one each on direct tax, indirect tax and capital market.

I also request you to kindly participate in the 'Gift a Membership' drive of the chamber and help spread the benefits of the chamber to as many tax professionals as possible.

Also, humble request to please donate eyes and inspire people to donate eyes.

जीवन का अमूल्य वरदान नेत्रहीन को नेत्रदान।

Schools, Colleges including Board exams are starting this month – best wishes to all the students – study hard but please don't stress yourself.

Happy Gudi Padwa !

Regards

CA Jignesh Savla
President

Do you know?



All donor eyes are acceptable irrespective of the donor's age, including eyes of premature/ still-born babies.

Request: Members please send your Mobile No & Email ID to update list of life members.
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DIRECT TAX CASE LAWS

Compiled by CA Rupal Shah
(Partner at RHDB & Co LLP)



Pr. CIT vs. Varha Infra Ltd.

Citation: [2022] 135 taxmann.com 77, Rajasthan HC, 16 November 2021

Rejection of books and estimated income.

Facts:

Assessee had filed return of income for AY 2016-17 declaring loss of Rs. 3,17,161/-. The case was selected for complete scrutiny and notice u/s 143(2) was issued seeking some details. In response to that, Assessee submitted certain documents, however, further details were sought. As per AO, when no such documentary evidence was produced then, a further notice was issued to the assessee and ultimately, the AO has rejected the books of accounts and estimated net profit for the year under consideration at 7.6% of the total turnover of Rs. 4,48,83,51,085/- i.e. Rs. 34,11,14,682/-. Penalty proceedings for not disclosing accurate income were separately initiated against the assessee and interest applicable under the Act on the income assessed was also levied.

On first appeal, CIT(A) directed AO to estimate profit at 10.32% before depreciation and directed to allow depreciation claim separately. Thus, reducing total income to Rs. 15,73,12,882/-

On second appeal, ITAT held that though there are some technical mistakes in maintaining the books of accounts, AO should analyse gross profit rate shown by the assessee during the year under consideration as compared to the gross profit rate shown in the immediate preceding year while coming to the conclusion of rejecting the books of account and estimating the net profit rate. The ITAT observed that during the year under consideration, the gross profit rate is 29.29% as compared to the gross profit rate of 27.87% shown in the immediately preceding year.

Thus, after finding the gross profit shown by the assessee as reasonable, the ITAT has found that the assessee's claim of interest and depreciation should be allowed and directed AO to compute income and tax liability accordingly.

Held:

The revenue preferred appeal before the High Court, however, High Court dismissed the appeal and ITAT order prevails.

CIT(TDS) vs. ITD Cementation India Ltd.

Citation: [2022] 135 taxmann.com 190, Calcutta HC, 4 January 2022

TDS on Commission on Bank Guarantee charged by the Bank.

Facts:

During the relevant assessment year, the assessee has created certain Bank Guarantees and in turn Bank has charged commission on that. The TDS department was of the view that commission deducted by Bank on issuance of Bank Guarantee is commission u/s 194H and hence liable to deduction of tax at source.

ITAT was of the view that there is no principal agent relationship between a bank issuing the Bank Guarantee and the Assessee and consequently the payment though termed as commission is not covered by section 194H.

Held:

In view of the judgments decided on this matter, the bank guarantee commission is not in the nature of commission paid to an agent but it is in the nature of bank charges for providing one of the banking services.

The Court after taking into consideration various decisions on the point held that the amount retained by the bank is a fee charged by them for having rendered the banking services and cannot be treated as a

commission or brokerage paid in course of use of any services by a person acting on behalf of another for buying or selling of goods

Thus, the appeals filed by the revenue is dismissed.

Cases referred to:

CIT v. JDS Apparels (P) Ltd. [2015] 53 taxmann.com 139 (Delhi)

CIT (TDS)-1 v. Larsen & Toubro Ltd. [2019] 101 taxmann.com 83 (Bombay)



ANALYSIS OF CLAUSE (ba) OF SECTION 16(2) OF CGST ACT, 2017 INSERTED IN FINANCE BILL 2022

Compiled by CA Bhavin Mehta



The following new clause (ba) is inserted after clause (b) in sub-section (2) of section 16 of the CGST Act, 2017 in the Finance Bill 2022:

“(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted”

The said amendment will create additional restriction on the recipient to claim the ITC on the basis communication of information through GSTN portal.

