CASC BULLETIN

THE CHARTERED ACCOUNTANTS STUDY CIRCLE

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EDITORIAL

Dear Colleagues,

All of us would love to call June 2020 as "post-covid-19", but alas, we still have a long way to go.

What we had taken for granted as "normal" is now under threat of erosion.

Our foundation of "normal life" has been shaken.

We are struggling to keep some sense of control over our existence.

We need to prepare for a "new normal".

We have all been anxiously waiting for the pandemic to get over and get back to "normal" life, rather the "new normal"!

In these stressful and testing times, it cannot be denied that all of us have been trying to stay active in this digital world which offers lots of opportunities to learn and entertain. Zoom vs Google Meet vs Microsoft Team vs Webex Meetings vs BlueJeans.... video conferencing platforms, wonderful discoveries, that helped connect men and mind across the globe thereby retaining our sanity by keeping our Grey Matter active!

If we have not come out of this lock down with A New Skill, More Knowledge, Better Health & Fitness We never lacked time, We lacked discipline!

The social and economic challenges faced are unprecedented. It is the hope and desire of all of us that we come out of this pandemic with as minimum damage as possible.

All of us should focus on running our professional firms in the most economical manner. Our professional firms need the understanding and cooperation of every employee. We Professionals need to think "Out of the Box", individually & collectively. Our clients need our moral and professional support now, more than ever. We need to turn them around at the earliest. All of us should be ready for some personal sacrifices, till times improve.

Sincere apologies for having skipped the April & May 2020 issues of CASC Bulletin.

Stay Safe and Stay Healthy.

Life is 1% what happens and 99% how you respond!

Best Regards

P.Ramasamy

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RECENT JUDGMENTS IN VAT CST GST

Purchase tax: Planting subsidy, transport subsidy and transport charges paid to third party lorry owners are to be included to the purchase price of sugarcane and purchase tax is due and payable on the value which includes Planting subsidy, transport subsidy and transport charges. **Tvl.Sakthi Sugars Limited, Coimbatore Vs. The Deputy Commissioner (CT) Coimbatore. Tax Case No.5 of 2020 DATED: 29.01.2020**

Stock transfer : Relying on the ratio of rulings in the case of in the case of M/s. Advance Paints (P) Ltd. v. C.T.O. Chennai (W.P.No.14193 of 2001, dated 9.12.2019) and in the case of The Deputy Commissioner (Court) Chennai (North) Division vs. Tvl.P.M.P. Iron and Steel India Ltd., (2012-13 (18) TNCTJ 76) the Writ Petition filed by the Revenue is dismissed in respect of a matter in which the Appellate Tribunal allowed the Petition filed by the Assessee and held the turnover in question to be Stock Transfer / Branch Transfer made by the Assessee during the relevant period and the same does not amount to inter-State Sales. **The Deputy Commissioner (CT) Chennai (East) Division, Chennai. Vs Tvl.Aby Engineers and Consultants (P) Ltd., Chennai-14. WP.36978/2002 Dated 21/01/20**

CA. V.V. SAMPATHKUMAR

Non-speaking order: The impugned order has not discussed as to how the penalty in the form of interest has been levied even though the said provision seems to indicate that there is some amount of discretion vested with the officer while imposing penalty under the said provision. It appears that no notice was also issued to the petitioner before the impugned order was passed. Further, the impugned order is also non-speaking. Hence, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order within a period of three months from the date of receipt of a copy of this order in accordance with law. **Fisherman's Cove, vs The Assistant Commissioner (CT) Chengalpattu Assessment Circle, W.P.No.25768 of 2012 DATED: 13.01.2020**

Objections filed: As the impugned orders have been passed without considering these objections of the petitioner though they were filed by the petitioner, this

Court is of the view the impugned orders are liable to be quashed and remitted back the cases to the respondent to pass speaking orders within a period of 30 days from date of receipt of a copy of this order. **M/s. Alfab Products, vs. The Assistant Commissioner (CT), Vadapalani Assessment Circle, W.P.Nos.16428 to 16431 of 2014 DATED: 09.01.2020**

Input Tax Credit Capital goods at 12.5%: The dealer who sold the capital goods to the petitioner charged VAT at 12.5% and passed on the incidence of such tax to the petitioner. The petitioner therefore availed the tax paid and reflected in the invoice at 12.5%.Since the capital goods were liable to VAT only at 4%, the petitioner was liable to reverse input tax credit (ITC) in excess of 4% and accordingly the petitioner was required to reverse credit availed equivalent to 8.5% VAT paid in excess by the registered dealer who sold the capital goods to the petitioner. A show cause notice was issued to the petitioner. By the impugned order, the respondent has directed the petitioner to reverse the excess credit of 8.5% Following the decision rendered in Sara Leathers' case reported in (2010) 30 VST 581 (Mad), the decision of this court in petitioner's own case in W.P.No.12459 of 2014 in order dated 29.08.2016, which allowed relief to the petitioner after referring to the decision rendered in TVL Tata Refractories Ltd Vs. The Commercial Tax Officer in W.P.Nos.5614 and 5615 of 2008 in order dated 17.11.2014 and in the view of the decision contained herein the petitioner is entitled succeed and the ITC can be claimed full of 12.5%. **Visteon Automotive Systems Pvt. Ltd., vs The Deputy Commissioner (CT) IV (FAC), Large Taxpayers Unit, Chennai W.P.No.32655 of 2015 DATED: 13.01.2020**

Purchase tax: Purchase tax payable under Section 12(1) of the Act has to be paid in cash. Such purchase tax can be adjusted on the output tax in terms of section 3(3) of the Act. The purpose of allowing ITC is to reduce the cascading effect of the taxes borne on the inputs and to allow seamlessly ITC at each stage of sale and purchase. Section 12(2) of the Act is merely a trade facilitation to reduce the cascading effect of the tax. It does not contemplate discharge of purchase tax under Section 12(1) Tamil Nadu Value Added Tax Act, 2006 from and out of Input Tax Credit. There is no scope for discharging purchase tax liability from and out of Input Tax Credit (ITC). **Tvl TCS Textiles Private Limited, Tiruppur. Vs The Assistant Commissioner (CT), North Circle, Tiruppur. W.P.No.31767 of 2014 Dated 06.01.2020.**

Stock variation: Both the appellate authorities below have concurrently held in favour of the Assessee that on account of the minor stock variations found during the course of survey, the Assessing

Authority could not have assessed separate turnover at the hands of the Assessee. The stock variations are found in the Refrigerator and Washing Machine. Learned Advocate for argued that after the change in the name of the company and merger of 3 subsidiary companies, there is bound to be mingling of stocks. Washing Machines and Refrigerators are received from other States and they have got distinct numbers for identification and they are subjected to excise duty. The Department is not having any evidence apart from the stock variation that the dealer is indulging in suppressing a turnover of a greater extent. There is no evidence with the Department for making further addition except the stock variation found at the time of inspection. Having heard both parties the Court held that there no question of law arises in the present tax case filed by the Revenue. The findings arrived at by the authorities below are justified and based on relevant and cogent materials and stating so, the tax case is devoid of merits and the same is dismissed. **The Deputy Commissioner (CT), Chennai (Fast) Division, Chennai 6 vs. Tvl. Whirlpool of India Ltd., No.304/ 305, Anna Salai, Chennai 18.Tax Case No.4 of 2020 DATED: 29.01.2020**

Penalty u/s 10A CST : Following the ratio of rulings in 109 STC 392(Mad) Coronation Arts Crafts vs. State of Tamil Nadu, 148 STC 256 (Mad) State of Tamil Nadu vs. Nu-Thread Tyres (2007) 3 SCC 124(SC) CTO v. Rajasthan Taxchem Ltd.. this Court held that the learned Appellate Tribunal was justified in holding that the Assessee was entitled to purchase the said fuel viz., diesel, for its generator set and even though the same was not separately included in the Registration Certificate of the Assessee, no mens rea can be attributed to the Assessee for purchase of the same at concessional rate against "C" Form and therefore, the question of imposition of penalty under Section 10(b) of the Act read with Section 10A of the Act does not arise **The Deputy Commissioner (CT) Coimbatore Division Vs Tvl. Chola Textiles Ltd, Tiruppur WP.46181/2002 Dated: 27/01/20**

Trade Discount: There is no dispute that the Petitioner is a dealer in motor cars and had received trade discount from the manufacturer from whom it had purchased the cars for retail sales at its show rooms. The trade discount which has been offered by the dealer is an incentive given by the manufacturer based on the performance of the Petitioner in the retail market. The trade discount offered by the manufacturer to the Petitioner does not in any manner enhance the taxable value of the motor cars sold by the Petitioner to the retail buyer at its show rooms. Therefore there is no basis on which the amount of Rs.3,48,08,441/- can be taxed as taxable turnover of the Petitioner. There are two independent transactions. One transaction is between

the manufacturer who is also a dealer who had passed on incentives to the Petitioner and the second transaction between the Petitioner and its buyers of its retail show room to whom the Petitioner has sold the cars. As these two are independent transactions there is no basis on which the trade discount passed to it by the manufacturer (dealer) to the Petitioner can be added in to the taxable turnover of the Petitioner for the purpose of assessment under the TNVAT Act, 2006. Stating so, the writ petition stands allowed even though the Petitioner has an alternate remedy by way of appeal. These observations is being made as there are no disputed question of fact involved in the present writ petitions. **KUN Motor Company Pvt. Ltd., Vs The Assistant Commissioner (CT), Nandambakkam Assessment Circle, Chennai W.P.No.37775 of 2015 DATED: 20.01.2020**

Writ Petition: Where writ petition was filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari to call for the records of the 2nd Respondent pertaining to the order dated 17.2.2003 in T.A.No.1202 of 2002 and quash the same as illegal, the Court held that in view of the litigation policy, since the Revenue's stake is less than the prescribed limit mentioned in G.O. (Ms) No.105, Commercial Taxes and Registration (D1) Department, dated 25.07.2019. the learned Government Advocate (Taxes) appearing for the Writ Petitioner / Revenue does not press the Writ Petition on merits and though Nobody appears for the Respondent / Assessee to oppose the said request, the Writ Petition is dismissed in view of the aforesaid submission. **The Deputy Commissioner (CT), Chennai (North) Division, Chennai. Vs. Tvl.Jain Impex, Chennai 79 and 2.The Secretary, TNSTAT (AB), Chennai W.P.1053/2005 Dated: 28/01/20 DATED: 28.01.2020**

