THE MONTHLY MAGAZINE FROM CASC

GST UPDATES

VOLUME-3 ISSUE-2 FEBRUARY 2024

CASC BULLETIN

INDEX

Date	Topic	Speaker
29.02.2024 (Thursday)	IBC - Role of CAs	Adv. Ram Meiyyapan

The meetings will be held at CASC at 6.30 p.m. and will be preceeded by fellowship over High Tea at 6.00 p.m.

CASC Annual Members are requested to renew their subscription for 2023 - 2024

EDITORIAL

The economy around Ram Mandir

The consecration of Ram Mandir in Ayodhya bodes well for the all round economic development of State of Uttar Pradesh. Ayodhya has already witnessed monumental infrastructure development due to this temple activity. In the pre-industrialization era, the economic activity of the society revolved around temples. That is why there is even a popular Tamil saying "கோவில் இல்லா ஊரில் குடி இருக்க வேண்டாம்" meaning one should not live in place which does not have a temple which implies the economic activity around the temples. As per recent news, the State of Uttar Pradesh has already overtaken industrialized States of Gujarat and Tamil Nadu in in terms of Gross State Domestic Product (GSDP). With a great history surrounding the Ram Mandir and with the kind of media attention it has got, it is expected that the temple will be a boost to tourism in the state even inviting international travelers.

Recent challenges faced by the profession

The challenges faced by practicing Chartered Accountant fraternity in the last decade are beyond imagination. No other profession has faced such a challenging environment in such a short span of time. First the Companies Act, 2013 which ushered enormous compliance burden on the companies and on the Chartered Accountants in terms of reporting requirements. The reporting responsibilities thrust on a company's

auditor has gone beyond the global levels, in terms of requirements to disclose aging analysis of trade receivables, trade payables and work in progress, disclosure of accounting ratios, reporting on benami transactions, reporting on availability of audit trail, reporting on whether a company has taken daily back up of its accounts etc. No other country has cast such an enormous burden on a practicing Chartered Accountant. No study has been undertaken to measure the benefits derived by the users of financial statements from these disclosures.

Second, in accordance with the prescriptions of FATF, the amendments to the PMLA making a Chartered Accountant in practice as a reporting entity has wide ramifications for a practicing Chartered Accountant. One needs to be abreast of the requirements of this act and its compliance requirements.

Third, the new Digital Personal Data Protection Act 2023, has vide ramifications for practicing Chartered Accountants in terms of handling clients data like his PAN number, Aadhar number, telephone number, mail id, etc. The Chartered Accountants community needs to have a good understanding of this Act in order to comply with its requirements. The penal consequences are extremely severe in the case of violation of the law. We had even organized a meeting at CASC on DPDPA very recently just to create awareness of the implications of the law and its consequences. While the implementation of the law is yet to see the light, it is only a matter of time that the relevant rules are framed and the forms are notified.

Adhyayana at Parvat

We, at the CASC, have made elaborate arrangements for the delegates and their families for its forthcoming Annual Residential Conference at Munnar with the theme "Adhyayana at Parvat". As usual, our Annual Residential Conference will be a mix of both learning and enjoyment and will be an opportunity for bonding among our members. We look forward to hosting you at Sterling Holiday Resorts, Munnar and wish all the delegates and their families a happy learning and enjoyment.

Appeal

We, at Chartered Accountants Study Circle, request members to contribute articles for the bulletin and you may contact the editorial board regarding the same. We have been regularly conducting technical programmes every month. Members are requested to attend the programmes conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent as hard copy to the office of the CASC or emailed to admin@casconline.org or any of the members of the Management Committee of the CASC. Any member interested in using the CASC platform for addressing our members on technical topics may kindly feel free to contact us by way of email at admin@casconline.org.

For and on behalf of the Editorial Board

R. Sricharan

Sricharan R

PRESENT MEMBERS OF THE MANAGEMENT COMMITTEE OF THE CHARTERED ACCOUNTANTS STUDY CIRCLE IN ALPHABETICAL ORDER

S.No.	Name	Email ID	Mobile No.
1	CA. Akshunn Daga G	CA. Akshunn Daga G	8695234818
2	CA. Balaji V	balaji.venkat@gmail.com	9003067900
3	CA. Bhuvaneswari R V	ca.bhuvaneswari@gmail.com	9894314621
4	CA. Manikandan S	smanik85@yahoo.com	9884756461
5	CA. Praveen T Venkatesulu	rtrpraveen89@gmail.com	9884525023
6	CA. Sricharan R	sricha95@gmail.com	8939946840
7	CA. Thulasidharan V	vthulasi97@gmail.com	9884029712
8	CA. Uttamchand Jain	uttamchallani@gmail.com	9840123097
9	CA. Vijayaraghavan K	vijay@srbr.in	9500031585

DISCLAIMER

The contents of this Monthly Bulletin are solely for informational purpose. It neither constitutes professional advice nor a formal recommendation. While due care has been taken in assimilating the write-ups of all the authors. Neither the respective authors nor the Chartered Accountants Study Circle accepts any liabilities for any loss or damage of any kind. No part of this Monthly Bulletin should be distributed or copied (except for personal, non-commercial use) without express written permission of Chartered Accountants Study Circle.

COPYRIGHT NOTICE

ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.

The soft copy of this bulletin will be hosted on the website shortly.

READER'S ATTENTION

You may please send your Feedback / Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest to ***admin@casconline.org***

For Further Details contact :
"The Chartered Accountants Study Circle"
"Prince Arcade", 2-L, Rear Block, 2nd Floor, 22-A, Cathedral Road,
Chennai - 600 086. Phone 91-44-28114283

Log on to our Website : **www.casconline.org**
For updates on monthly meetings and professional news.
Please email your suggestions / feedback to admin@casconline.org

RECENT JUDGEMENTS IN VAT/CST/GST

CA. V.V. SAMPATHKUMAR

Freezing of bank account: This WP has been filed to direct the respondent to consider the representation of the petitioner dated 18.10.2023. The supplier of the petitioner had failed to make the payment of GST. Since the supplier had failed to make the deposit, the respondents had proceeded against the petitioner and passed an order and also freezed the bank account of the petitioner. Therefore, the petitioner made a representation dated 18.10.2023 to de-freeze their bank account, wherein they had undertook to deposit the pending ITC to the respondents. The petitioner had filed an appeal before the Appellate Authority, whereby, they had paid a sum of Rs.83,000/- for accepting the appeal, which is yet to be numbered by the respondent. Respondent directed the petitioner to pay a sum of Rs.4,34,522/-. According to the provision of Section 107 of GST Act, 2017, if the petitioner paid 10% of the outstanding tax dues along with penalty, the respondent proceedings will be automatically stayed. The said legal position was also confirmed by the learned counsel for the respondents. In such view of the matter, in the present case, since the petitioner had paid a sum of Rs.83,000/-, the respondent is supposed to have de-freeze the bank account of the petitioner as per Section 107 of the Act. Hence, the court directed that the respondents to consider the representation of the petitioner dated 18.10.2023 and de-freeze the petitioner-s bank account, upon the production of proof of deposit of Rs.83,000/- or 10% of the

total demand made by the respondent. The said exercise shall be completed within a period of one week from the date of receipt of copy of this order. **M/s.Jey Tech Moulds Dies, Vs.1.The Deputy Commissioner (GST)-II CT-Annex Building I, Greams Road, Chennai-6. 2.The Deputy State Tax Officer, Madhavaram Assessment Circle, Chennai 600 003. W.P.No.33523 of 2023 Dated: 30.11.2023**