The communication of credit entitlement and restriction is prescribed in section 38. The amended section 38 as proposed in Finance Bill 2022 read as follows:

SECTION 38.- Communication of details of inward supplies and input tax credit

- (1) *The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.*
- (2) *The auto-generated statement under sub-section (1) shall consist of—*
 - (a) *details of inward supplies in respect of which credit of input tax may be available to the recipient; and*
 - (b) *details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—*
 - (i) *by any registered person within such period of taking registration as may be prescribed; or*
 - (ii) *by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or*
 - (iii) *by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or*
 - (iv) *by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or*
 - (v) *by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or*
 - (vi) *by such other class of persons as may be prescribed.”.*

The recipient of supply would be entitled to claim credit based on the auto generated statement (GSTR-2B) on the GST portal and the said statement will also provide the details of supplies in respect of which the **Recipient shall not be entitled to credit, either wholly or partly**, on account of following:



- (i) Supplies made by any newly registered person for specified period. The restriction is proposed in respect of supplies made by registered person after obtaining registration for specific period, which would be prescribed by the Rules.

Example: It is presumed, in respect of supplies made within three months from the date of registration, the recipient of such supplies will not be entitled to claim the ITC. Mr. A obtains GST registration on 01.01.2023. He supplies goods of Rs.10,000 to Mr. B on 10.01.2023 and collects GST of Rs.500. In the given example credit of Rs.500 would be denied to Mr. B because the supplies pertain to period within three months from the date of registration.

- (ii) Registered supplier has defaulted in payment of GST and continued the default for specified period.

Example: Mr. A has not paid GST of Oct, 22 month supplies. He has continued the default of non-payment of tax also for the month of Nov, 22 and Dec, 22. Mr. B, the recipient, will not be entitled to claim the credit.

- (iii) The registered supplier has short paid output tax as per GSTR-1 in excess of the specified limit.

Example: It is presumed the Govt. prescribes the short payment limit at 10% of the output tax amount. Mr. A has filed his GSTR-1 return for month of Dec, 22, wherein the aggregate tax payable comes to Rs.1 lakh. Mr. A pays tax of Rs.80,000 through GSTR-3B of Dec, 22. There is short payment of tax by Rs.20,000. The short payment of tax is 20% of the tax payable by Mr. A. The recipient of supply may be denied the credit in respect of supplies procured from Mr. A.

- (iv) The supplier has availed ITC in excess of credit entitled to him as per auto-generated statement provided by GST portal by specified limit.

Example: Assuming Govt. prescribes the limit of ITC up to 110% of the auto-generated statement by the portal. Mr. A has availed ITC of Rs.20,000 in the month of Jan, 22 as per his books of accounts and records, whereas as per auto-generated statement of Jan, 22 the ITC is Rs.15,000. This means Mr. A has availed ITC more than 110% of Rs.15,000. In respect of supplies made by Mr. A during the month of Jan, 22, the recipients will not be entitled to claim the credit wholly or partly, as may be prescribed.

- (v) The Govt. may prescribe the limit up to which a registered person can discharge the output tax liability from its electronic credit ledger. Where the registered supplier has claimed the credit in excess of such specified limit, the recipient may be denied the credit.

Example: Let say dealers in Iron and Steel (class of dealers) is allowed to utilize 80% of ITC from its Electronic Credit ledger to discharge its output tax liability. Mr. A, a iron and steel dealer, has discharged its entire GST liability from the Electronic Credit ledger. In such a case, the service recipient/buyer may not be entitled to claim the credit.

- (vi) The credit on supplies made by specified class of suppliers will not be available. Such class of suppliers will be prescribed.