Classification, Industrial Cables: The Hon'ble Division Bench of the Delhi High Court in the case of Anchor Electrical (P) Ltd. Vs. Commissioner, Sales Tax [2014] 71 VST 427,after taking into consideration of the definition of "cable" as defined under Section 2(g) of the Industrial Electricity Rules: "Voltage" in Section 2(av) of the Indian Industrial Electricity Rules, held that when statutory determination under the relevant law itself having classified 1100 volts cable as high voltage cables, there cannot be any difficulty in accepting the dealer's contention that the subject goods are industrial cables and taxable at 5% **M/s. Classic Associates, Vs. The Commercial Tax Officer, Purasawakkam Assessment Circle, Chennai. W.P.Nos.35025 to 35027 of 2015 DATED: 06.01.2020**

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CASE LAWS - GST / SERVICE TAX

1. SERVICE TAX – SUBSIDY RECEIVED FROM TATA TELE SERVICES ON SALE OF MOBILE HANDSETS PURCHASED FROM INDEPENDENT VENDORS – NOT COVERED UNDER BUSINESS AUXILIARY SERVICES

CA. VIJAY ANAND

In Balaji Enterprises v. CCE &, Jaipur 2020(33) GSTL97 (Tri.-Del.) the appellant is a distributor appointed by Tata Tele Services for marketing their telecom service products in terms of the distributorship agreement and also holds registration under the taxable category of "Business Auxiliary Services" (BAS). Tata Tele Services pays commission to the Appellant for the services provided under the distributorship agreement and the Appellant charges service tax on the commission received. In addition, the appellant decided to engage in the business of selling mobile handsets and for this it paid VAT on such sales for which separate agreements were entered into with third party manufacturers / vendors for supply of handsets sold by the Appellant to the customers. The invoices were raised by the vendors in the name of the appellant who was responsible for making payments to such vendors and Tata Tele Services was in no way connected with the payment to the vendors from whom the Appellant purchased the handsets. However, such handsets purchased from other vendors were sold at a price fixed by Tata Tele Services, which price was lower than the purchase price of the handsets and Tata Tele Services paid the different amount to the Appellant by way of subsidy. The adjudicating authority confirmed the demand under BAS on such subsidy. On appeal, the Tribunal observed as under:-

1. The issue that arises for consideration is whether the subsidy received by the appellant from Tata Tele Services on the sale of mobile handsets purchased by the appellant from independent vendors can be said to be an amount received for providing BAS to Tata Tele Services and, therefore, chargeable to service tax.

2. A perusal of the agreement shows that Tata Tele Services for the purpose of marketing the telecom services desired

to appoint distributors and the Appellant was appointed as a Distributor to market and sell service provided by Tata Tele Services. "Service" has been defined to mean one or more of the "telecom service" provided by Tata Tele Services which would include distribution of prepaid cards, smart cards and all other services within the purview of the license in relation to the telecom service.

3. The appointment of the appellant as a distributor was subject to the terms and conditions set forth in the agreement. It is not in dispute that the appellant has paid the service tax on the commission received by the appellant for marketing/selling of the telecom services provided by Tata Tele Services. The dispute is with regard to the subsidy received by the appellant from Tata Tele Services on the sale of mobile handsets from third party vendor. The case of the appellant is that these handsets are sold at a price fixed by Tata Tele Services, which price is lower than the purchase price of the handsets and Tata Tele Services reimburses the differential amount by way of subsidy.

4. However, the SCN proceeds on the footing that the appellant has been appointed as a distributor of Tata Tele Services for selling/marketing their CDMA handsets with connections. This premise is not in accordance with the terms of the agreement which also mentions that the appellant has been appointed as a distributor for marketing/selling/reselling of services, goods and any other product/commodities provided by Tata Tele Services. Tata Tele Services has not provided any handsets to the appellant which has been purchased from third parties specified by Tata Tele Services. There is no agreement between the appellant and Tata Tele Services for selling mobile handsets at a lower rate. The mobile handsets are independently purchased by the appellant and VAT is discharged on the sale of mobile handsets to the customers. However, while selling the handsets the appellant sells them at a price lower than the purchase price and Tata Tele Services pays the differential amount as subsidy to the appellant.

5. In Commissioner of Customs and Central Excise, Goa V. Swapnil Asnodkar, it was observed that without specifying the activity and the nature of service of the Respondent he cannot be taxed. Further out of the seven clauses under Section 65 (19) no clause has been pointed out under which the Respondent is liable for service tax.

6. In United Telecoms Ltd., service tax was proposed to be demanded in the SCN for an activity under BAS and BSS. Under BSS also several activities are listed as exigible under that head. It was held that in the absence of proposal in the SCN as to the liability of the assessee under the precise provision in the Act, the demand cannot sustain.

7. The aforesaid decisions clearly hold that it is imperative for the Department to specify which specific service contained in the seven clauses of section 65(19) of the Act is being provided and in the absence of any specific service pointed out in show cause notice, the demand cannot be confirmed as the noticee will not be aware as to which precise service contained in the sub-clause has been rendered by him.

8. In the present case, the SCN even after reproducing the seven clauses of section 65(19), does not specify which particular clause was attracted and it only mentions that "the assessee is an authorized distributor appointed by M/s TTSL for selling CDMA handsets along with connection to the customers. The expenditure incurred by the distributor is reimbursed by M/s TTSL in the guise of subsidy and the same appears to be covered under the definition of "Business Auxiliary Service" and chargeable to Service Tax since, the amount received by the assessee was in respect of providing Business Auxiliary Service to M/s TTSL.

9. In the present case, the appellant is engaged in the marketing of telecommunication services of Tata Tele Services for which it is receiving a consideration and the Appellant is discharging service tax on the said amount of consideration. The amount of subsidy that the Appellant is receiving on account of sale of handsets at a lower price does not have any nexus with the promotion or marketing of the services provided by Tata Tele Services. It needs to be noted that Tata Tele Services is reimbursing only that amount to the Appellant which the Appellant would have otherwise received from the customer buying the handsets. No service is being provided. The amount of subsidy is merely a compensation and this amounts the Appellant would have received from the customer. In fact, it can be said that the arrangement between the Appellant and Tata Tele Service for selling the handset at a lower price only aids the business of the Appellant because it will be able to sell more handsets.

Hence, the appeal was held and impugned order set aside.

2. SERVICE TAX – PAYMENT OF TAX ALONG WITH INTEREST BEFORE SCN – SECTION 73(3) NOT TO APPLY WHEN THERE IS SUPRESSION OF FACTS – NO REASON TO DENY THE IMPOSITION OF PENALTIES

In Meroform (India) Pvt. Ltd. v. Commissioner of Service Tax, Noida 2020 (33) G.S.T.L 200 (Tri. – All.), the appellants were duly registered with Service Tax Department under the category of 'Business Exhibition Service', 'Erection, Commissioning & Installation Service' and 'Works Contract Service' and provided services to Delhi Development Authority in connection with the preparation for the Commonwealth Games. Enquiry proceedings were initiated when the department noticed that the appellants were not paying due service tax for the period from April, 2010 to November, 2010 consequent to which the assessee paid the tax along with interest and has also filed the returns. Thereafter the adjudicating authority confirmed the imposition of penalties u/s 78 & 77 of Finance Act, 1994.

On appeal, the Tribunal observed as under:

1. The appellant had not filed ST-3 returns for the impugned period till 20/01/2012 nor paid service tax and the said short payment was detected through an enquiry by Revenue.

2. Therefore, sub-section 3 of Section 73 of Finance Act, 1994 which empowers conclusion of proceedings of payment of service tax along with interest before issuance of show cause notice are not applicable in the present case.

3. The case laws relied upon by the learned counsel for the appellant reported at 2009-TIOL-161-CESTAT-MAD is not applicable in the present case because in the said case service tax was paid voluntarily along with interest whereas in the present case service tax was paid after initiation of enquiry.

4. Further the ruling of Hon'ble Karnataka High Court in the case of Commissioner of Service Tax, Bangalore vs. Prasad Bidappa reported at 2011 (09) LCX0148 relied upon by learned counsel for the appellant is not applicable in the present case because in the said case suppression was not alleged.

5. Final Order of this Tribunal reported at 2008-TIOL-2286-CESTAT-BANG is also not applicable in the present case since there is no reference to Sub-section (4) which has debarred Sub-section (3) of Section 73 in case there is suppression. In view of the above

findings, we do not find any infirmity with the impugned order and therefore, we do not interfere with the impugned order.

Hence the appeal was rejected.

3. SERVICE TAX – REMUNERATION/ SALARY TO WHOLE-TIME DIRECTOR – NO LIABILITY UNDER RCM

In Maithan Alloys Ltd. v. Commissioner of C.E & S.T., Bolpur 2020 (33) G.S.T.L. 228 (Tri.-Kolkata), the appellant assessee is a manufacturer of ferro alloys on which central excise duty is being paid. In the course of business, the assessee company pays remuneration to its whole time directors which has fixed as well as variable components. The said variable component comprised of commission payable on the basis of percentage of profit in conformity with the provisions of the Companies Act. The adjudicating authority confirmed the demand of service tax under reverse charge mechanism on the remuneration paid to the whole time directors holding that the said remuneration paid to the directors would constitute 'service'. On appeal, the Tribunal observed as under :

1. The only dispute herein is for payment of remuneration to whole time directors, which is a fact on record. The provisions of Companies Act, 2013, contained in section 2(94), duly defines 'whole time director' to include a director in the whole-time employment of the company. A whole-time director refers to a director who has been in employment of the company on a fulltime basis and is also entitled to receive remuneration.

2. The position of a whole-time director is a position of significance under the Companies Act. Moreover, a whole-time director is considered and recognized as a 'key managerial personnel' under Section 2(51) of the Companies Act. Further, he is an officer in default as defined in clause (60) of section 2 for any violation or non-compliance of the provisions of Companies Act.

3. Thus, the whole time director is essentially an employee of the Company and accordingly, whatever remuneration is being paid in conformity with the provisions of the Companies Act, is pursuant to employer – employee relationship and the mere fact that the whole time director is compensated by way of variable pay will not in any manner alter or dilute the position of employer – employee status between the company assessee and the whole time director.

4. The very provisions of the Companies Act makes whole time director (as also incapacity of key managerial personnel) responsible for any default /offences, it leads to the conclusion that those directors are employees of the assessee company.