Ocean freight and refund: Since the Hon'ble Apex Court, in the case of Union of India vs. Mohit Minerals Pvt Ltd., reported in 2022 (5) TMI 968, had set aside the imposition of IGST on the Ocean Freight Charges, the petitioner is entitled for the refund of said amount. The refund application was not only rejected by the officer on the aspect of non-acceptance of the contention of the petitioner but also on the aspect of limitation. Recently, this Court in the order in W.P.No.23604 of 2022 dated 06.11.2023 [M/s. Lenovo (India) Pvt. Ltd., vs. The Joint Commissioner of GST (Appeals-1) and others], it has been held that the fixation of limitation for making refund application is only directory in nature and the same is not mandatory. Accordingly, the limitation of 2 years, which was provided u/s 54(1) of the GST Act, 2017, is directory in nature. In such case, if any reasons were provided for delay in filing the refund application, the same shall be considered and the said delay shall be condoned by the respondent. **M/s.ARS ENERGY PRIVATE LIMITED, Vs.1.Addl Commissioner (Appeals), Chennai-34.2. DC of GST and CE, Purasawalkam Division, Chennai-40. W.P.No.17763 of 2020 Dated :28.11.2023**

Registration cancellation: This writ petition has been filed challenging the proceedings dated 01.02.2023 and further, to direct the respondent to restore the petitioners' GST

Registration. The present issue was already covered by the aforesaid judgement of this Court in W.P.No.25048 of 2021 and the relevant portion is extracted hereunder: " Hon'ble Supreme Court taking note of the hardship faced by the litigants had also extended the limitation by its orders dated 23.03.2020, 08.04.2021, 27.04.2021 & 23.09.2021 in Recognizance of Extension of Limitation Vs. xxxx, in Miscellaneous Application No.665/2021 in SMW(C) No.3/2020. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply" In view of the above, this Court allowed this petition. While allowing this petition, it was made clear that if the petitioner is liable to pay any tax or penalty, he is required to pay the same in accordance with law. Stating so, the impugned proceedings dated 01.02.2023 is set aside. **C.Chinnathambi vs. The Assistant Commissioner, Rasipuram. W.P.No.33269 of 2023 Dated: 27.11.2023**

Rectification application: This writ petition has been filed to direct the respondent to consider the rectification application filed by the petitioner dated 16.06.2023. The learned counsel appearing for the respondent would fairly submit that the said rectification application dated 16.06.2023 filed by the petitioner will be considered within a period of 2 weeks. Considering this, the Hon'ble Court directs the respondent to consider the rectification application dated 16.06.2023 filed by the petitioner and dispose of the same in accordance with law within a period

of two weeks from the date of receipt of copy of this order. **Sevathan Poongodi vs. The State Tax Officer, Harur Assessment Circle, Harur. W.P.No.33288 of 2023 Dated 27.11.2023**

Jurisdiction: In the present case, the petitioner had filed his reply dated 14.09.2023 to the show cause notice dated 23.08.2023. However, without considering the said reply, the impugned order was passed by the respondent on 20.09.2023. Further, according to the petitioner, he had also raised the issue with regard to jurisdiction of the respondent to issue the show cause notice in the reply filed by him. Since, the Ld counsel for the respondent requests to remit the matter back to the respondent, this Court is inclined to pass the following orders: (i) Impugned order dated 20.09.2023 is set aside. (ii) Court remits the matter back to the respondent for re-consideration. (iii) Respondent is directed to consider the reply dated 14.09.2023 filed by the petitioner. Further, the respondent is also directed to consider the issue, with regard to the jurisdiction, which was raised by the petitioner in the said reply. (iv) Thereafter, the respondent is directed to pass appropriate orders in accordance with law, after providing an opportunity of personal hearing to the petitioner, within a period of four weeks from the date of receipt of copy of this order. **Brakes India Private Limited, Vs. Deputy Commissioner (CT) IV, Large Taxpayers Unit, Chennai-35. W.P.No.33344 of 2023 Dated 27.11.2023**

Opportunity: The main grievance of the petitioner is that though the petitioner had asked for the details of annexure, without providing the same, the impugned order came to be passed hurriedly by the respondent. Further, he would contend that the respondent had not provided any opportunity of personal hearing to

address their issues before the passing of impugned order. Hence, these writ petitions. The Court observed that in general, the personal hearing opportunity will be provided only after the filing of reply by the Assessee. However, in the present case, the date for personal hearing (27.07.2023), which was fixed by the respondent, is much before the date of filing of reply (12.08.2023), and in such circumstances, the petitioner had uploaded a communication dated 27.07.2023 requesting the respondent to provide the details of the annexure of show cause notice. However, the said details were not provided to the petitioner, due to which the petitioner was unable to file their reply. Under these circumstances, the impugned order dated 02.09.2023 came to be passed by the respondent without providing any opportunity of personal hearing to the petitioner. This Court was of the considered view that the said impugned order was come to be passed in violation of principles of natural justice and the same is set aside with directions. **M/s.HIL Limited vs. Assistant Commissioner (Sales Tax), Madhavaram Assessment Circle, Chennai 3. W.P.Nos.32610 & 32612 of 2023 Dated 24.11.2023**

Error and rectification: In the present case, it appears that the show cause notice was issued to the petitioner and the petitioner had received the same. Thereafter, the assessment order was passed on 17.07.2023. However, the petitioner is not in agreement with the same, since there was an error in the said assessment order. Hence, the petitioner had filed a rectification application through online on 17.08.2023 and physically on 29.08.2023. In view of the above, though this writ petition has been filed challenging the impugned order dated 17.07.2023, it will be sufficient to meet out the case of the petitioner if the rectification application of the petitioner is disposed of by the

respondent. Accordingly, this Court directed the respondents to dispose of the rectification application filed by the petitioner dated 17.08.2023 and 29.08.2023 on or before 31.12.2023. and issued an order of interim stay of recovery proceedings against the petitioner. **M/s. SYA Homes, Vs.1.Assistant Commissioner (ST)(FAC), Vadapalani Assessment Circle, Chennai 6., 2. State Tax Officer, Vadapalani Assessment Circle, Chennai 6 W.P.No.33040 of 2023 Dated 23.11.2023**

Personal Hearing: Even if no reply is filed, it is mandatory on the part of the respondents to provide opportunity to the petitioner for personal hearing. Without giving any such opportunity of personal hearing, the impugned order came to be passed, which amounts to violation of provision specified under Section 75(4) of the GST Act. **M/s. Gabriel India Limited vs.1.State Tax Officer, Group IV, Salem Division, Hosur 2.State Tax Officer Group-II, Intelligence Salem, Hosur 3.State Tax Officer Adjudication-I, Intelligence, Salem, Hosur 4. Assistant Commissioner (ST) Hosur–II Circle, Hosur WP No.33132 of 2023 DATED: 23.11.2023**

Limitation: In the present case, admittedly no intimation was provided to the petitioner with regard to keeping the call book and even in that case also, the Act provides time limit of six months to pass orders. However, in the present case, citing the internal circular issued by the respondents to keep the matters in the call book, the respondents have failed to adhere to the time limit provided in the statute. The circular is beyond the scope of the provisions of the Act and notifications provided therein. Therefore, keeping the call book without intimation to the petitioner and beyond the scope of the Act is unacceptable. Hence, by citing the said reason, the respondent

department cannot keep the matter pending for a period of 12 years and thus, the present proceedings are clearly barred by limitation. **M/s.Steel Authority of India Limited Vs. 1.O/o the Commissioner of GST & CE, Salem -1. 2.O/o the Assistant Commissioner of GST & CE, Salem-7. 3.O/o the Superintendent of Central Excise,Salem III Range, Salem-7. 4.The Central Board of Indirect Taxes and Customs, Dept of Revenue, MoF, North Block, New Delhi-2. 5.Union of India Writ Petition No.12074 of 2023 DATED 22.11.2023**