MY COMMENTS

- Section 41(1) envisages that every registered person shall be entitled to take credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger. In other words, every assessee is under obligation to self-assess. Only thereafter, section 59 steps in, where under every registered person is required to self-assess the taxes payable under the Act and furnish a return for each tax period as specified under section 39 of the Act. Section 59 does make reference to Section 39, which deals with furnishing of returns, but the fact remains that for furnishing of returns, preparatory work has to be done by the assessee himself and is not fully or wholly dependent on the common electronic portal for that purpose.
- The common electronic portal is only an enabler and a facilitator in bringing on board all the registered persons which include the supplier, recipient, registered person and other recipients. The efficacy of common electronic portal or so to say malfunctioning thereof, does not extricate the registered person from the primary obligation of self-assessment of output tax liability as predicated in Section 16 of the CGST Act, 2017. The registered person is expected to exercise the option of utilizing ITC or to pay by cash for discharging his output tax liability at the time of filing of return on the information gathered from the primary record in his possession. If the registered person intends to avail ITC, he can do so by paying the output tax liability from his electronic credit ledger referred to in Sections 2(46) and 49(2) of the CGST

Act. The functions or features provided in the common electronic portal of auto generation of statement is only a facility made available to the registered person. A registered person is under legal obligation to maintain books of accounts and records as per the provisions of the GST Act and Chapter VII of the GST Rules regarding the transactions in respect of which the output tax liability would occur.

3. The Supreme Court in ***UOI vs. Bharti Airtel & Ors reported in (2021) taxmann.com 319 (SC)*** observed as under:

“32. The High Court, however, did not enquire into the cardinal question as to whether the writ petitioner was required to be fully or wholly dependent on the auto generated information in the electronic common platform for discharging its obligation to pay output tax liability for the relevant period between July and September 2017. The answer is - an emphatic No. In that, the writ petitioner being a registered person, was under a legal obligation to maintain books of accounts and records as per the provisions of the 2017 Act and Chapter VII of the 2017 Rules regarding the transactions in respect of which the output tax liability would occur. Even in the past (till recently upto the 2017 Act came into force), during the pre-GST regime, the writ petitioner (being registered person/assessee) had been maintaining such books of accounts and records and submitting returns on its own. No such auto-populated electronic data was in vogue. It is the same pattern which had to be followed by the registered person in the post-GST regime.

33. As per the scheme of the 2017 Act, it is noticed that registered person is obliged to do self-assessment of ITC, reckon its eligibility to ITC and of output tax liability including the balance amount lying in cash or credit ledger primarily on the basis of his office record and books of accounts required to be statutorily preserved and updated from time to time. That he could do even without the common electronic portal as was being done in the past till recently pre-GST regime. As regards liability to pay output tax liability that is on the basis of the transactions effected during the relevant period giving rise to taxable event. The supply of goods and services becomes taxable in respect of which the registered person is obliged to maintain agreement, invoices/challans and books of accounts, which can be maintained manually/ electronically. The common portal is only a facilitator to feed or retrieve such information and need not be the primary source for doing self-assessment. The primary source is in the form of agreements, invoices/ challans, receipts of the goods and services and books of accounts which are maintained by the assessee manually/ electronically. These are not within the control of the tax authorities. This was the arrangement even in the pre-GST regime whilst discharging the obligation under the concerned legislations(s). Indeed, that self-assessment and declarations would be any way subject to verification by the tax authorities”.

4. Section 16 (2) specifies the conditions for an assessee to claim the ITC. Once the substantive conditions are fulfilled the ITC cannot be taken away by non-fulfilment of certain procedures. In the present case the legislature has failed to make distinction between recipients and suppliers and punish bonafide recipients. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. A statute has to be read in such a manner so as to do justice to the parties. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity. Such a construction has to be avoided. The doctrine of impossibility would trigger.
5. The event where fraud, collusion or connivance is established between the recipients or the immediate preceding supplier or any of the predecessor's suppliers, the credit would not be available to the recipient.
6. The above provision clearly defeats one of the objects of GST, i.e. removing cascading effect of taxes. In Statement of Objects and Reasons to the 122nd Constitution Amendment Bill, 2014, it is stated “The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services”. The reform aspect of GST is lost.
7. On account of conduct of supplier, who has collected GST from recipient, the recipient is made to suffer. The denial of credit of tax paid would amount to violation of Article 14 and Article 300A of the Constitution of India.
8. GST is indirect tax, the incidence of which can be passed on by the supplier to the recipient. The objective of GST is to charge tax on value additions and to avoid cascading effect of taxes. The recipient has to take care to verify that the supplier is also registered person and has valid registration under GST Act. Failure on the part of supplier with no fault by the recipient should not attract double tax in the hands of recipient. Clause (ba) and clause (aa) (inserted w.e.f. 01.01.2022) of section 16(2) denies the benefit of ITC only because of the default of the supplier over whom recipient has no control. The recipient has no access to the GSTR-1/IFF or GSTR-3B filed by the supplier since those particular are meant to be confidential as per section 158 of the CGST Act.