5. Further, the appellant has duly deducted tax under section 192 of the Income Tax which is the applicable provisions for TDS on payments to employees. This factual and legal position also fortifies the submission that the whole time directors who are entitled to variable pay in the form of commission are 'employees' and payments actually made to them are in the nature of salaries. This factual position cannot be faulted in absence of any evidence to the contrary.

Hence, the appeal filed by the appellant was allowed with consequential relief.

4. SERVICE TAX – SALE OF SPACE ON SHIPS BY FREIGHT FORWARDER TO EXPORTERS – NO TAX ON THE MARGINS RETAINED

In Marinetrans India Pvt. Ltd. v. CST, Hyderabad-ST 2020 (33) G.S.T.L. 241 (Tri.-Hyd.) the appellant is a freight forwarder and has been registered as service provider under the category of "business support services". The adjudicating authority confirmed the demand on the margin retained between purchasing space from the shipping lines and selling it to the exporters for profit. On appeal, the tribunal observed as under:

1. It is not in dispute that the appellant herein is purchasing the space from the shipping lines and then is selling the same to exporters. It is the case of the revenue that this amounts to acting as an intermediary for helping the business of the shipping lines and therefore they are liable to pay service tax on business auxiliary services on the profit which they receive.

2. It is the case of the appellant that this is a deal on principal to principal basis between them and the shipping lines and again between the exporters and them. They are not acting as an agent. They could purchase the space for a lower price and sell it at a higher price and thereby earn profit. On the other hand, if they failed to sell the space to exporters, after purchasing from the shipping lines, they may incur a loss. They are not receiving any commission whatsoever from the shipping line or from the exporters.

3. Para 2.1-3 of the Circular of the CBEC No. 197/7/2016-S.T., dated 12-08-2016 clearly states that service tax is payable when one acts as an intermediary and not as a trader dealing on principal to principal basis on their own account which is undisputedly the case here.

4. In an identicalcase, in the case of Phoenix International Freight Service Pvt Ltd. (2017 (47) S.T.R. 129 (Tri. – Mum) the Tribunal held that buying and selling space on ships does not amount to rendering a service and any profit or income earned through such transactions is not leviable to service tax. There is no reason to deviate from this view taken by the Tribunal which view is also supported by the C.B.E. & C circular cited above.

Hence, the appeal was allowed with consequential relief.

5. GST – IMPORT OF GOODS ON PAYMENT OF CUSTOMS DUTY ON CIF BASIS – INCLUSION OF THE OCEAN FREIGHT UNDER RCM – NOT SUSTAINABLE

In Mohit Minerals Pvt. Ltd. v. Union Of India 2020 (33) G.S.T.L 321 (Guj.), the petitioner is engaged in importing non-cooking coal from Indonesia, South Africa and U.S.A. and supplying it to various domestic industries including power, steel, etc. It has business based at various parts of the country, however, the main business place is in Gujarat and most of the imported coal comes at the port located at Gujarat. The petitioner discharges the customs duty on the imported products at the time of each import and such value includes the value of freight on which customs duty is demanded and paid. The petitioner is liable to pay integrated tax in terms of provisions of the Integrated Goods and Services Tax Act, 201 (IGST/Integrated Tax Act) and accordingly they are paying IGST at the time of import itself, which also includes value of Ocean Freight involved in imported coal.

A writ-application was filed praying for the following reliefs :

a. To quash Notification No.8/2017-Integrated Tax (Rate), dated 28.6.2017 and Entry 10 of the Notification No.10/2017-Integrated Tax (Rate), dated 28.6.2017 by declaring that same lack legislative competency, ultra vires to the Integrated Goods and Services Tax Act, 2017 and hence unconstitutional;

b. To declare that no tax is leviable under the IGST Act on Ocean Freight for services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India and levy and collection of tax on such Ocean Freight under the impugned Notifications is not permissible under the law;

c. Direction to the second Respondent to place before the Court the records of the recommendation given and all decision taken in respect of impugned Notifications;

d. Pending the hearing and final disposal of the petition,

i. To stay the operation of impugned Notifications;

ii. To stay the levy and collection of IGST on Ocean Freight on transport of goods in a vessel from a place outside India upto the customs station of clearance in India by a person located in non-taxable territory; and/or;

iii. To restrain the first respondent No.1 and all its officers, agents to take any coercive measure against the petitioner and its officers during the pendency of writ petition; and/or;

iv. To issue such other writ/order/ direction and further orders as the court may deem just and proper in the facts and circumstances of the case.

The High Court observed as under:

1. Section 5 of the IGST Act provides for levy and collection of integrated tax on inter-state supply of goods or services or both. The proviso to sub-section (1) of Section 5 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, on the value as determined under the said Act at the point when the duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962.

2. It is a fundamental principle of construction of tax statutes that if the words of the Act on one construction results into double taxation of the same transaction, that result will be avoided by adopting another construction which may reasonably be open. Further, double taxation, by way of delegated legislation, when the statute does not expressly provide, is not permissible.

3. In the case of United Shippers Ltd. v. CCE, 2015 (37) S.T.R 1043 (Tribunal), the Tribunal held that there can be no levy of service tax on barge charges and the handling charges which is part of the import transaction into India and form an integral part of the transaction value on which the customs duty is leviable. The judgment of the Tribunal has been affirmed by the Supreme Court in the case of CCE v. United Shippers, 2015 (39) S.T.R J369 (SC).

4. Thus, having paid the IGST on the amount of freight which is included in the value of the imported goods, the impugned notifications levying tax again as a supply of service, without any express sanction by the statute, are illegal and liable to be struck down.

5. Prior to 01.06.2016, the services of transportation of goods in a vessel from a place outside India up to the customs station of clearance in India

were exempted from service tax. As a result, the Indian Shipping Lines were unable to avail the input tax credit of tax paid on the goods and services and such tax formed part of their transportation cost. To provide them the level playing field, service tax was imposed on the service of inward transportation of goods to enable the Indian Shipping Lines to avail the input tax credit. Further, the services of the outward transportation of goods were treated as export of service and thus the credit of the excise and service tax was available. It is further stated that subsequently, many FOB contracts were being converted into CIF contracts. In order that the tax is suffered by both, the foreign shipping line and the Indian shipping line, the services of the inward transportation of goods provided by a person in a non-taxable territory to a person in a non-taxable territory were made liable to service tax.

6. Even international, the service of international transportation both relating to imports and exports is GST-free (i.e. no tax is payable on the outward supply and the tax paid on the inward supplies can be claimed as refund). The tax is collected from the importer of goods by including it in the value of imported goods.

7. In the United Kingdom, the Value Added Tax Act, 1994 provides that the services of transportation relating to the import and export is zero-rated (i.e. no tax is payable on the outward supply and the tax paid on the inward supplies can be claimed as refund).

8. Thus, the services of transportation relating to export and import are governed by the international considerations and all countries treat the same as zero-rated or GST-free.

9. Vide Finance Act, 2016, the sub-clause (ii) of clause (p) of Section 66D of the Finance Act, 1994, which provided that the service of transportation of goods from a place outside India upto the customs station of clearance is not leviable to service tax, was omitted and Notification No.9/2016-ST dated 1.3.2016 effective from 1.4.2016 was issued, which inserted entry no.53 in the Mega Exemption Notification No.25/2012-ST dated 20.6.2012.

10. The effect of the above amendment was that the service of transportation of goods in a vessel from a place outside India upto customs station of clearance in India became taxable whereas the same services by an aircraft were made exempted from payment of tax. The amendments were made with the objective that the Indian Shipping Lines which were hitherto not eligible to avail credit of taxes paid

on the input side as the services provided by them were not leviable to service, became eligible to avail the credit and pass on the same to the consumer.

11. However, by such an amendment, the Indian Shipping Lines were placed at a disadvantageous position than the Foreign Shipping Lines who were exempted from paying the service tax vide entry no.34 of the Notification No.25/2012-ST dated 20.6.2012 and, as the above-mentioned person would not be able to pass on the credit, the importer of the goods was made the person liable to pay tax vide Notification No.15/2017-ST and 16/2017-ST both dated 13.4.2017 w.e.f. 23.4.2017.

12. Further, vide Notification No.14/2017-ST dated 13.4.2017, the point of taxation was provided and vide Notification No.16/2017-ST dated 13.4.2017, an alternative mechanism for paying the service tax at the rate of 1.4% of the CIF (Cost, Insurance and Freight) value of the goods.

13. Further, vide Notification No.10/2017-C.E. (N.T.) dated 13.4.2017 effective from 23.4.2017, the importer of the goods has been allowed to avail the Cenvat Credit on the basis of the challan of payment of service tax by the said importer.

14. Under the erstwhile service tax regime, Section 66B of the Finance Act, 1994 was the charging section which levied the tax on the value of all the services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another. Section 68 provided for collection of tax. Sub-section (1) of Section 68 provided that every person providing taxable service shall pay the service tax. Further, sub-section (2) of Section 68 provided that, in respect of such taxable services as may be notified by the Central Government, the service tax shall be payable by such person and in such manner as may be prescribed.

15. Further, as per Section 5(3) of the IGST Act, the Government is only authorized to specify the categories of supply on which the tax is to paid by the recipient of the supply under the reverse charge basis. The Government cannot further specify the person liable to pay tax as other than the recipient of the supply.

16. There is no doubt that in the taxing legislation, the legislature deserves the greater latitude and the greater play in joints. This principle, however, cannot be extended so as to validate a levy by a subordinate legislation which has no sanction of law, however, laudable may have been the object to introduce it.

17. The legislature, while enacting the IGST Act, was aware of the wide provisions under the Finance Act, 1994, which provide the Government the power to collect tax under the reverse charge basis only from the recipient of the service but from any other person as may be prescribed. However, while enacting the IGST Act, the legislature consciously curtailed the power of the Government to collect tax under the reverse charge basis from any person and restricted it only to the recipient of the supply.

18. If the intention of the Government was to allow the credit of the taxes paid on the goods and services used for providing the supply of the inward transportation, the same could have been made a zero-rated supply. A zero-rated supply is provided u/s 16 of the IGST Act, wherein it is provided that zero-rated supply can be made either without the payment of tax or with payment of tax along with an option to claim refund of tax later. Further, the person making the zero-rated supply will be eligible to avail the input tax credit and claim refund if the same remains unutilized. The same approach has been adopted even internationally.