Principles of Natural Justice: It is not known as to why the respondent had issued two notices with similar contents. However, at any cost, prior to the passing of impugned order, the respondent is supposed to have considered the reply filed by the petitioner and since, the respondent was failed to do so and passed the impugned order depriving the rights of the petitioner in violation of principles of natural justice, the said impugned order is liable to be set aside. Stating so, the impugned order dated 12.07.2023 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondent and the respondent is directed to consider the reply filed by the petitioner as the reply for both the show cause notice and pass appropriate orders in accordance with law after providing an opportunity of personal hearing to the petitioner. **M/s.Yunus Industrial Stores, Vs. Assistant Commissioner (ST), Broadway Assessment Circle, Chennai 3 W.P.No.32863 of 2023 Dated 22.11.2023**

(The Author is a Chennai based Chartered Accountant in Practice. He can be reached at vvsampat@yahoo.com)

CASC CHENNAI, MEMBERSHIP FEE

Corporate Membership	**Rs.**
Corporate Annual Membership	3,000.00
Corporate Life Membership (20 Years)	20,000.00
Individual Membership	
Annual Membership	750.00
Life Membership	7,500.00

CASC - HALL RENT

HALL RENT FOR 2 HOURS	1,000.00
HALL RENT FOR 2-4 HOURS	1,500.00
HALL RENT FOR FULL DAY	2,500.00
LCD RENT FOR 2 HOURS	600.00
LCD RENT FOR 2-4 HOURS	800.00
LCD RENT FOR FULL DAY	1,200.00

CASC BULLETIN - ADVERTISEMENT TARIFF - PER MONTH

Full Page Back Cover	2,500.00
Full Page Inside Cover	2,000.00
Half Page Back Cover	1,500.00
Half Page Inside Cover	1,250.00
Full Page Inside	1,200.00
Half Page Inside	750.00
Strip Advertisement Inside	500.00

Minimum 6 months advertisement is required.

If advertisement is 12 months or above, special discount of 15% is available

The above amounts are Exclusive of Government Levies like GST. Applicable taxes will be added

Your demand draft / cheque at par should be drawn in the name of **"The Chartered Accountants Study Circle"** payable at Chennai.

Kindly contact admin@casconline.org for the Clarifications and or queries.

CASE LAWS - GST

1. GST – REFUND DENIAL WITHOUT PERSONAL HEARING – NOT SUSTAINABLE

CA. VIJAY ANAND

In Resource Unlimited v. JC of GST &CE (Appeals), Coimbatore 2023(79) GSTL 169/(2023) 12 Centax 142 (Mad.), the petitioner filed two refund applications which were rejected without affording an opportunity of personal hearing and this was sustained by the appellate authority. On a writ petition, the high court observed as under:

1. On a reading of Rule 92(3) of Central Goods and Services Tax (CGST) Rules, 2017, it is clear that the no application for refund shall be rejected without giving the applicant an opportunity of being heard. However, in the instant case, the same has not been followed which is a clear violation of the principles of natural justice.

2. Hence, the impugned orders passed merits to be set aside and the matter remanded back to the by the adjudicating authority for fresh consideration after affording an opportunity of personal hearing to the petitioner and pass orders afresh in the applications made by the petitioner on merits and in accordance with law.

Hence, the writ petition was allowed.

2. ST – RENTING OF IMMOVABLE PROPERTY ONE TIME PREMIUM/ "SALAMI" RECEIVED TOWARDS SUB-LEASING – EXEMPT

In Luxmi Township Ltd. CCGST & C.EX.Siliguri 2023(79) GSTL 232/(2023) 11 Centax 238 (Tri.Kolkata), the Appellant (Assignor) had subsequently executed "Deeds of Assignments" with some business entities (Assignees) sub-leasing a part of land out of the total land measuring 393.25 acres which was taken on lease by them from the Government of West Bengal on 21-11-2003 for one time charges. The present issue is related to the following sub-leasing deeds executed by the Appellant with various companies:

a) Deed No. 07359 of 2011 executed with M/s. Choicest Enterprises Ltd.,

b) Deed No. 11220 of 2012 executed with M/s. Megha Builders,

c) Deed No. 04096 of 2012 of MLA-OSL Ltd.

The adjudicating authority confirmed the demand on the charges received by the appellants under Renting of Immovable Property Services along with interest and penalties. On appeal, the Tribunal observed as under:-

1. The issue to be decided here is whether the permanent transfer of the lease hold rights

by the Appellant to the Business entities would be termed as ' sub-lease' to bring it under the ambit of levy of service tax or it can be termed as ' sale of leasehold rights' which is not liable to service tax. The Appellant submits that there is a minute difference between 'sub-lease' and 'assignment of lease'. In the 'sub-lease', the sub-lessor reserves a right of reversion, and in case of 'assignment of lease', the entirety of the rights being transferred to the assignee to the extent of the property covered thereby.

2. The permission granted by the District Land and Land Reforms Office (DLLRO) for transfer of the rights of the Appellant to the said three business entities and the clarification issued by them to the department are subject to the following.

i. Full rights and the Title hitherto available with the Lessor has been transferred to the Assignees.

ii. After the Deeds of Assignment has been executed in favour of the three Business Entities, the land transferred has been mutated in the name of the respective Assignees.

iii. After the Deed of Assignment, the Assignee is deemed to be the lessee of the said plot.

iv. The Assignee is responsible for renewal of the lease deed after its expiry.

v. The Assignee is responsible for payment of 'rent' fixed by the Government.

3. It is evident that the State Government considers only the Assignee as the lessee of the plots transferred in their names. In a normal lease, the lessor retains the reversionary rights and the property is returned back to them after the lease period. The Title of the property is never transferred to the lessee. Thus, we observe that the terms and conditions of the Deeds of Assignment clearly indicate that it is not a lease or sub-lease as alleged in the impugned order.

4. The Appellant does not have any reversionary right of the property after the after the permanent transfer of their leasehold rights to the three Business Entities. It is only the assignees who have the right to get the lease renewed in their favour after completing the formalities directly with the Govt. of West Bengal and the Appellant does not have any role in this regard.

5. The contention of the Appellant is that either prior to 1-7-2012 or after that, the transaction would come under the purview of 'Renting of immovable property, only if the transaction is first classifiable as 'leasing' or 'sub-leasing'. The Appellant stated that they have executed a Deed with the State Government and acquired 393.25 acres of land for a period of 99 years, with effect from 23-4-2002. Out of this, they relinquished their leasehold right on certain portion of the land and permanently assigned the same on long term lease on favour of the said three

companies vide three different Deeds of Assignment. The permanent assignment of land cannot be called as 'lease' and hence it would not fall under the definition of taxable service as defined under section 65(105)(zzzz) of the Finance Act,1994.

6. Once the Appellant executed the Deed of Assignment in favour of the three business entities, the 'Title' of the land which has been assigned to them has been transferred in the name of the said three parties. Subsequently, lands have also been mutated in the name of the respective parties. Therefore, the transaction must be treated as 'sale of leasehold rights' and service tax would not be applicable on the outright transfer of rights.