9. 'Lex Non Cogit ad impossibilia' is an age old maxim which means that 'the law does not compel a man to do which he cannot possibly perform'. A body of law does not compel or forces someone to do the thing which is impossible. The law does not compel the doing of impossibilities. Where the law creates a duty or charge and the party is disabled to perform it, without any default in him and has no remedy over it, there the law will in general excuse him.

10. Section 56 of the Indian Contract Act, 1872 provides for doctrine of impossibility:

“An agreement to do an act impossible in itself is void.

A contract to do an act, which, after the contract is made becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Where one person promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.”

The word “impossible” means impracticable, useless or that uproots the foundation. The impossibility may be caused in several ways, such as, indefinitely impossible, destruction of subject matter, unavailability, death or disability, method of performance impossible, statute.

11. The doctrine of frustration according to Indian law is really an aspect or part of the law discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The doctrine of frustration comes into play when a contract becomes impossible of performance, after it is made, on account of circumstances beyond the control of parties or the change in circumstances makes the performance of the contract impossible. (Refer Supreme Court decision in **Satyabrata vs. Mugneeram & Co (1954) S.C.R. 310**) The Contract Act allows the contract to be set aside due to impinging impossibility precluding its performance. The law of impossibility of performance does not necessarily require absolute impossibility, but also encompass the concept of severe impracticability.

12. The provision under clause (aa) and (ba) of section 16(2) treats supplier as well as recipient guilty for non-filing GSTR-1/IFF. This in the opinion of author is violative of Article 14 of the Constitution of India. In other words, it is submitted that by treating unequals equally the legislative measure is violative of Article 14 of the Constitution. This measure qua the recipient/purchaser is arbitrary, irrational and unduly harsh and, therefore, violative of Article 14 of the Constitution. There are other statutory avenues available with the department to collect the tax from the defaulting supplier. This includes demand and recovery of tax under section 73, 74, 79, 81, 83, etc.

13. In the press release issued by Central Board of GST Council on 04.05.2018, it is mentioned that there shall not be any automatic reversal of input tax credit from the buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.

14. In the opinion of author, the recipient has to make sure that the supplier is registered dealer and issued the tax invoice in compliance with the provision of GST Act and the Rules made thereunder. He has received the goods or services or both and has reflected the ITC in its GSRT-3B return filed online. Once the recipient/purchaser demonstrates that he has complied with such requirements, he cannot be denied the ITC only because supplier fails to discharge its obligation.

15. Reference material –

(i) *On Quest Merchandising India Pvt. Ltd. vs. Govt. of NCT of Delhi, 2018 (10) G.S.T.L. 182 (Del.)*;

(ii) *Gheru Lal Bal Chand vs. State of Haryana, (2011) 45 VST 195 (P&H)*;

(iii) *K.T. Moopil Nair v. State of Kerala, AIR 1961 SC 552*;

(iv) *Shri Ram Krishna Dalmia vs. Shri Justice S. R. Tendolkar (1959) 1 SCR 279*;

(v) *M/s Mahalaxmi Cotton Ginning Mills vs. The State of Maharashtra 2012-TIOL-370-HC-MUM-VAT*;

(vi) *UOI vs. Bharti Airtel Ltd. (supra)*;

(vii) *LGW Industries Ltd. & Ors vs. UOI reported in (2022) 134 taxmann.com 42 (Calcutta)*.



GST UPDATES

Compiled by **Jaideep P. Sonpal, Advocate**

Writer is regular contributor to www.taxconsult.online



- **Some improvements in GSTR-1**

1. Removal of 'Submit' button before filing. The two step filing process (Submit and File) will now will be in a single step.

Details regarding the new steps in the filing process are:

- i.) Click '**Generate Summary**' button to generate summary
 - ii.) Click '**Proceed to File/Summary**' button to view the final summary before filing and
 - iii.) Click '**File Statement**' button to file GSTR-1/IFF.
2. A table-wise & detailed consolidated summary before actual filing of GSTR-1. The summary page will provide recipient-wise summary for cases where recipient count is up-to 100.
 3. A new Summary format can now be downloaded. The new summary format has been aligned with the notified format of GSTR-1. It will also contain the total outward supplies liability to be auto-populated in GSTR-3B.