19. Alternatively, such services could have been exempted from payment of tax and simultaneously excluded from the value of exempt supply for the purpose of determining reversal of the input tax credit. The said mechanism has been provided in the case of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India (exempted from payment of tax till 30.09.2019 vide Notification No.9/2017 - Integrated Tax (Rate) dated 28.06.2017).

20. Simultaneously, the said service has been excluded from the aggregate value of exempt supply for the purpose of reversal of input tax credit under Rule 42 and 43 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) via Explanation to Rule 43(2) of the CGST Rules.

21. In Gujarat Ambuja Cements Limited and another v. Union of India and another, (2005) 4 SCC 214, the constitutional validity of Sections 116 and 117 respectively of the Finance Act, 2000 was challenged on the ground that it encroached upon the power of the State Legislature under Entry 56 of List II of the 7th Schedule to the Constitution and also on the ground that the levy of the service tax on the customers of goods transport operators and clearing & forwarding agents was discriminatory as the other

recipients were not subjected to such imposition. The Supreme Court, while rejecting both the contentions, held that the legislature has the competence to collect tax from the recipients of services. The ratio of Gujarat Ambuja Cements Ltd. (supra) is in no way helpful to the respondents for the purpose of defending the notifications.

22. In the case on hand, there is no challenge to the competence of the legislature in enacting Section 5(3) of the IGST Act which empowers the Government to notify the goods or services upon which tax is liable to be paid by the recipients. The issue in the present case is, when the statutory provision empowers collection of tax from the recipient of goods or services, then whether the delegated legislation by way of notification can stipulate imposition of tax on a person who is neither the supplier nor the recipient of service.

23. In Phulchand Exports Limited v. O.O.O. Patriot, (2011) 10 SCC 300, the Supreme Court has referred to and relied upon the decision in the case of Johnson v. Taylor Brothers and Company Limited, 1920 AC 144 (HL) in the context of determination of rights of the sellers and buyers under the Indian Contract Act, 1872 and held that in a CIF contract, the seller is obliged to procure a contract of affreightment under which the goods would be delivered at their destination. This supports the case of the writ-applicants that in a case of CIF contract, the contract for transportation is entered into by the seller, i.e. the foreign exporter, and not the buyer, i.e. the importer, and the importer is not the recipient of the service of transportation of the goods.

24. Consequently, no tax is leviable under the IGST Act, 2007, on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law.

Hence, the writ-application along with all other connected writ-applications were allowed and the impugned Notification No.8/2017 - Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017 - Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the IGST Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional.

6. SERVICE TAX – ADJUDICATION – DELAY IN CULMINATION – BEYOND ONE YEAR FROM THE CONCLUSION OF ARGUMENTS – DEMAND LIABLE TO BE QUESTIONED

In Sunder System Pvt. Ltd. V UOI 2020 (33) G.S.T.L. 621 (Del.), the petitioner was issued a show cause notice on 25.11.2011 and the hearings were concluded on 03.02.2015. Further hearing notice was issued on 09.08.2017 as well as the subsequent corrigendum dated 20.09.2017 primarily on the ground that the adjudication proceeding had become barred by limitation in view of the limitation period of one year for adjudication from the date of the show-cause notice prescribed under Clause (b) of sub-section (4B) of Section 73 of the Finance Act, 1994. The petitioner also seeks refund of an amount of Rs.1,13,56,468/- along with interest from the date of deposit.

On writ petition high court observed as under:

1. The short question that arises for consideration is the interpretation of Section 73 (4B) (a) & (b) of the Finance Act, 1994.

2. In National Building Construction Co. Ltd. Vs. Union of India; 2019 (20) G.S.T.L. 515 (Del.), it was held that even if no time period for limitation is prescribed, the statutory authority must exercise its jurisdiction within a reasonable period and if it is not so done, it will vitiate the proceedings. Keeping in view the aforesaid mandate of law as well as sub-section (4B) of Section 73 of the Finance Act, 1994, this Court is of the view that a statutory authority has to decide the show-cause notice within the time prescribed wherever it is possible to do so.

3. In the present case, it is apparent that it was certainly possible for the adjudicating authority to adjudicate upon the show-cause notice issued to the petitioner within a period of one year at least from the conclusion of arguments on 03.02.2015, if not earlier.

4. Since that has not been done, the present writ petition is liable to be allowed on the short ground of limitation alone.

Hence, the writ petition was allowed and show-cause notice dated 25th November, 2011 was quashed. Furthermore, the respondents were directed to refund the amount to the petitioner within four weeks.

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MANUFACTURE AND OTHER OPERATIONS IN WAREHOUSE REGULATIONS 2019

CA. DEBASIS NAYAK

The provision of warehousing of imported goods without payment of customs duties in Customs Bonded Warehouses is provided under various sections of the Customs Act, 1962. In a common parlance, there are only private and public warehouses concept wherein the importer can store the goods without payment of customs duties otherwise leviable on import. However, Finance Act, 2016 introduced a new concept of Special warehousing to store sensitive goods. Finance Act, 2016 have also simplified warehousing provisions as to move from physical control to record based control and inserted a concept of Special warehouse. Moving from storing of goods to Manufacture in bonded warehouse, Section 65 permits manufacturing also in bonded warehouse. We have captured various types of warehousing below for ease understanding:

Types of Warehousing under Customs regulations

- Public Bonded Warehouse (Section 57) – This is regulated by **Public Warehouse Licensing Regulations, 2016.** Under this regulation, any person **can store** the goods in this warehouse. It is used for the purpose of trading.

- Private Bonded Warehouse (Section 58) – This is regulated by **Private Warehouse Licensing Regulations, 2016. Only the Licensed goods can be stored in Private warehouse.** It is used for the purpose of trading.

- Special Warehouse (Section 58A) – The concept of special warehouse is inserted by Finance Act, 2016 to provide for a new class of warehouses which require continued physical control and will be licensed for storing revenue sensitive goods. The board may specify the goods to be deposited in this warehouse. This is regulated by **Special Warehouse Licensing Regulations, 2016.**

- Manufacturing and Other Operations in Warehouse (Section 65) - Explained below

Section 65 of the Customs Act, 1962 (hereinafter referred to as, "the Customs

Act") provides for manufacturing as well as carrying out other operations in a bonded warehouse. Earlier, Under section 65, the Board has prescribed "Manufacture and Other Operations in Warehouse Regulations, 1966" (MOOWR, 1966). Hence, the concept of manufacturing and other operations is not newly implemented. However, it has not attracted the attention of the investors due to difficult procedures and licensing requirements. Under MOOWR, 1966, to convert a new or existing facility into a bonded manufacturing premises, it is mandatory to seek license under section 58 (that converts a premise to bonded warehouse) along with a license under section 65 (that permits manufacturing or other operations). To overcome such dual licensing requirement to the manufacturer, the board has issued a Circular No. 34/2018-Customs dated October 18, 2018 prescribing the form of application for seeking grant of license as a private bonded warehouse as well as permission to carry out manufacturing or other operations into a single form.

With the Government's continuous efforts to promote India as the manufacturing hub globally and the commitment towards ease of doing business, the Board has issued Manufacture and Other Operations in Warehouse Regulations 2019 ("MOOWR, 2019) in supersession of the MOOWR, 1966 to streamline the procedure, documentation and compliances to be followed under Section 65 of the Customs Act vide notification no. 44/2019-Customs (N.T) dated June 19, 2019.

The Board has further received various representations from the trade and potential investors seeking clarifications on various issues. Considering this and with a view to provide clarity and predictability and to facilitate investments, the Board has issued revised Manufacture and Other Operations in Warehouse Regulations 2019 (no. 2 regulations) (MOOWR, 2019) vide Notification No.69/2019-Customs (N.T.) dated 01.10.2019 in supersession of earlier Notification No. 44/2019- Customs (NT) and a revised Circular 38/2018-Customs in a consolidated and integrated manner with earlier Circular 34/2018 to covers the following in detail:

- procedures and documentation for units operating under Section 65 in a comprehensive manner,
- application for seeking permission under section 65,
- provision of execution of the bond by the licensee,
- receipt, storage and removal of goods,
- maintenance of accounts and conduct of audit

The said circular and regulation are self-contained and accordingly the provisions of Warehouse (Custody and Handling of Goods) Regulations, 2016, and the Warehoused Goods (Removal) Regulations, 2016, which provides for procedure for custody and handling of goods in and removal of goods from public and private bonded warehouses, is not applicable for warehouses operating under section 65.

Eligible Person for Operating under MOOWR, 2019

The following persons shall be eligible to apply for license under these regulations,-

(i) a person who has been granted a licence for a warehouse under section 58 of the Act

(ii) a person who applies for a licence for a warehouse under section 58 of the Act, along with permission for undertaking manufacturing or other operations in the warehouse under section 65 of the Act synchronously

Advantage of MOOWR Scheme, 2019

- Unlimited period of duty deferment on import of raw materials and capital goods until clearance to domestic market – positive working capital
- No export obligation and limit of clearance to domestic market
- Seamless transfer of goods from one warehouse to another without payment of duty
- No Geographical limit; new manufacturing facility can be set up or an existing facility can be converted into a bonded manufacturing facility irrespective of its location in India.
- Single point of jurisdiction for approval
- Ease compliance and maintenance of digital accounts for receipt, removal and storage of goods in a single format;
- No limit on warehousing – importer can store the goods for unlimited period

Procedure for opting MOOWR Scheme

STEP -1 – Filing of Online Form by Applicant

An online application for operating under these regulations shall be made to the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be https://www.investindia.gov.in/bonded-manufacturing/application-form (Annexure-A of the Circular No. 34/2019-Customs) along with the details including business details, proposed facility (nature of manufacturing, particulars of imported

goods, final product, intermediate product, waste and scraps etc.).

Mandatory documents required such as Certificate of Incorporation, Memorandum and Articles, Documents supporting property-holding rights, such as rent agreement, lease deed, Copy of warehouse license, if issued earlier, Ground plan of the site with details, Fire safety audit certificate, Work Experience Certificate Of Warehouse Keeper, ITR and Balance Sheet etc.

STEP -2 – Verification by Customs officer

After filing the online application as per specified form, the following process shall be executed:

- Customs officer (Bond Officer) shall visit the premise of the applicant for verification in respect to security, fire protection, IT enabled inventory management system, type of construction, area available for examination of goods, if required etc.
- DRI / DGGI shall verify the declarations provided such as insolvent or bankrupt, conviction for an offence, penal action etc. in serial no.11 of Part -II of Annexure-A online form.
- Customs officer shall provide examine the premise of the applicant;

STEP -3 – Execution of Bond and other details

The following details shall be obtained from the applicant such as Insurance Policy, undertaking under section 73A of the Act, Indemnity undertaking, Bond as per Annexure C to the Circular No. 34/2019-Customs, Details of Warehouse keeper etc.