7. Further, after the transfer, the 'rent' was payable by the three Business Entities directly to the DLLRO and not to the Appellant. The Appellant have not received any consideration as 'rent'. The amount they received as one time payment as 'premium or Salami' is meant for the developmental activities undertaken by them on the land received from the State Government. After permanent transfer of the leasehold rights to the three Business Entities, they have no right on the land. For any further activity on the land, the said Business Entities have to deal directly with the DLLRO/ State Government, except renewal after expiry of the original lease of 99 years. Thus, the transaction undertaken by the Appellant cannot be termed as 'lease' or 'sub-lease' for the purpose of levy of service tax.

8. DLLRO has clarified that full rights and title as lessor goes to Assignee under the Deed of Assignments which clearly indicates that this is the case of perpetual assignment of leasehold right and not 'sub-lease' as alleged in the impugned order. In the Deed of Assignment it is categorically mentioned that all the rights, title and interest has been transferred by the Appellant in favour of the Assignee and the Assignee would be deemed to be the Lessee of the plot as if the Lease had been executed by the State Government in favour of the assignee. Further, the letter of permission accorded to the Appellant by the DLLRO clearly states that the assignee would be deemed to be the Lessee of the plot as if the lease has been executed by the State Government in favour of the assignee.

9. Further, the letter of permission accorded by the DLLRO to assign the leasehold right in favour of the assignee stated that assignee shall pay such rent as may be determined by the DLLRO, Darjeeling @ 0.03% of the land cost within first 60 days of the year for which such rent is payable in the office of the DLLRO. The clause regarding payment of rent to the DLLRO by the assignee has also been spelt out in the Deed of Assignment. Thus, if the Deed of Assignment is to be regarded as Lease Agreement, then it should be regarded as a Lease Agreement which is to be read with Letter of Permission accorded to the Appellant by the DLLRO between the State

of West Bengal and the assignee for which the consideration is payable in the form of rent to the State of West Bengal through DLLRO.

10. One time Premium received by the Appellant cannot be equated with rent payable on regular intervals for continuous use of the property. The difference between the Premium or salami and the lease rent as envisaged in Section 105 of the Transfer of Property Act, 1882, has been dealt in the decision of the Hon'ble High Court in the case of A R Krishnamurthy and A R Rajagopalan v. Commissioner of Income Tax, Madras (1982) 133 ITR 922 (Mad). Arising out of the above, the price paid for transfer of possession or the right to enjoy the property is called the 'Premium or Salami' and the periodical payments made for continuous use of the property under lease is called 'rent'. The Appellant has received only a one time payment as Premium and hence by relying on the above decision the Premium received by the Appellant cannot be called as 'rent'.

11. In Greater Noida Industrial Development Authority v. Commissioner of Central Excise and Service Tax, Nodia (2014) 51 taxmann.com 73 (New Delhi - CESTAT) = 2015 (38) S.T.R. 1062 (Tribunal), it was held that the 'Salami or Premium' received in respect of lease of immovable property is not exigible to service tax.

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

3. ST – TRANSPORTATION OF GOODS SERVICE PROVIDED BY COMPANIES – DEMAND UNDER RCM

In MAA Kalika Transport Pvt. Ltd. v. CCGST & C.Ex., Rourkela 2023(79) GSTL 263/ (2023) 8 Centax 273 (Tri.-Kolkata), the appellant is providing "Transportation of Coal Services" upto a distance of 200 km against various work orders. The adjudicating authority confirmed the demand under "Cargo Handling Service" overruling the assesse's contention that the same are to be classified under " Goods Transport Agency" warranting the payment of tax under the Reverse Charge Mechanism (RCM) by the recipient of service. On appeal, the high court observed as under:

1. The contract is a composite contract primarily for the purpose of transportation of coal beyond 180 to 200 KM. The activities like loading, unloading, obtaining delivery orders etc are incidental or ancillary to the transportation service. The contract has not provided any separate charges for these activities and cannot be vivisected to arrive at the value of service for each activity artificially.

2. Board Circulars No.104/07/ 2008-S.T. dated 6.8.2008 and No.186/5/2015-ST dated 05.10.2015 clarifies that when a contract is entered for a composite contract for transportation service including various intermediate or ancillary services provided in relation to the principal service of road transport of goods like

loading/unloading, packing/ unpacking, transshipment, warehousing etc., which are provided in the course of transportation, such contract cannot be vivisected. It will be treated as a contract for transportation only as the other services are naturally bundled together with the principal service.

3. The contracts are essentially meant for transportation of goods and other activities are naturally bundled along with this this principal service. Once the services rendered are classified as Transportation Service, the liability of payment of service tax on these services was not on the Appellant, as the service recipients in all these cases are Companies registered under Companies Act, 1956/ 2003, and the liability to pay service tax is on the recipients of service as provided under Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994.

4. Regarding classification of the service rendered by the Appellant under the category of 'Cargo Handling Service', Board has issued a clarification as to what type of services will fall under the category of 'Cargo Handling service' and cited certain illustrations of "Cargo Handling Agents".

5. In the instant case, the Appellant was not providing any of the services mentioned which fall under the category of 'Cargo Handling Agent Service' neither was there any proposal in the Notice to categorize the service

rendered by the Appellant as 'Cargo Handling Agent service'. In the impugned order, the adjudicating authority classified the services under the category of Cargo Handling agent Service' on his own. Thus, the adjudicating authority has travelled beyond the scope of the Notice, which is legally not sustainable.

6. The next issue is that the demand has been confirmed on the basis of the data received from Income-tax department. No effort was made by the department to ascertain whether the amount received by the Appellant was on account of rendering of any taxable service on which the Appellant was liable to pay service tax. There is no finding in the impugned order to this effect.

7. There is no new material evidence brought on record for raising the demand of service tax on the value mentioned in the records received from the Income-tax department. The demand cannot be raised merely on the basis of the data received from the Income-tax Department, without any corroborating evidence to substantiate that the value received were in connection with taxable service rendered by the Appellant, relying on the decisions in Larsen & Toubro Ltd., v. ACST Reported in (2023) 2 Centax 327 (Cal.)/ 2023 (72) G.S.T.L. 361 (Cal.) and CST v. Hindustan Cables Ltd., reported in 2022 (382) ELT 188 (Cal.)

8. The adjudicating authority himself has classified the service under different

categories and this is indicative of the lack of clarity on the classification of the service even within the department which cannoted be the ground for involing the extended period.

9. Arising out of the above, there is no suppression of fact involved in this case and the extended period cannot be invoked to demand duty as also the levy of penalty.

Hence, the tribunal held as under:

i. The Appellant has rendered 'Transportation service' and not 'Cargo Handling Service' as claimed by the department.

ii. The service rendered by the Appellant under these contracts are essentially Transportation Service, naturally bundled. The individual services in the contract cannot be vivisected to demand service tax from the Appellant under the category of 'Cargo Handling Service'.

iii. The demand of service tax under 'Cargo Handling Service' cannot sustain as there was not such proposal in the Notice.

iv. The demand of service tax cannot be made only basis of the data received from Income-tax department without any corroborating evidence.

v. There is no suppression of fact involved in this case. Consequently, extended period cannot be invoked to demand duty as also the levy of penalty.

(The Author is a Chennai based Chartered Accountant in Practice. He can be reached at reachanandvis@gmail.com)

SUMMARY OF AAR/AAAR

1. Taxability and ITC eligibility for canteen service provided by employer to employee on a deduction of part payment from the employee's salary

CA. AMAN GOYAL &
CA. PRIYANKA PRABAGHAR

In case of M/S Kohler India Corporation Pvt Ltd [GUJ/GAAR/R/2024/03 dated January 05, 2024] referred as 'Applicant') – Gujarat state Authority of Advance Ruling ('AAR' or 'Authority').