- **GST E-Invoicing Update:**

It is clearly evident from the actions of government that they want to reduce the intervention of professionals & reduce GST compliance and to cater this object government had introduced mandatory e-invoicing for registered persons having aggregate turnover above Rs.50 crores from FY 17-18, now with effect from 01st April, 2022 the existing limit of Rs.50 crores has been reduced to Rs.20 crores vide Notification No. 01/2022 - Central Tax issued on 24th February.

- **Rectification of GST credits with CA Certificate:**

If GST Credits could not be availed where B2B supplies wrongly shown as B2C in FY 2017-18 & FY 2018-19 in GSTR 1 by the supplier & he can't amend the same, then Submit CA certificate in this regard with proper reconciliation vide MH State Govt Internal Circular No. 02A of 2022 dt. 25-02-2022.

Some Important GST Advance Rulings

1. **Property tax, electricity charges etc. to be excluded for calculating exemption limit of Rs. 7,500 by housing society: AAR**

Authority for Advance Rulings, Maharashtra Mahindra Splendor CHS Ltd., In Re - [2022] 135 taxmann. com 71 (AAR - MAHARASHTRA)

The applicant was a housing society whose main objects were managing, maintaining and administering its property; raising funds for achieving the said objects etc., by way of collecting contributions/charges from members of the society, like property taxes, maintenance charges, water and electricity charges etc. It filed an application for advance ruling to determine taxability of amount collected under GST.

The Authority for Advance Ruling observed that the applicant society and its members are distinct persons and the various charges received by the applicant from its members are nothing but consideration received for supply of goods /services as a separate entity. The exemption as per the entry No. 77 of the Notification No. 12/2017 CT (R) would be available only when a member's contribution per month is up to an amount of Rs. 7,500. A member, who shall contribute an amount which is more than Rs. 7,500, would not be eligible for the exemption under entry No. 77 and the entire contribution amount would be liable to be taxed. However, the charges collected by society on account of property tax, electricity charges and other statutory levies would be excluded while calculating the exemption limit of Rs. 7,500.

2. **GST applicable where Partner's Property rented Out to Partnership Firm for Business Purposes: AAR**

The Authority for Advance Rulings (AAR), Chennai bench has held that GST is liable to be paid in respect of the properties rented out to the partnership firm by the partner to carry out the business even

if it is free of rent as the activity is in furtherance of business. The applicant is the managing partner in the partnership firm and having certain properties in his name. The firm is carrying out its business on those properties on free of rent. Applicant stated that in IT Act it is clear that when the partner uses his property for business carried out by the firm, then deemed rent does not arise. Hence approached AAR for clarity under GST law for the above scenario. The bench comprising Ms. K Latha (Member SGST) and Mr. T G Venkatesh (Member CGST) has held that the property of the individual being rented out to the partnership firm is a “supply” under GST Act. However when consideration for such renting is considered, Schedule I of the CGST Act 2007 clearly states that activities to be treated as supply even if made without consideration are supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made it in the course or furtherance of business. The bench further held that where the supply is between related persons, the value of such supply shall be open market value of such supply. Where the open market value is not available, the supply of goods or services of like kind and quality will be the taxable value under section 15(5) of the Act. Considering all the relevant facts AAR Chennai Bench has ruled that the property rented out for business purpose even without rent by the partner attracts GST, and the value should be arrived by applying Rule 28 of CGST/TNGSTRules2017.

Important GST High Court Decisions:

1) GST Registration shall be restored on Payment of Tax, Penalty and Uploading of Returns: Tvl. Suguna Cutpiece Center Vs The Appellate Deputy Commissioner (ST) (GST) (Madras High Court):

In a major relief to the taxpayers facing problems with restoration of GST registration even after payment of tax amount, penalty and filing of GST registration, the Madras High Court directed the GST department to restore such registrations in order to avoid problems to the taxpayers and the loss of revenue to the department.