STEP -4 – Grant of License

After due verification of the application made, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall grant permission to operate under the provisions of these regulations and it shall remain valid unless it is cancelled or surrendered.

STEP -5 – Start Manufacturing

After grant of license, applicant shall start the manufacturing. Pursuant to that, Customs officer will vist the premise to certify commencement of manufacture or other operations in the Warehouse and examine the records maintained by applicant.

Bonded Premises requirements

Regulation 8 of MOOWR 2019 requires the licensee to provide at the warehouse

- signage that prominently indicates that the site or building is a customs bonded warehouse;

- a computerized system for accounting of receipt, storage, operations and removal of goods (Annexure -B) and;

- such facilities, equipment and personnel as are sufficient to control access to the warehouse, provide secure storage of the goods and ensure compliance to the regulations.

Further, the regulations do not mandate that a structure fully closed from all sides is a pre-requisite for grant of license. What is important is that the site or building is suitable for secure storage of goods and discharge of compliances, such as proper boundary walls, gate(s) with access control and personnel to safeguard the premises.

Therefore, Principal Commissioner/ Commissioners should take into consideration the facilities, equipment and personnel put in place for secure storage of goods, while considering grant of license.

How does MOOWR Scheme, 2019 works?

1. *Duty Deferment on import of raw materials and capital goods*

   Customs duties or Integrated GST is not payable or deferred at the time of import of raw materials and capital goods into the bonded warehouse. Duties on imported raw materials and capital goods used in manufacturing or other operations are deferred until clearance of finished goods. If such manufactured goods are exported, deferred duty is waived.

2. *Domestic Procurement of raw materials and capital Goods and Services*

   There is no restriction on procurement of raw materials, capital goods and services from DTA Market. However, it has to be procured with payment of applicable GST and there is no exemption.

3. Export of manufactured goods

   Duty on raw material is waived in case finished goods are exported. Further, capital goods can also be sold to foreign manufacturer after utilization without payment of duty.

4. Domestic clearance

   On clearance of the finished goods to the domestic market, importer has to pay of customs duty, cess on the value of the raw material imported and GST on the value of the finished goods. Further, for clearance of capital goods, importer has to pay customs duties, cess and GST on depreciated value (as per depreciation schedule in Income Tax Act). If the raw materials and capital goods are cleared as such then interest is levied on duty deferred beyond 90 days.

Maintenance of Records and Filing of Return

1. A licensee shall maintain the following documents -

- maintain detailed records of the receipt, handling, storing, and removal of any goods into or from the warehouse as per *Annexure-B digitally* and produce the same to the bond officer, as and when required;

- keep a record of each activity, operation or action taken in relation to the warehoused goods;

- keep a record of drawal of samples from the warehoused goods under the Act or any other law for the time being in force; and

- keep copies of the bills of entry, transport documents, Forms for transfer of goods from a warehouse, shipping bills or bills of export or any other documents evidencing the receipt or removal

2. The above records shall be preserved for the period of *minimum five years* from the date of removal of the goods from the warehouse

3. A licensee shall file with the bond officer a monthly return of the receipt, storage, operations and removal of the goods in the warehouse, within ten days after the close of the month to which such return relates.

Receipt and Removal of Goods from bonded warehouse

Prior permission of the proper officer is not an essential condition for removal of the warehoused goods considering the requirement and nature of the product to clear expeditiously. However, a licensee shall require to file the due documentation (such as the Form for transfer of goods from a warehouse, bill of entry and shipping bill, respectively) and pay the duties due.

Audit and Penalty

- The proper officer may conduct audit of a licensee in accordance with the provisions of the Customs Act and the rules made thereunder

- If a person contravenes any of the provisions of these regulations, or abets such contravention or fails to comply with any of the provision of these regulations, he shall be liable to a penalty in accordance with the provisions of the Act.

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INTEREST ON LATE TAX PAYMENT UNDER GST

What makes interest so interesting!

Daniel Dennett once said, *"The way evolution always discovers reasons is by retroactive endorsement."* This philosophy holds no relevance with our sprouting Goods and Services Tax ('GST') legislation, since there is no past to bank on.

It is a principle that, Businesses will have to shelter itself from various exposures that will lead to its fall. But if one pierces his eyes beneath the great beetling businesses brow, what glitters as the 'worry line' is the levy of Interest under GST.

The parent section governing the levy of Interest under GST is Section 50 of Central GST Act, 2017 ('CGST Act'), the relevant excerpts of Section 50, i.e. sub-section 1 of CGST Act is reproduced below for reference.

50. (1) Every person who is liable to pay tax in accordance with the provisions of this Act, or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen percent, as may be notified by the Government on the recommendations of the council.

Takeaways from plain reading of the Section are as follows:

CA. HARINI SRIDHARAN

1. Every person who is liable to pay tax, but fails to pay, is liable for interest.
2. Interest is levied on the part of the tax remaining unpaid.
3. Interest is levied for the period between the due date and the actual date of payment of tax.
4. Interest liability is automatic – since the phrase employed in the Section is 'pay on his own'.
5. Rate of interest shall be such rate as recommended by the council, with an upper cap of 18%.

Levy of interest – automatic?

It is palpable that Interest liability is automatic, and it is the obligation on the part of the taxpayer to pay interest immediately on defaulting the payment of tax on due date.

But if there are certain objections raised by the taxpayer on the quantification of interest – it cannot be unilaterally decided

by the department, especially when the objection is with regard to the period or quantum of tax remaining unpaid. The arithmetic exercise of quantification will have to be done after considering the objections of the taxpayer. This has been supported by the Madras High Court decision in case of Daejung Moparts Private Limited ***(Writ Appeal Nos. 2127 and 2151 of 2019).***

Law vs. GST portal:

Though Section 50 of CGST Act imposes interest only on the portion of the tax remaining unpaid, it is an irrefutable fact that GST portal is designed in such a manner that unless the entire tax liability is paid by the taxpayer, the system will not accept the return in GSTR-3B form.

So, even if the taxpayer has Input tax credit to the extent of 95% of the total liability, he cannot file the return unless the remaining 5% is also paid. Hence though such a restriction is not imposed by the legislation, it is a realistic datum that every taxpayer has to face.

Gross or net:

The legislation effective 1st July 2017 did not provide the needed clarity of whether the levy of interest is on gross liability or the net liability remaining after setting off the Input tax credit.

In the 31st GST Council meeting held at New Delhi on 22nd December 2018, in-principle approvals were obtained for certain amendments – one such amendment relates to Interest provisions. The relevant excerpts of Press release of Ministry of Finance in this regard read as follows:

"Amendment of Section 50 of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger

The above recommendation of the Council will be made effective only after the necessary amendment in the GST Acts are carried out"

To our utter dismay, the Amendment was not carried out in the Act and were still on paper till it was inserted through Finance Act, 2019 enacted on 1st August 2019, but reserved to be notified on a later date.

Gujarat High Court in case of Megha Engineering & Infrastructure Limited ***(Writ Petition No. 44517 of 2018)*** delivered on 18th April 2019 was the first ever decision in this regard. Writ against levy on Interest on gross tax liability was dismissed by stating that no claim to Input tax credit can be made unless the returns are filed. Relevant excerpts from the judgements are given below for reference:

"until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place.

As a consequence, no payment can be made from out of such a credit entry. It is true that the tax paid on the inputs charged on any supply of goods and / or services, is always available. But, it is available in the air or cloud. Just as information is available in the server and it gets displayed on the screens of our computers only after connectivity is established, the tax already paid on the inputs, is available in the cloud. Such tax becomes an input tax credit only when a claim is made in the returns filed as self-assessed."

The Honorable Gujarat High Court denied interpreting Section 50 of CGST Act, 2017 in the light of the proposed amendment in the 31st GST council meeting, since it was still on paper.

Amendment to Section 50 of CGST Act, 2017:

Finally, the approval obtained in the 31st GST Council meeting was enacted on 1st August 2019 by way of amendment to Section 50 of CGST Act, 2017, but with a date yet to be notified.

Proviso was inserted to Section 50 of CGST Act, 2017 which is as follows:

"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger"

The proviso seeks to note that the interest liability arises only on the amount due to be paid but not paid in cash. The only exception provided is filing of returns upon determining the tax not paid / short paid / erroneously refund / ITC wrongly availed or utilized by a proper officer of the department.

When the taxpayers were about to have a sigh of relief, by concluding that no interest would get attracted on amount available in electronic credit ledger in case of delayed filing of self-assessed returns, there came in a question as to whether this amendment is prospective or retrospective or even effective?

Retrospective or Prospective or not effective – Revenue's viewpoint?

When things were chaotic, an Intra-departmental communication dated 10th February 2020 which was meant only for the Revenue Officers consumption, warily got publicized.

In the said communication, Section 50 without any reference to the Proviso and Section 75(12) (relating to the recovery provisions relating to self-assessed returns) was quoted and the field officers were directed to initiate recovery proceedings of interest on gross tax liability from taxpayers.

It is to be noted that this internal communication was issued after 6 months of enacting the amended Act.

A target collection of Rs 46000 crores towards interest liability was given on the strength that the Proviso to of Section 50 of CGST Act, 2017 is YET TO BE NOTIFIED.

This intentionally publicized internal communication came like a caution to those who were contemplating whether the applicability of the Proviso to Section 50 of CGST Act can be retrospective !

Approach of the Courts – Proviso to Section 50:

Though Department had made its approach clear on its take, the judges of the courts did not fail to rule by exercising their judicial temperament.

Temporary solutions have been offered by the Delhi High Court in case of M/s. Landmark Lifestyle ***(Civil Writ Petition No. 6055 of 2019 and Civil Miscellaneous No. 26114 of 2019)*** and Gujarat High Court in case of Amar Cars Private Limited ***(Special Civil Application No. 4025 of 2020)*** by granting stay on recovery of interest on gross tax liability until further orders.