Facts of the Case:

- The applicant is engaged in the manufacturing of plumbing products for kitchen & bathrooms. Their manufacturing facility is in Gujarat and is governed by the provisions of the Factories Act, 1948.

- The Applicant having more than the specified number of employes is mandated to provide canteen facility to its employees and thereby has entered into a contract with a Canteen Service Provider ('CSP').

- The agreement between the applicant and the CSP (Canteen Service Provider) allows the CSP to use various utensils for preparing and serving food at the canteen.

- The CSP invoices the applicant, incorporating applicable GST, based on the consumption of the canteen services by the applicant's employees.

- A part of the canteen charges is borne by the applicant whereas the remaining part is borne by their employees.

- In this regard, the Applicant has approached the AAR to seek clarification in the applicability of GST on such charges and the ITC availability on the canteen service availed by the Applicant.

Question before AAR:

i. Whether the deduction of nominal amount made by the applicant from the employees who are availing food in the factory premises would be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017? If so, the valuation of the same.

ii. Whether the Company is eligible to take the ITC for the GST charged by the CSP for canteen services, where the canteen facility is mandatory in terms of section 46 of the Factories Act, 1948?

Interpretation of Law by the Appicant:

- The applicant neither keeps any margin nor makes any separate supply to the employees and hence there is no supply from the applicant to its employees.

- Further, the applicant is not in the business of provision of canteen facilities & recovers the employees share without keeping any profit margin.

Observation of AAR

- As per Circular No. 172/04/2022-GST dated July 06, 2022 it is clarified that perquisites provided by the 'employer' to the 'employee' in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

- In this regard, the Applicant is providing canteen facility as mandated by the Factories Act and thereby the deduction from employee's salary on account of canteen services will not constitute 'Supply'.

- Further, the deduction from employee's salary not being a supply the question on valuation is ruled out in this case.

- With regard to the availability of ITC on the amount paid the CSP, the AAR has held that Input Tax Credit will be available to the Applicant in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948.

- Furthermore, the ITC shall be available only to the extent of cost borne by the Applicant and will not be able to claim ITC on the portion of ITC borne by the employees

Ruling of the AAR

- The deduction of amount by the applicant from the salary of the employees who are availing facility of food provided in the factory premises would not be considered as a 'supply' under the provisions of section 7 of the

CGST Act, 2017 and the GGST Act, 2017.

- Input Tax Credit (ITC) will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its employees other than contract employees working in their factory, in to the extent of the cost borne by the applicant and disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.

2. Applicability of TDS deduction in the hands of a recipient being a public company making supplies to a public sector undertaking.

In case of M/s. Ramagundam Fertilizers and Chemicals Limited (A.R.Com/17/2023 TSAAR Order No. 01/2024 dated January 02, 2024 referred as 'Applicant')– Telangana state Authority of Advance Ruling ('AAR' or 'Authority').

Facts of the case

- The Applicant is a public company formed as a Joint Venture Company of various Public Sector Undertakings National Fertilizers Limited (NFL), Engineers India Limited (EIL) and Fertilizer Corporation of India Limited (FCIL) (Promoters) and Govt. of Telangana with participation in equity and control over RFCL.

- The Applicant was formed to set up natural gas-based ammonia urea complex along with offsite & utility facilities at Ramagundam.

- The Applicant is primarily engaged in production and supply of fertilizers Urea and Ammonia.

- The MRP of urea is statutorily fixed by the Government of India and the difference between the delivered cost of fertilizers at farmgate and MRP payable by the farmer is given as subsidy to the fertilizer manufacturer/ importer by the Government of India.

- Currently, the Applicant is supplying urea to NFL and NFL shall supply the same to the farmers.

- As per section 51(1) of CGST Act, 2017 the persons specified therein shall pay GST TDS by deducting the same from the payment to be made to their suppliers.

- Further, the Government has notified vide Notification No. 33/ 2017 – CGST dated September 15, 2017 certain persons liable to deduct TDS.

- In this regard, vide Notification No.73/2018 – CGST dated December 31, 2018, a proviso was added to exempt deduction of TDS when the supplies are being made by one person to another within the persons as specified under Section 51(1) of CGST Act, 2017.

- Currently the Applicant is paying GST TDS and has not availed the exemption as per the said notification.

Question before AAR

- Whether the applicant can be classified under notified persons under section 51 of CGST ACT

2017 read with Notification No. 33/2017 dated 15 September 2017?

- Whether the applicant is liable to pay GST TDS by deducting it from the consideration payable to the Supplies?

- Whether the exemption notification is applicable for the transactions undertaken by the applicant if other applicable conditions remain satisfied?

Observation of AAR:

- The Applicant has submitted that it is established by Government through the investment policy under Ministry of Fertilizers as a consortium of nominated Public Sector Undertaking and the same is approved by Central Government.

- Further, the Applicant is a Joint Venture Company of National Fertilizers Limited (NFL), Engineers India Limited (EIL) and Fertilizer Corporation of India Limited (FCIL) (Promoters) with 26% equity each by NFL & EL. FCIL has been granted 11% equity in terms of CCEA approval and the remaining part of the shareholding is held by the State Government of Telangana and others.

- The cumulative holdings of shares to the extent of 87.3% is held by the Central PSUs and the State Government of Telangana. Therefore the Applicant is a PSU established by the Government and falls under the notified persons as per Section 51(1)(d) of CGST Act, 2017.

- Hence, the supplier will attract TDS unless the recipient falls under the category of Section 51(1) (a), (b), (c) and (d).

Ruling of AAR:

- The Applicant is classified under notified persons under section 51 of CGST ACT 2017 read with Notification No. 33/2017 dated 15 September 2017.

- In case the recipient falls under any of the category as specified under clauses (a), (b), (c), (d) of Section 51(1) of CGST Act, 2017 then the applicant supplier will not attract TDS.

3. Classification of roof top solar systems as plant and machinery and the availability of ITC on the same

In case of M/s. Unique Welding Products P. Ltd (GUJ/GAAR/R/2024/01 dated January 05, 2024 referred as 'Applicant')– Gujarat state Authority of Advance Ruling ('AAR' or 'Authority').

Facts of the case

- The Applicant is engaged in the business of manufacturing and sale of welding wires.

- The applicant has entered into an interconnection agreement with power distribution licensee (Madhya Gujarat Vij Company Ltd) for captive use of power generated by Roof Top Solar System and have recently installed a roof top solar system.

- The power generated is solely and captively used for manufacturing welding wires within the same premises.

Question before AAR

- Whether the applicant is eligible to take ITC as 'inputs/capital goods' or 'input services' on the purchased rooftop solar system with installation & commissioning in terms of sections 16 & 1 7 of the CGST/ GGST/IGST Act?

- Whether the rooftop solar system with installation and commissioning constitute plant and machinery of the applicant which are used in the business of manufacturing welding wires and hence not blocked input tax credit under section 17(5) of the CGST/ GGST/ IGST Act?

Observation of AAR:

- The AAR has stated that the roof solar plant, affixed on the roof of the building is not embedded to earth and the same have been capitalised in the books of accounts by the Applicant.

- The roof solar plant is not permanently fastened to the building and hence qualifies as a plant and machinery and not an immovable property and thereby nit blocked under Section 17(5) of the CGST Act, 2017.

- Therefore, the AAR has held that the applicant is eligible for input tax on roof solar plant.

Ruling of AAR:

- The applicant is eligible to avail ITC on roof top solar system with installation & commissioning under the CGST/GGST Act.

- The roof top solar system with installation and commissioning

constitute plant and machinery of the applicant and hence is not blocked ITC under section 17(5) of the CGST/GGST Act.