Glance at practical track records of GST officials on registration issue

Harassment by GST state official:

One of our MCTC member & my colleague friend requested me to share his plight of GST official’s harassment through my article so our professional community can witness harassment of GST official by overriding jurisdiction.

My colleague had applied for GST registration for his client but this application was withheld only on the ground of absence of PT EC & RC number. Screenshot of notice seeking clarification is attached below:-

Form GST REG-03

{See Rule 9(2)}

Reference Number:.. XXXXXXXXXXXXXXXX

Date:XX/03/2022

To

XXXXXXXXXXXXXXXXX
MUMBAI Mumbai Suburban,
Maharashtra, 400XXX

Application Reference No. (ARN): XXXXXXXXXXXX

Date:XX/02/2022

Notice for Seeking Additional Information/Clarification/Documents relating to Application for Registration

This is with reference to your Registration application filed vide ARN AXXXXXXXXXX Dated -XX/02/2022 The Department has examined your application and is not satisfied with it for the following reasons:

1. State Specific Information - State Specific Information - Others (Please specify) - Professions Tax E.C Number
Professions Tax R.C Number

You are directed to submit your reply by XX/03/2022

If no response is received by the stipulated date, your application is liable for rejection. Please note that no further notice/reminder will be issued in this matter.

GST registration on the ground of any default in compliance of any other legislative act. If there is default in any other act, authorities are appointed and are authorized under the applicable act to exercise their authority and penalize or prosecute the defaulter. Such actions of GST officials are simply beyond the jurisdiction and violative of Article 19(1)(g) of Constitution of India and this will also set wrong precedents for officials under other legislative acts.

Interesting personal experience before GST-Commissioner (Appeals):

In the recent past during GST amnesty scheme we had filed an appeal before commissioner appeals for restoration of GST registration and all the pending GST dues and returns were filed. It was interesting to notice the helplessness of the appellate authority in the order, which is clearly evident in extract of the order mentioned below for your reference:

Extract of order:

*"7. Verification report with regard to filing of the Returns for the relevant period and payment of Tax / Interest, Penalty / Late Fees and whether any dues pending or otherwise as required under Rule 23 of the CGST Rules, 2017, was called for from the jurisdictional Division/Range office vide letter dated 07/12/2021 and reminders dated 11/01/2022, 07/02/2022 and 11/02/2022. Further, letter dated 17/12/2021 was issued to the Commissionerates requesting to sensitise the jurisdictional division/range offices to the needs of the assessee-appellants and directing them to expeditiously send the verification reports. **However, I find that inspite of making so many correspondences, no report has been received from the jurisdictional office. The appeal cannot be kept indefinitely pending for non – receipt of report from the jurisdictional office. I therefore allowed the appeal** subject to verification by the jurisdictional division office of the filing of returns and payment of all tax liabilities along with interest, late fees etc, as laid down under Rule 23 of the CGST Rules, 2017.*

8. Accordingly, the appeal filed by the appellant is disposed of on the above terms."

GST-Commissioner (Appeals) is a quasi judicial authority, this shows if judiciary is helpless before the GST authorities, a big question is what a common man can expect?. If you see in terms of GST collection of last month (Feb 2022) its Rs.1,33,026 crores. But in terms of service GST department is yet lagging behind, genuine dealers are facing hardships after paying heavy penalties, filing returns and forget about the seamless flow of credits instead government is working on how to block credits.

2. **Taxpayer entitled to claim ITC and a Technical Glitch in GST Portal should not deprive him of such a claim: Ezy Electricals Vs State of Gujarat (Gujarat High Court):** HC held that if the writ applicant is otherwise entitled to claim the Input Tax Credit under Section 18(1)(c) of the Act, a technical glitch in the portal should not deprive him of such a claim. It was within the capacity of the department itself to resolve the controversy and see to it that the needful is done.
3. **GST Dues: Personal Properties of a Partner of LLP can't be Attached, says Gujarat HC in M/s. Utkarsh Ispat LLP Vs State of Gujarat:**

In an important order, the Gujarat high court has said that the GST officials cannot provisionally attach personal properties of a partner of a partnership firm without final determination about the liability of the firm, which is accused of wrongly availing input tax credit (ITC). The court said that the partner of an LLP is not a taxable person, and the liability of the firm is yet to be determined.