But the wizardry came from the Madras High Court in case of Refex Industries Limited ***(Writ Petition No. 23360 and 23361 of 2019 & Writ Miscellaneous Petition Nos. 23106 and 23108 of 2019).*** The Honorable Dr. Justice Anita Sumanth conclusively pronounced that Interest is applicable only on net cash liability retrospectively and held as follows:

i. proper application of Section 50 is one where interest is levied on a belated cash payment. Interest is not to be levied on ITC available all the while with the Department to the credit of the assessee. The ITC available with the Department is, neither belated nor delayed.

ii. Credit will be valid till such time it is invalidated by recourse to the mechanisms provided under the Statute and Rules

iii. Proviso inserted to Section 50(1) seeks to correct an anomaly in the provision as it existed prior to such insertion. Hence such Proviso is to be read as clarificatory and operative retrospectively.

Reaffirmed by GST Council meeting:

Without any recourse, the GST council had finally accepted the standpoints of the courts and held that Interest is applicable only on Net cash liability retrospectively in the 39th GST Council meeting held on 14th March 2020 in New Delhi.

As "Happy endings come after a story with lots of ups and downs" – story of Interest has concluded with a happy ending that Interest is applicable only on Net liability from the date of introduction of GST.

COVID-19 CONTRIBUTIONS BY CORPORATES - THE GOVERNMENT MUST RETURN THE FAVOUR

CA RAHUL JAIN & **CA. V. BARATWAJ**

The entire world is taking its best efforts to fight the six-letter demon which is challenging the survival of the human ecosystem- 'CORONA (*aka* COVID-19)' The impact of the Virus has certainly set the alarm bells ringing in the entire world's clock. This battle requires support in all forms possible.

In India, while all efforts are in place by the Government to overcome this situation, many noble corporates have come forward and committed to provide assistance to help fight this battle out both financially and by offering assistance through essential goods and services.

To encourage such contributions, the Ministry of Corporate Affairs (MCA) vide General Circular No. 10/2020 dated 23.03.2020 had clarified that spending funds for COVID-19 would be regarded as an eligible CSR activity. Though corporates are providing assistance in these distress times without any concomitant expectations to provide such assistance, the authors in this Article would try and deal with the benefits under GST which may arise from such assistance.

Before dwelling further, let us understand the basic nitty-gritties of CSR. CSR, as a concept, is based on the idea that a business entity is responsible not only to its shareholders and other stakeholders but also for the society as a whole. It is on the premise that when the society is allowing businesses to exist and grow, the business must also contribute to the society's well-being. Keeping in view the role companies can play in upbringing the society, the Companies Act 2013, vide Section 135 has made it mandatory for certain categories of companies to spend some percentage of its profits in specified activities mentioned in Schedule VII every year. The activities mentioned in Schedule VII are aimed at improving the welfare of the society as a whole.

In this background, considering that many corporates are not only opting for cash contributions but are also procuring goods and services for the benefit of the society, an interesting question which may arise is whether such expenditure on providing goods and services which is part of the

CSR activities as per the MCA Circular would be eligible to be claimed as Input Tax Credit (ITC) under Goods and Services Tax (GST) Law?

Basic eligibility for ITC under GST

For a business to claim ITC under GST, there are two basic tests to be fulfilled:

- Such item must be an **input or input service** and
- Such item must be used in course or furtherance of **business**

The terms inputs and input services are defined under the GST law in a very wide manner. While input means any goods which are not capitalized in books of accounts, input service encompasses all services other than those excluded. The CSR expenditure incurred by corporates may be in the form of providing food, equipment, kits, facilities for transport, daycare and shelter and any other kind of support for the affected persons.

Considering that the CSR expenditure in the form of goods is debited in the Statement of Profit & Loss and not carried forward as 'Assets' and the services offered by corporates are not covered in the exclusions from input services, the CSR expenditure by corporates can be regarded as 'inputs' and 'input services'.

The second test for an item to be eligible for ITC is that the expenditure must be in course or furtherance of business of the corporates. This is where the real point of discussion arises. In this regard, it is important to understand as to what constitutes **'business'** for the corporates for the purpose of GST Law.

The term 'business' is defined under the GST law in a very wide manner to include trade, commerce, manufacture, and also activities which are incidental or ancillary to such activities. The term 'incidental or ancillary' is very wide and includes activities which are integral and inextricably linked to the business[1].

Considering that corporates are responsible to society as a whole, CSR and business cannot be separated. Further, no business entity can be completely absolved of its responsibility without taking care of the social needs. For the existence of business, CSR becomes an important aspect. Hence, it could be argued that CSR activities are 'incidental or ancillary' to the business of corporates.

Judicial precedents on the aspect of whether credit would be eligible in CENVAT

While there are no judicial precedents in the context of GST on whether CSR expenditure would be regarded as

[1] Keshaodeo Shivprasad vs Union of India [1992 (61) ELT 404 (MP)]

incidental and ancillary to business and eligible for credit, there are certain precedents in the CENVAT credit regime where credit has been allowed on CSR activities.

In **Northern Coalfields Ltd. vs Commissioner[2],** it was held that expenditure on Corporate Social Responsibility is a statutory requirement under the Companies Act and when it is clearly in relation to the activity of manufacture, CENVAT credit would be eligible.

In **Essel Propack Ltd vs Commissioner of CGST[3],** it was held that CSR is not charity since it has a direct bearing on manufacturing activity of company that is largely dependent on smooth supply of raw materials. Further, CSR also augments credit rating of company as well as its standing in corporate world. Hence, the credit was held to be eligible.

It shall be noted that both the above decisions were rendered in the context of 'manufacture' whereby the credit was held to be eligible since the CSR activity had close connection with 'manufacture'. In our view, the term 'business' is a much wider term in comparison to 'manufacture'. In fact, the definition of 'business' includes 'manufacture'. Hence, once it has been held that CSR expenditure can be availed as credit in the context of 'manufacture', credit should be eligible in the context of 'business' too.

Resort to provisions of connected legislation

In this context, provisions of Income Tax Act, 1961 could also be looked at. Section 37 allows deduction from business profits in respect of any expenditure, not covered in any other provisions, which are wholly and exclusively incurred for the purpose of business or profession. Explanation 2 of the said section, inserted w.e.f AY 2015-16 states that expenditure incurred by assessee on CSR activities under Companies Act, 2013 shall not be **deemed** to be expenditure for the purpose of business or profession.

It has been held in various decisions[4] in Income Tax that Explanation 2 is only prospective in nature. Prior to AY 15-16, companies would be eligible to claim CSR expenditure as deduction under Section 37 since such expenditure is in relation to

[2] 2020(2) TMI 1004- CESTAT New Delhi

[3] 2018 (362) ELT 833 (Tri.-Mum)

[4] a. National Small Industries Corpn. Ltd vs DCIT [2019 103 taxmann.com 288 (Delhi-Trib.)],
b. ACIT vs Jindal Power Ltd. [2016 70 taxmann.com 389 (Raipur-Trib.)]
c. Bengal NRI Complex Ltd. vs DCIT (ITAT Kolkatta) ITA No. 2231/Kol/2017

business. Post AY 15-16, in view of the Explanation, companies would not be eligible to claim CSR expenditure which is incurred under the Companies Act, 2013 as deduction, even though such expenditure is in relation to business.

From the above, it can be seen that, but for the explanation, CSR expenditure would have been deductible under Income Tax as incurred for the purpose of business. It shall be noted that there is no such restriction under GST law like in case of Income Tax.

Thus, in the GST regime where the definition of 'business' is wide and in the absence of a specific exclusion as in case of Income Tax, ITC seems to be available in respect of CSR expenditure.

Is there any provision in GST law which could be invoked to state that such contributions are ineligible to be claimed as ITC?

While there are certain basic conditions for claiming ITC under GST law, there are certain other provisions which state that though the basic tests for claiming ITC are satisfied, ITC is still ineligible. One such provision is Section 17(5) of the Central Goods and Services Tax (CGST) Act, 2017. The relevant clause in Section 17(5) is clause (h) which states that **goods disposed of by way of gift** is not eligible for ITC.

A question arises as to whether the equipment, kits, etc. which are provided by the corporates free of cost would be regarded as a **'gift'** and hence not eligible as ITC. There is a need to understand as to what is a **'gift'.**

According to **Merriam Webster Dictionary**, the meaning of gift is, "something **voluntarily** transferred by one person to another **without compensation**; the act, right, or power of giving."

Black Law Dictionary inter alia states that gift is "a voluntary conveyance of land, or transfer of goods, from one person to another, made **gratuitously**, and **not upon any** consideration of blood or money."

Further, Australian GSTR 2001 / 6 inter alia states that, 'for a supply to be a gift, it must be transferred to the **recipient voluntarily**. It must **not be subject to any contractual obligation** and the donor **cannot receive an advantage of a material character** for giving away of the gift.

From the various meanings of 'gift' discussed above, the characteristics of gifts can be deduced as follows-

a) it is made voluntarily;

b) without consideration; and

c) no material benefit should be derived to donor.

While conditions b) and c) seem to be satisfied in the present case, questions may arise with regard to condition a).

There is a possibility to argue that CSR is a statutory requirement and therefore there is no discretion on part of the Companies. Thus, expenditure on CSR cannot be termed as made 'voluntarily'. However, considering that corporates have themselves come forward and provided assistance for COVID-19, and no consideration has flown from the beneficiaries to the Corporates, the Department could take a stand that the such expenditure is incurred as a gift 'voluntarily' and hence, credit is not available.

To support such stand of the department, the Hon'ble Authority for Advance Rulings, Kerala in the case of **Polycab Wires Private Limited**[5] had held that free distribution of electrical items to flood affected people under CSR activity is to be regarded as 'gift' and hence ITC is not eligible.

Considering the above, this aspect of whether spending by companies on providing equipment, kits, etc. would be eligible for ITC, could end up in litigations where companies would need to prove that the assistance provided is not wholly voluntary and hence not covered by the aforesaid ineligibility.

Another interesting aspect to be considered is that the above ineligibility is only in respect of gift of 'goods'. Therefore, when companies offer facilities such as medical facilities, transportation, space for essential purposes, etc., for care and support of affected people, the ineligibility is not attracted.

Embargo under the Companies Act

It is important to note that as per Rule 4 of the Companies (Corporate Social Responsibility) Rules, 2014, activities carried on in normal course of business cannot be regarded as CSR Activities. The term 'business' is accompanied by the words 'normal course' which in simple terms means in the ordinary or usual course. The phrase 'Normal course' has been defined by some dictionaries[6] as 'As things typically unfold, take place, or happen'. Ordinarily the COVID-19 Pandemic being witnessed by us and the resultant contributions towards the same can by no stretch of imagination be said to be something in the

[5] 2019(24) GSTL 103 (AAR-GST)

[6] Macmillans Dictionary and www.lawinsider.com

normal course of business and hence, would qualify as CSR. The lingering question which still remains open is that though these are not made in the normal course of business, can these otherwise be said to be as incidental or ancillary to the main business. In other words, contribution to COVID-19 being a one-time expenditure, a question arises as to whether it can still be treated as incidental or ancillary.