4. Classification of cattle feed plant as immovable property and the setting up of and running of the same as composite works contract supply

In case of M/s. IDMC Limited (GUJ/GAAAR/APPEAL/2023/08 dated December 07, 2023 referred as 'Appellant')– Gujarat state Appellate Authority of Advance Ruling ('AAAR' or 'Appellate Authority').

Facts of the case

- The appellant supplies cattle feed plants, including equipment, machinery, and erection/ installation services.
- The agreement's intention is for the supply and installation of the cattle feed plant, excluding civil work/services and hence the Applicant states that it qualifies as composite supplies and doesn't meet the definition of 'works contract service.'
- The appellant argues that their plant, although fixed with nuts and bolts, is not rooted to the earth for efficient operation and that their supply of cattle feed plant with services qualifies as a composite supply, classifiable under heading 8436 with a GST rate of 12%.
- Further, for the supplies involving civil work, the appellant asserts that it results in immovable property and should be classified as a works contract.

- In this regard the Appellant has sought clarification from the Authority for Advance Ruling ('AAR') which has held that the supply of a functional Cattle Feed Plant, inclusive of its Erection, Installation and Commissioning and related works involved is Works Contract Service.

- Aggrieved by the order, the Appellant has appealed before the AAAR.

Contention of the Appellant:

- The Appellant contended that the AAR has only considered the theory of 'test of permanency' for determining the issue and erred inholding that cattle feed plant is an immovable property as once the plant is installed and commissioned, it cannot be shifted to another place without dismantling the parts and accessories.

- The Appellant further argued that the 'test of permanency' cannot be the sole reason for concluding the permanency of the item embedded to the earth. The tests of extent and object of annexation should be taken into due consideration before classifying a property as immovable.

- Hence, the Appellant contended that the cattle feed plant supplied along with erection and commissioning services without civil work should not be classified as 'works contract services' since the same does not amount to construction of immovable property.

- The appellant further submitted that their supply would qualify as composite supply of cattle feed plant as it involves various machineries, equipment and

services which are naturally bundled and are part of overall system.

Question before AAAR

- Whether the contract involving supply of cattle feed plant which involves supply of equipment/ machinery along with erection, installation & commissioning services without civil work, thereof would be treated as works contract services or not and rate of GST thereon.

Observation of AAAR:

- The AAAR observed that the appellant has submitted that they have following responsibilities with respect to plant execution:

- Supply of cattle feed equipment such as pellet mill, hammer mill etc.

- Supply of other ancillary equipment/ goods such as MS Structural MS Chequered plates, Conveyors for transporting raw material in the plant, Electrical switch boards and cables etc.

- Services relating to commission, installation and erection of equipment

- Undertaking trial runs on the machinery installed and testing of output received

- The AAAR has states that the various equipments assembled by the appellant at their customer's premises arc either fitted with foundation/structures or fitted on foundation/ structures.

- The cattle feed plant which is set up by the appellant at their

customer's premises cannot be shifted from one place to another without dismantling of all the equipments, machine parts and accessories and electrical systems.

- The AAAR has held that the criteria of an 'immovable property' is fulfilled as the cattle feed plant is a type of plant and machinery which is attached to earth or permanently fastened to anything attached to the earth.

- Further, the AAAR has relied upon the Board Circular No. 177/09/2022-TRU dated August 03, 2022 wherein it was clarified that that supply, construction, installation and commissioning of a dairy plant on turn-key basis constitutes as works contract and dairy plant which comes into existence is an immovable property.

- Hence the AAAR has upheld the ruling of AAR by stating that the Cattle Feed Plant is an immovable property and supply of goods and services by the appellant for setting up and running of Cattle Feed Plant amounts to composite supply of works contract as defined in clause (119) of Section 2 of CGST Act, 2017.

The Authors are Chennai based Chartered Accountants. They can be reached at amang.goyal@pwc.com and priyanka.prabaghar@pwc.com)

INDIA'S GROWTH MOMENTUM CONTINUES

CA. KANDASWAMY

India's GDP Growth is estimated to grow by 7.3% in the current fiscal (FY 2023-24), which is a slight improvement over 7.2% growth recorded in the previous year. The encouraging factor is the rising share of Capital Expenditure (Gross Fixed Capital Formation) from 28.9% in FY 2021-22 to 29.2% in FY 2022-23, which is estimated to increase further to 29.8% in FY 2023-24, as per the Ministry of Statistics and Programme Implementation.

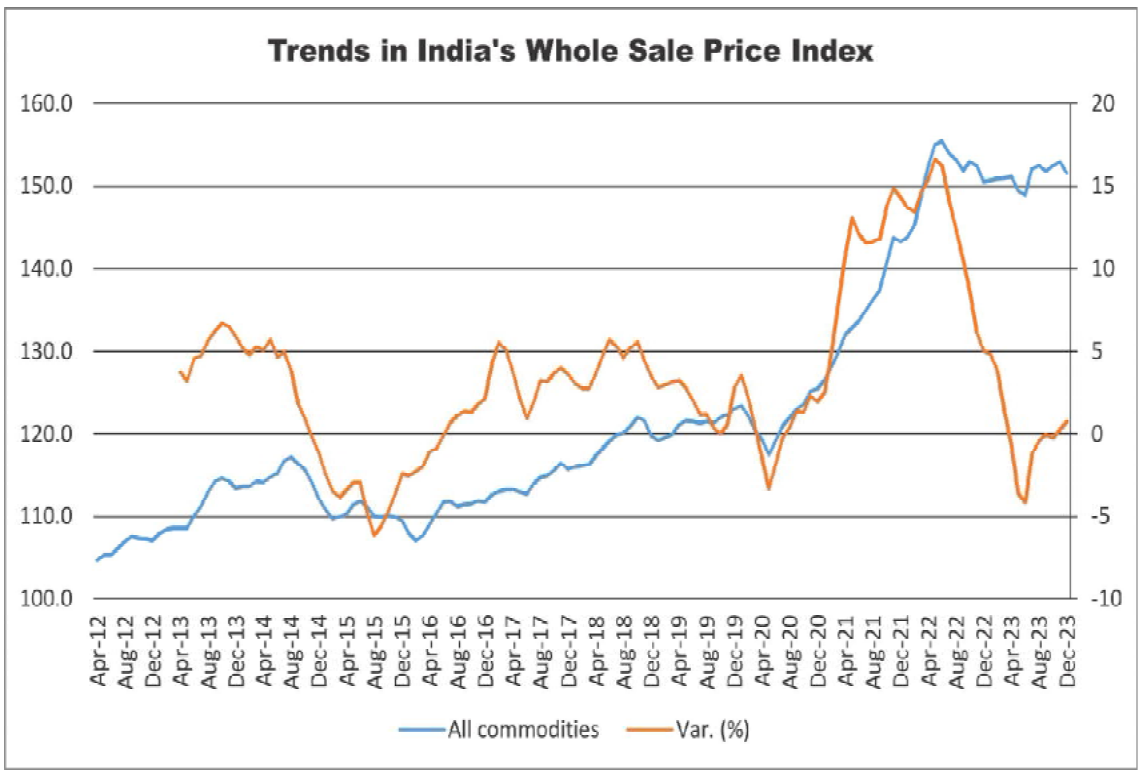
The estimated growth would have been better but for drastic deceleration estimated in the pace of growth in Agriculture, Livestock, Forestry and Fishing from 4.0% in FY 2022-23 to mere 1.8% in FY 2023-24. Another pain point is the significant moderation in the pace of growth in Trade, Hotels, Transport, Communication and servicers related to broadcasting together from 7.1% in FY 2022-23 to mere 6.3% in FY 2023-24. Estimates also point to moderation in the pace of growth in electricity, gas, water supply and other utility services from 9.0% in FY 2022-23 to 8.3% in FY 2023-24.