"The day such liability is determined and fixed, it is open for the department to proceed not only against the firm as a taxable person, but also against the individual partner of the firm," the court stated. Besides, the officer concerned had also ordered provisional attachment of goods, stocks and receivables, which were pledged, and a floating charge created in favour of the Kalupur Commercial Bank Ltd. for availing cash credit facility. The court said it did not approve of such attachment and observed that the law itself makes it clear that the attachment should not hamper the normal activities of the taxable person.

STUDENTS' CORNER

ESOP TAXATION

Compiled by CA Neel Randeria



In the current times, shows like Shark Tank, have increased the drawing room and local train discussions involving start-up jargons. It is a delight to see so many people across ages discuss something meaningful. Keeping up with the recent trend of discussions, here is a topic that would interest several heads.

ESOP means **Employee Stock Option Plans**. These are shares given by the company to its selected few employees as a mode of partial compensation. The intent for such ESOPs is to align the interests of employees with that of the shareholders. Also, it saves the company from liquidity issues as there is no cash outflow. Often, it is also used to retain talents in the company.

Though, the focus of this article is *taxation* of such ESOPs. To be extremely lucid in explanation, anything that the employer gives to the employee is categorized as salary. As per section 17(2) of Income Tax Act, 1961; ESOPs or sweat equity shares are taxable as **perquisites** in the hands of the employee. The year of taxability is the **year in which shares are allotted** to the employee.

Taxable Amount = FMV of shares – Amount paid by EE for ESOPs.

Note- FMV (fair market value) is to be checked on the date on which the option is exercised. Further details about the FMV calculations are mentioned in Rule 3(8).

When the employee sells the shares, the employee obviously is subject to capital gains. The cost of acquisition in this case has to be the FMV of shares calculated as per Rule 3(8). Also, it is important to note that, the period of holding shall be considered from the date of allotment of ESOPs till the date of transfer of shares by the employee.

Additional discussion is required in case of ESOPs being given by a start-up u/s 80-IAC. Here, the eligible start-up is required to deduct TDS in case of ESOPs within 14 days from,

- Date of assessee ceasing to be employee of that start-up
- Date of sale of such shares by the assessee
- After the expiry of 48 months from the end of relevant AY.

[whichever is earlier]

The above TDS-part is a recent amendment in Section 192 which is in effect from AY21-22



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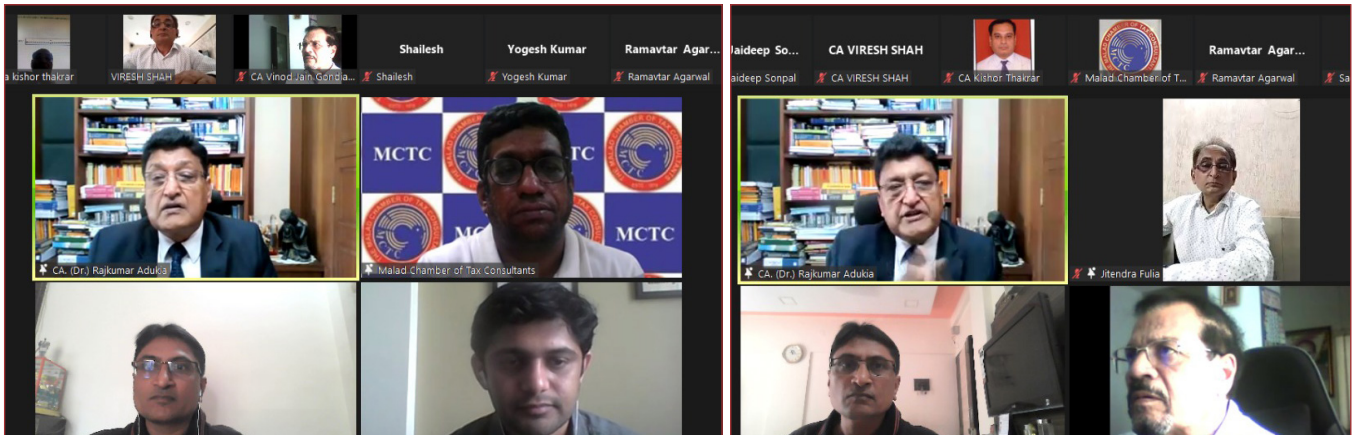


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