In this regard, in Income Tax context, the Hon'ble Supreme Court in **Sri Venkata Satyanarayana Rice Mill Contractors Co. vs CIT**[7] has held that donations made to Chief Minister's Drought Relief Fund or District Welfare Fund for the benefit of public and for the purpose of assessee's business shall be allowed as deduction whether such donations are made voluntarily or at the instance of authorities concerned.

Accordingly, it can be seen that even one-time payments could be availed as deduction under Income Tax when it can be established that such payments are related to assessee's business. From the above, considering the fact that CSR has an important connect with business of a company, even contributions for COVID-19, though one-time payments, could be regarded as incidental or ancillary to business of the assessee.

Conclusion

To conclude, the authors feel that the assistance by corporates towards COVID-19 may be regarded as incurred in course or furtherance of business under GST. Further, in the absence of a specific provision in GST Law as in case of Income Tax Law, a stand could be taken that such contributions by corporates are eligible for ITC under GST.

However, applying the ineligibility provision under Section 17(5)(h), the Department could contend that the expenditure on 'goods' is in nature of gift and not eligible for ITC, which may end up in litigations.

Considering that the Corporates are being benevolent in opening up their purses for the greater good of the society, the Government must extend the reciprocity by allowing ITC as well as deduction under Income Tax in respect of assistance towards fighting COVID-19. In this regard, a suitable clarification may be issued by the Government. Such act of mutual support would increase the bonhomie between the Government and Corporates which is the need of the hour.

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[7] 1996 (6) SCC 611

NCLAT BENCH CHENNAI - SOME FAQ'S

Mr. ANANT MERATHIA - ***Advocate, Chennai***[1]

The Ministry of Corporate Affairs (MCA) in a very relevant measure has announced the setting up of a Bench of the Hon'ble National Company Law Appellate Tribunal (NCLAT) Bench at Chennai a few days ago. This was done by the Ministry's notification dated 13th March 2020, notifying this constitution of a NCLAT Bench at Chennai vide its notification with Ref No. MCA N/No/S.O. 1060(E). The first NCLAT Bench is situated at Delhi and has been functional for about three years. This move has been by and large appreciated by stakeholders and this article we will evaluate some fundamental aspects and very frequently asked questions on this subject.

The Chennai Bench is to hear appeals from the National Company Law Tribunal (NCLT) Benches situated in states (1) Karnataka, (2) Tamil Nadu, (3) Kerala, (4) Andhra Pradesh, (5) Telangana, (6) Lakshadweep and (7) Puducherry. This Bench will be in addition to the Principal Bench of the NCLAT at New Delhi which shall continue to hear appeals other than those in the jurisdiction of Chennai Bench of the NCLAT.

While the Circular has been shared amongst various Social Media and Sharing Apps, ensuring awareness, there are multiple queries raised by stakeholders namely the parties in the litigation, lawyers and other professionals including Insolvency Professionals. Some of the most immediate questions have been addressed in this Article.

What types of cases will be heard in this NCLAT, Chennai Bench?

The NCLT's across the nation have jurisdiction to hear cases primarily relating to the subjects of:

a) Disputes under Oppression and mismanagement under Companies Act

b) Disputes relating to transfer of shares under Companies Act

c) Schemes of merger, demerger, capital reduction, etc. under Companies Act

d) Cases under Insolvency and Bankruptcy Code, 2016

e) Restoration of companies under Companies Act

Up until the date of notification, all matters pertaining to the above mentioned subject matters were appealed to the

[1] *Refer* : NCLAT notice dated 24.03.2020 on preventive measures to contain Covid-19

NCLAT Bench at Delhi. However, with the constitution of the latest NCLAT Bench at Chennai, matters appealed from NCLT Benches at Chennai, Bangalore, Kochi, Hyderabad and Amravati will be heard and decided at the Chennai Bench. This is basically pertaining to matters relating to the Companies having registered office in these states.

Is it not limited to cases under IBC, 2016?

It is essential to step a few years back in time, to understand this concept better. The Company Law Board was established in 1991 which heard matters primarily related to Oppression and Mismanagement and Disputes on Transfer of Shares. A few years later a regional Bench was set up at Shastri Bhavan, Haddows Road, Chennai. The regional Bench at Chennai heard matters relating to Companies having registered office at the four southern states (Andhra Pradesh, Karnataka, Kerala and Tamil Nadu) & Pondicherry. The jurisdiction of matters pertaining to Schemes of Companies and winding up vested in the High Courts of the respective States. In 2016-17, The NCLTs were established, and the jurisdiction of both these fora was shifted to the respective NCLTs.

This circular more or less takes us back to the same jurisdictional purview of the CLB, of course with the inclusion of the new state, Telangana. Hence matters pertaining to NCLTs in the Southern demarcation shall be heard and not only IBC matters.

How does the appeal system work?

The Code provides for matters in the NCLT to be appealed in the NCLAT and there are certain legal provisions indicating that Civil Courts would not interfere in matters especially relating to IBC, 2016. However it has been a matter of debate as some issues have been considered under appeal / writ jurisdiction in the Hon'ble High Courts. Given that IBC is an evolving law it might take a couple more years for this issue to be established. But as a by and large rules, appeals from the NCLTs across the nation are made to the NCLAT and subsequently to the Hon'ble Supreme Court.

Impact on cases or litigants?

It is anticipated that the new NCLAT Bench at Chennai will be a helpful move in the interest of cases and appeals as the sole NCLAT Bench is getting overburdened at the Principal Bench at Delhi. Setting up a dedicated regional bench for cases from the southern part of the country will also facilitate litigants to pursue their appeals at Chennai itself which could be relatively more accessible and convenient. There would certainly be reduction in time and costs involved in filing & handling of such appeals for the litigants making it more user-friendly towards the interest of speedier justice.

When will the NCLAT, Chennai begin functioning & what is the status of pending cases in Delhi?

Given that the infrastructure is yet to be completed and still being set up, the NCLAT Bench at Chennai might take a few weeks or a few months to get fully functional and operational, also given the current situation. Given the way things have worked in the past it is most probable that the NCLAT Registry at Delhi could start shifting of files of pending status to the Chennai Bench and this logistics process would take the time as mentioned above.

Given that the time period to make an appeal is a very limited at the appeal level, it would be expected that the Benches at Delhi might still entertain urgent relief matters from the states until the Chennai Bench is fully operational as litigants cannot be left in a vacuum. Moreover the present coronavirus pandemic is likely to delay matters for some time. There have been a spate of notifications[1] issued by various Ministries & NCLAT in wake of the pandemic and lockdown; whereby the principal bench is also closed and any urgent matters can only be filed by email to the registry. Further there was another circular indicating that the Chennai Bench is likely to be functional only by June 2020[2] and later notified to state that the Delhi Bench will hear appeals pertaining to the Jurisdiction of Chennai[3], which also at this point appears to be uncertain given the overall scenario.

All that can be said is that once things get back to normal; the Bench would start functioning but with some delay.

Would the cases be heard afresh which are at appeal level? Have the appointments of members been made?

While it would be difficult to answer this at this stage, again from past experiences when a new Bench is constituted to hear cases; usually the same starts afresh which at times mean starting all over again. But this aspect will have to be seen on a practical level.

With respect to appointments; certain appointments of members were made a while ago and it is expected that some from them would take charge and preside over the cases at Chennai Bench. A notification dated 17.03.2020has been issued by Hon'ble NCLAT mentioning a judicial and a technical member likely to take charge in Chennai.

Any likelihood of similar regional appeal benches and other places?

There could be a possibility of setting up similar appellate Benches in Mumbai & Kolkata for cases emanating out of the respective western and eastern regions of the country. But this is again a matter of discussion for the future and nothing concrete can be stated unless there is an official circular from the Government.

[2] NCLAT Notice on Chennai Bench issued on 16.03.2020
[3] NCLAT Notice on Chennai Bench issued on 17.03.2020

A DISCUSSION PAPER ON CHAPTER III- DIRECT TAXES OF FINANCE ACT, 2020 - FEBRUARY & MARCH, 2020

CA. VIVEK RAJAN V

Introduction - Thanking everyone for our Discussion Papers of 2016, 2017, 2018 & 2019 (Interim and Final)

The Finance Bill, 2020 (Bill No. 26 of 2020) was presented in Lok Sabha on 01st February 2020 by Ms. Nirmala Sitharaman, Union Finance Minister. In Chapter III of Finance Bill, 2020, there has been 104 amendments to the Income-tax Act, 1961. The Finance Bill, 2020 got the assent of the President of India on 27th March 2020 and thereby becoming **THE FINANCE ACT, 2020 [ACT NO 12. OF 2020]**

Scope of the Discussion Paper

This discussion paper attempts to **cover all sections of the Finance Act, 2020** relating only to Direct Taxation. This discussion paper attempts to cover all the aspects about the amendments broadly and not in detail. Further unless otherwise specifically mentioned, sections discussed in this paper, relates to Income-tax Act, 1961 and the Finance Act, 2020. Please refer to Finance Act, 2020 and the relevant pronouncements before taking any decision. The readers are requested to contact the author, in case of errors (which are unintentional) and also in case of divergent views with the author's note.

We thank the readers for giving their support for the 100% coverage attempted for the first time for the Budget 2019. Similarly, we are attempting to extend the coverage of the discussion paper **to all the sections of the Finance Act, 2020 and also to coin FAQ's to the best extent possible.** Giving due consideration to the volume of the discussion paper and the challenges involved in publishing, we intend to present this in a phased manner (April 2020 and May 2020). The sections which are not covered in this month's bulletin, would be covered in the subsequent months. We sincerely hope that this effort is of value addition to the readers.