The GDP growth is powered by remarkable rise in the growth of manufacturing sector from mere 1.3% in FY 2022-23 to relatively strong 6.5% in FY 2023-24. During this period, mining and quarrying sector is set to sizzle with impressive acceleration in the growth from 4.6% to 8.1%. The star performer amongst services is financial, real estate and

professional services, which is set to expand by 8.9% in FY 2023-24, over and above 7.1% growth recorded in the previous year. Construction sector is set to continue its double digit growth at 10.7% in FY 2023-24, which is an improvement over 10.0% recorded in the previous year.

WPI based inflation is positive for two months in succession

WPI based inflation was negative for seven months in succession since April 2023, with peak negative at 4.2% in June 2023. Since then, there was deceleration in the pace of fall in WPI based inflation to 0.1% in September 2023, which inched up to -0.3% in October 2023. Since then, the WPI based inflation turned positive at 0.3% in November 2023 which further increased to 0.7% in December 2023.



Before the model code of conduct is in place for the ensuing Lok Sabha Elections 2024, the Government is widely expected to cut the petrol and diesel prices in the range of Rs 5 to 10 per litre. This will help India tame inflation further, and possibly RBI may cut interest rates, even before US or any other advanced markets are bracing for a cut in interest rates.

About 50% of our Crude Oil, Petroleum and Lubricant imports are exported

India's net imports at current prices were 2.7% of the GDP in FY 2021-22, which surged to 3.6% in FY 2022-23, but is now estimated to moderate to 2.0% in FY 2023-24. Exports are an addition to GDP and imports are a deduction from GDP.

India imported Rs 10.64 lakh crores worth of Petroleum, Crude and Products during the nine months ended December 2023. During this period, our petroleum product exports were Rs 5.13 lakh crores, while plastic and linoleum exports were 0.49 lakh crores. Thus, we find that India exports nearly 50% of its crude oil and petroleum product imports, with some value addition.

India has historically been a net importer (including goods and services), largely due to large scale import of petroleum, oil and lubricants, capital goods, gold and military equipment. Our trade balance was US$ -5.17 Billion in December 2023, which represents an improvement from US$ -7.75 Billion in December 2022. But there are signs that the net imports can come down, and pave way for net exports, as and when India can significantly and sustainably scale up the share of Electric Vehicles and Hydrogen Powered Vehicles in place of diesel or petrol powered vehicles.

Another positive factor for India is that the China + 1 policy of the Western World will help India to step up exports. The massive capacity additions will add further strength. In addition, the effective use of Big Data, Internet of Things, Artificial Intelligence, Block chain etc will significantly enhance the global competitiveness of Indian Agriculture, Industry and Services sector, facilitating India in its mission to become a net exporter!

India becomes a net importer of Steel in FY 2023-24

Eight infrastructure industries together recorded 7.8% growth in November 2023, which is still a deceleration from double digit 12.0% growth recorded in October 2023. The growth in November 2023 was powered by 12.4% spike in petroleum refinery, 10.9% growth in coal production, 9.1% growth in steel production and 7.6% growth in natural gas production. On the flipside, crude oil (-0.4%), Cement (-3.6%) recorded fall while Electricity 5.6% growth in production while fertilizers recorded mere 3.4% growth during this period.

India was a net exporter of steel in the previous three fiscal, but the country has become a net importer of steel in the current fiscal. This is adversely impacting domestic finished steel production, which recorded deceleration in the pace of growth in production from 16.3% in August 2023 to 13.8% in September 2023, which further eased to 10.7% growth in October 2023, and gave way for single digit 9.1% growth in November 2023.

Demographic dividend, Capacity additions, infrastructure investments, improving global competitiveness, Green Hydrogen, shift towards Electric Vehicles and Hydrogen Powered Vehicles together can usher in India's ascend to the next orbit of growth.

(The author is a Chennai based Chartered Accountant in Practice. He can be reached at ca_kandaswamy@yahoo.com)

REQUIREMENT OF DIN-IS IT ACHE 'DIN' FOR TAXPAYERS?

CA K PRASANNA

Introduction

Tax Transparency is often an important area of discussion amongst any Country's tax policies and administration. India has taken several measures globally, like entering into automatic exchange of information agreements, conventions on mutual administrative assistance in tax matters, and discussions on the implementation of international standards on tax transparency.

As part of domestic measures, tax transparency steps could be traced to section 282B[1] of the Income-tax Act, 1961 ('the Act'), which dealt with the allotment of document identification number (DIN) in every notice, order, letter, or any correspondence issued by him to any income-tax authority or Assessee or any other person and such number shall be quoted thereon. It was also suggested that the non-bearing of DIN on the documents should be treated as invalid and shall deemed never to have been issued. However, this section was short-lived as it was omitted by the Finance Act 2011[2], considering practical difficulties due to the non-availability of requisite infrastructure on an all-India basis.[3]

As part of progressive measures, a faceless assessment was introduced

[1] Finance (No. 2) Ect, 2009, w.e.f. 1-10-2010
[2] W.e.f 01-04-2011
[3] Memorandum to Finance Bill, 2011 (Clause 30)

under Section 144B of the Act[4], which provides several transparency measures such as authentication of records, etc. The Central Board of Direct Taxes (CBDT) issued Circular no 19 of 2019, dated 14 August 2019, wherein they mandated the requirement of DIN to be quoted on all correspondences/notice/letter, i.e., echoing the provisions of erstwhile Section 282B of the Act. The Circular also addressed the exceptional circumstances where communication can be sent without DIN and procedures to be followed. This enables the department to maintain an audit trail and transparency with the taxpayers as they can verify the status in the e-filing portal. With these measures on the first day of introduction, a record of 17,500 communications with DIN were generated[5].

Exceptional Circumstances where DIN need not be quoted

The Circular provides for exceptional circumstances in which the DIN need not be quoted and provides the procedure to be followed in such cases. The situations[6] are as follows:

(i) Technical difficulties in generating/allotting/quoting and issuance or communication electronically;

(ii) When income-tax authority is outside the office for discharging his official duties;

(iii) Delay in migration of PAN from a non-jurisdictional assessing officer;

(iv) PAN or Assessee is not available when proceedings under the Act are sought to be initiated (Except 131 or 133 proceedings); and

[4] W.e.f 01-04-2021 by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and later substituted by Finance Act 2022 w.e.f 01-04-2022

[5] PIB Release - MOF dated 01 October 2019

[6] Para 3 of Circular 19 of 2019

(v) Functionality to issue communication is not available in the system

The communication may be issued manually after recording reasons in writing and with prior approval of the Chief Commissioner/Director General of Income-tax. It is also emphasized that the communication has to state that it is issued manually, and the approval date must be given in a prescribed format.

Powers of CBDT issuing the Circular

As I pointed out earlier, Section 282B was shelved abruptly; however, with the infrastructure facilities improving and the department moving towards a faceless assessment/appeal regime, the requirement of an audit trail and transparency was the need of the hour, although the Act at present[7], does not mention anywhere about quoting DIN in all correspondence.

Further, the Hon'ble Prime Minister[8] had asked the Department of Revenue to develop measures to ensure that honest taxpayers are not harassed and served better. Further, there are instances where the department cannot maintain an audit trail of the manually issued communication, which has caused inconvenience to taxpayers.