Acronym and Description

FA	Finance Act
CG	Capital Gains
IFHP	Income from House Property
LTCG	Long Term Capital Gain
The Act	Income Tax Act, 1961
PY	Previous Year
AY	Assessment Year
PCIT	Principal Commissioner of Income-tax
CIT	Commissioner of Income-tax
NRI	Non- resident Indian
RBI	Reserve Bank of India
NCLT	National Company Law Tribunal
FMV	Fair Market Value
TDS	Tax Deducted at Source
TCS	Tax Collected at Source

1. Two regimes for personal tax – Insertion of Section 115BAC

With effect from 01st April 2021 and applies from AY 2021-22 and subsequent AY's

Present scenario

There is no change in the rates of taxes for individuals, HUF's, AOP's and BOI, when compared to the previous year. The existing slab rates are as under and the tax payer was entitled to certain allowances and deductions before getting taxed under these rates

a. For individuals up to the age of 60 years, HUF's, BOI's, AOP etc

Income Slab	Tax Rates
Up to Rs. 2,50,000	Nil
From 2,50,001 up to Rs. 5,00,000	5%
From 5,00,001 up to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

b. For individuals with age between 60 years and up to the age of 80 years

Income Slab	Tax Rates
Up to Rs. 3,00,000	Nil
From 3,00,001 up to Rs. 5,00,000	5%
From 5,00,001 up to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

c. For individuals above 80 years of age

Income Slab	Tax Rates
Up to Rs. 5,00,000	0%
From 5,00,001 up to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

Amendment

The amended slab rates for all categories of tax payers are as under and there are no special provisions for tax payers above the age of 60 years or 80 years

Income Slabs	Tax Rates
Up to Rs. 2,50,000	Nil
From Rs.2,50,001 to Rs. 5,00,000	5% (Rebate u/s 87A available)
From Rs. 5,00,001 to Rs .7,50,000	10%
From Rs. 7,50,001 to Rs. 10,00,000	15%
From Rs. 10,00,001 to Rs. 12,50,000	20%
From Rs. 12,50,001 to Rs. 15,00,000	25%
Above Rs. 15,00,000	30%

List of exemptions and deductions that tax payer has to give up

The following is the list of exemptions and deductions that the tax payer has to give up in order to avail the new rates of taxation.

S.No	Section	Name of the exemption/ deduction/ section
1	Section 10(5)	Travel concession or travel assistance received from employer
2	Section 10(13A)	House rent allowance (HRA)
3	Section 10(14)	Special allowance (not a perquisite) granted to meet expenses incurred for official purposes and dearness allowance
4	Section 10(17)	Income by way of daily allowance / allowance/ constituency allowance received by MP/MLA/ any other person having membership of state legislature
5	Section 10(32)	Exemption for minor child in case of clubbing of income
6	Section 10AA	Special provisions in respect of newly established Units in Special Economic Zones
7	Section 16	Deductions from Salaries
8	Section 24(b) in respect of property u/s 23(2)	Interest payable on borrowed capital – Income from house property
9	Section 32(1)(iia)	Additional depreciation
10	Section 32AD	Investment in new plant or machinery in notified backward areas in certain States
11	Section 33AB	Tea development account, coffee development account and rubber development account
12	Section 33ABA	Site Restoration Fund
13	Section 35(1)(ii)	Expenditure on scientific research- *deduction of 150%*

14	Section 35 (1)(iia)	Expenditure on scientific research -*Any sum paid to a company to be used by it for scientific research*
15	Section 35 (1)(iii)	Expenditure on scientific research- *Any sum paid to research association for undertaking research in social science or statistical research*
16	Section 35 (2AA)	Expenditure on scientific research – *Any sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person with a specific direction that the said sum shall be used for scientific research- deduction of 150%*
17	Section 35 AD	Deduction in respect of expenditure on specified business
18	Section 35 CCC	Expenditure on agricultural extension project
19	Section 57(iia)	Deduction for family pension
20	Any provisions of Chapter VIA other than section 80CCD(2) or Section 80JJAA	Deductions to be made in computing total income except Section 80CCD (2)-Maximum 10% deduction in case of pension Section 80JJAA- Deduction in respect of employment of new employees

Tax payer to forego

a. Loss carried forward or depreciation from any early AY, to the extent attributable to the list of exemptions/ deductions given in the above table.

b. Loss under the head "Income from house property" with any other head of income.

c. The loss and depreciation shall be deemed to have been given full effect to and no further deduction shall be allowed.

d. The WDV of block of assets have to be computed again for AY 2021-2022.

e. Tax credit u/s 115JD shall not be available for those tax payers opting for new rates.

Entry/ Exit

Having income from business or profession

Entry

The option has to be exercised within the time limit u/s 139(1) and such option once exercised shall apply to subsequent AY's .

Exit

The option can be **withdrawn only once** for a PY and thereafter the person shall never be eligible to exercise option, except where such person ceases to have any income from business or profession.

Not having income from business or profession

Entry

The option has to be exercised within the time limit u/s 139(1).

Exit

The option can be withdrawn at the time of filing of return of income within time limit u/s 139(1)

Author's note

Example of the tax rates under the new regime

Particulars	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Gross Total Income (Deductions under Chapter VI-A not considered)	2,50,000	5,00,000	6,00,000	8,00,000	11,00,000	13,00,000	15,00,000	18,00,000
Tax Amount	Nil	12,500	22,500	45,000	95,000	1,37,500	1,87,500	2,77,500
Less: Rebate u/s 87A	Nil	12,500	Nil	Nil	Nil	Nil	Nil	Nil
Add: HEC @4%	Nil	Nil	900	1,800	3,800	5,500	7,500	11,100
Total Tax Payable	Nil	Nil	**23,400**	**46,800**	**98,800**	**1,43,000**	**1,95,000**	**2,88,600**

Example of the tax rates under the old regime for individuals less than 60 years of age

Particulars	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Gross Total Income	2,50,000	5,00,000	6,00,000	8,00,000	11,00,000	13,00,000	15,00,000	18,00,000
Less: Deductions under Chapter VIA	50,000	1,00,000	1,50,000	2,00,000	2,00,000	2,00,000	2,00,000	2,00,000
Taxable Income	2,00,000	4,00,000	4,50,000	6,00,000	9,00,000	11,00,000	13,00,000	16,00,000
Tax Amount	Nil	7,500	10,000	32,500	92,500	1,42,500	2,02,500	2,92,500
Less: Rebate u/s 87A	Nil	7,500	10,000	Nil	Nil	Nil	Nil	Nil
Add: HEC @4%	Nil	Nil	Nil	1,300	3,700	5,700	8,100	11,700
Total Tax Payable	Nil	Nil	Nil	**33,800**	**96,200**	**1,48,200**	**2,10,600**	**3,04,200**

Example of the tax rates under the old regime for individuals between 60 years and up to the age of 80 years

Particulars	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Gross Total Income	2,50,000	5,00,000	6,00,000	8,00,000	11,00,000	13,00,000	15,00,000	18,00,000
Less: Deductions under Chapter VIA	50,000	1,00,000	1,50,000	2,00,000	2,00,000	2,00,000	2,00,000	2,00,000
Taxable Income	2,00,000	4,00,000	4,50,000	6,00,000	9,00,000	11,00,000	13,00,000	16,00,000
Tax Amount	Nil	5,000	7,500	30,000	90,000	1,40,000	2,00,000	2,90,000
Less: Rebate u/s 87A	Nil	5,000	7,500	Nil	Nil	Nil	Nil	Nil
Add: HEC @4%	Nil	Nil	Nil	1,200	3,600	5,600	8,000	11,600
Total Tax Payable	Nil	Nil	Nil	**31,200**	**93,600**	**1,45,600**	**2,08,000**	**3,01,600**

Example of the tax rates under the old regime for individuals above 80 years of age

Particulars	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Gross Total Income	2,50,000	5,00,000	6,00,000	8,00,000	11,00,000	13,00,000	15,00,000	18,00,000
Less: Deductions under Chapter VIA	50,000	1,00,000	1,50,000	2,00,000	2,00,000	2,00,000	2,00,000	2,00,000
Taxable Income	2,00,000	4,00,000	4,50,000	6,00,000	9,00,000	11,00,000	13,00,000	16,00,000
Tax Amount	Nil	Nil	Nil	20,000	80,000	1,30,000	1,90,000	2,80,000
Less: Rebate u/s 87A	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Add: HEC @4%	Nil	Nil	Nil	800	3,200	5,200	7,600	11,200
Total Tax Payable	Nil	Nil	Nil	**20,800**	**83,200**	**1,35,200**	**1,97,600**	**2,91,200**

FAQ's

1. **I am less than 60 years of age. Whether shall I opt for the new rates of tax or continue with the existing rates of tax.**

   As can be inferred from the tables above, for a person who is less than 60 years of age, both the rates are beneficial so much so that up to a Gross Total Income of Rs. 11,00,000, the existing rates of tax coupled with availing of deductions under Chapter VI-A would be beneficial.

   For persons having Gross Total Income exceeding Rs. 11,00,000, the new rates would be beneficial if tax outflow alone is kept in mind.

2. **I am more than 60 years of age but less than 80 years of age. Whether shall I opt for the new rates of tax or continue with the existing rates of tax.**

   Similar to the assessee's whose age is less than 60 years of age, the old rates are beneficial up to Gross Total Income of Rs. 11,00,000. For persons whose Gross Total

Income is more than Rs. 11,00,000, the new rates are beneficial if tax outflow alone is kept in mind.

3. **I am more than 80 years of age. Whether shall I opt for the new rates of tax or continue with the existing rates of tax.**

   In this scenario, the old rates are beneficial up to Gross Total Income of Rs. 13,00,000 and thereafter the new rates are beneficial, if tax outflow alone is kept in mind.

4. **Now that there are rates of tax that operates without giving effect to erstwhile tax saving deductions, has there been a consequential amendment to those sections that tax the inflow on account of these deductions.**

   For example, the maturity proceeds out of a life insurance policy is taxable under some scenarios and also the withdrawal from Provident fund. If the deduction with respect to these is not claimed at the time of investment, as a corollary and as a consequence, the withdrawal / maturity of the same also shall not be taxed.

   No, at present there is no consequential amendment in view of the above question.

To conclude, the tax payer either has to work out in detail as to which scheme would be better or has to seek professional advice before taking the final call.

Further, the TDS on salary for FY 2020-2021 has already kicked in and the quarterly TDS return for Q1 of FY 2020-2021 would be due for filing shortly and if the CBDT can make necessary changes in the Form 24Q in the meanwhile, it would ensure that irrespective of the choice of the tax payer, we have a robust information capturing system in place that will ensure smooth and hassle free deduction of TDS on salary for FY 2020-2021 as a whole.

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