Under the powers conferred in section 119(1) of the Act, the Board is authorized to issue orders/ instructions/ directions for property administration of this act, and the authorities shall observe and follow the Board's instructions. Therefore, the Board has issued the Circular (Supra)

[7] After removal of Section 282B

[8] https://pib.gov.in/PressReleseDetail.aspx?PRID=1586811 - rationale as per the PIB press release.

for proper administration and effective audit trail maintenance (para 1 of the Circular).

Disputes before the Appellate Forum

The above process of quoting DIN as per the Circular was the subject matter of dispute before several appellate forums and the Courts/ ITATs. This article intends to take you through the analysis of various rulings and aspects for consideration from a litigation standpoint.

The non-quoting of DIN was a subject matter of dispute before the **Kolkatta ITAT** in the case of **Tata Medical Centre Trust vs. CIT**[9], wherein the non-quoting DIN on the revisionary order under Section 263 of the Act was challenged. During the hearing, the Assessee raised the DIN-related aspect as part of additional grounds for adjudication by relying on the **Supreme Court** ruling in **National Thermal Power Corporation**[10].

The taxpayer pointed out the difference in communication between a notice under Section 154 of the Act and an order under Section 263. The former notice had a bar code on the top left corner with DIN communicated and in case of latter, the order was issued in a manual form without bearing any DIN. The ITAT placed reliance on several rulings on the binding nature of the circulars to hold that revisionary order is void. The view of the ITAT was approved by the **Hon'ble Calcutta High Court**[11].

[9] ITA No.238/Kol/2021
[10] 229 ITR 383
[11] (2023) 154 taxmann.com 600

The **Delhi Tribunal** in **Brandix Mauritius Holdings Ltd**[12], while adjudicating the additional ground, the ITAT has quashed the reassessment order, which was passed without DIN by placing reliance on the Circular (supra). The ITAT also observed that the order passed by the assessing officer does not fall under exceptional circumstances. This ruling was subsequently approved by the Delhi High Court[13] by holding that there is no question of law arising as there is no scope for debate in view of the Circular and the object behind introducing it.

Recently, the **Chennai ITAT**, in a batch of appeals[14] dealing with the non-quoting of DIN in the directions issued by the Dispute Resolution Panel (DRP) under Section 144(5), addressed the validity of final order under Section 144(13). As part of the batch, the revenue argued that DRP direction is an internal communication and the purpose of serving the directions to the Assessee is to file any rectification petition. Further, it was argued that the Circular is applicable only to manual modes of communication and not to communication routed through the ITBA portal. He further argued that introducing DIN is only for the issuance of manual communication, and audit trail and transparency are achieved in the case of communications under the ITBA portal. The ITAT rejected the arguments of the department and held that orders issued by the AO/ DRP are invalid and non-est and shall be deemed to have never been issued.

[12]TS-760-ITAT-2022(DEL)
[13]TS-184-HC-2023 (DEL)
[14]Sutherland Global Services Inc - TS-718-ITAT-2023(CHNY)-TP

Further, there are a plethora of judgments on the validity of order/ communications, which have been summarized in the later part of this article.

Tale of other judgments

(i) *Madras High Court in Texmo Precision Castings UK Ltd*[15]

The Petitioner, in a writ, challenged the revision order passed under Section 263 of the Act, as it was passed without DIN and was communicated separately on the next day. Therefore, the revisionary order violates the requirement of the Circular. The Madras High Court, while dismissing the writ petition on the grounds of alternative remedy, had observed that as per para 5 of the Circular, the manual communication could be regularized within 15 days of the issuance. Hence, the revisionary order cannot be without jurisdiction.

With due respect, the Hon'ble bench failed to appreciate that the application of para 5 of the circular regularizing the manual communication only if the DIN could not included as part of communication due to exceptional circumstances mentioned in para 3 and reasons for lack of DIN and date of approval is required to be given in the communication.

(ii) *Jharkhand High Court in Prakash Lal Khandelwal*[16]

The AO, pursuant to directions of the ITAT passed an order on 31

[15] TS-398-HC-2022MAD
[16] TS-143-HC-2023(JHAR)

March 2022 and the same was uploaded on 03 April 2022. Further, a communication of DIN was done on 01 April 2022, and further, a corrigendum was issued on 11 April 2022 to remove any anomalies.

The High Court, while dismissing the writ petition pursuant to ITAT directions on the ground of alternate remedy, had held that a one-day delay in uploading orders or generating DIN could not make assessment orders unsustainable in law (para 12).

Few observations from the Order are as follows:

a) Vide letter 08.07.20221 pointed out that the entire proceedings will be under a faceless assessment scheme. However, the respondent challenged in the writ petition is jurisdictional AO (JAO). It is unclear whether the case was moved back to JAO as per Section 144B(8) of the Act. If the same has not been transferred, whether the order passed satisfies the requirement of 144B was not addressed.

b) The Petitioner pointed out that the date of signing the manual order was not provided in the order. If the proceedings were undertaken under the NFAC regime, then the order has to be validated through a digital signature, which will mandatorily have the date of affixing DSC. Refer to Section 144B of the Act r.w.s 282A of the Act and rule 127A. It is to be noted that Section 144B(9) treating an order passed in violation of provisions of 144B as non-est was withdrawn retrospectively by the withdrawal of the said subsection by the Finance Act, 2022.

c) The order was passed on white paper, and the same is not as per the format prescribed under Notification 2/2016[17].

d) The High Court observed that the timeline under 153(3) of the Act is only for making orders and is only a directory, and the same is different from the timeline provided under 153(1) and 153(2). However, the ground related to whether the order was made on time or not is left open to the petitioner.

(iii) *Allahabad High Court in Chandra Bhan*[18]

While dismissing the writ petition on the grounds of alternate remedy being available, the Court observed that non-quoting of DIN on notices does not cause any prejudice to the Assessee, and the petitioner has acknowledged the notice and participated in the proceedings. Therefore, the non-quoting of DIN cannot be the reason for entertaining the writ petition.

The Court failed to appreciate the fact that the question of alternate remedy persists only if the order is valid.

Summary of other case laws

Several jurisprudences have dealt with the validity of various orders / communications issued without DIN, and the same has been tabulated below (illustratively):

[17] Notification dated 03 February 2016 issued by DGIT(S)/DIT(S)-3/AST/Paperless Assessment Proceedings/96/2015-1

[18] TS-458-HC-2023(ALL)

#	Nature of Issue	Case Laws
1	Non-quoting of DIN on the assessment/reassessment order	Sharda Devi Bajaj [TS-679-ITAT-2023(DEL)] SPS Structures Ltd [TS-791-ITAT-2023(CHANDI)] Prtatap Singh Yadav [TS-293-ITAT-2023(DEL)]
2	Separate Communication of DIN on the same day of passing the assessment order	Teleperformance Global Services Private Limited [TS-216-ITAT-2023(Mum)]
3	Manual Order without DIN and subsequent DIN	Linde India Ltd [TS-530-ITAT-2023(Kol)]
4	Non-quoting DIN on Show cause notice and revisionary order	Dilip Kothari [TS-858-ITAT-2022(Bang)] Nova Properties Private Limited [TS-671-ITAT-2023(Ahd)]
5	Satisfaction Note not contained DIN	**Favourable to Taxpayer -** Ashok Commercial Enterprises [TS-506-HC-2023(BOM)] **Favourable to Department** - South Coast Spices Exports Pvt. Ltd [TS-629-HC-2023(KER)];
6	Approval Granted under 153D without DIN	Finesse International Design Pvt. Ltd [TS-772-ITAT-2023(DEL)]
7	DRP directions not containing DIN	Berlian McDermott Sdn.Bhd [TS-588-ITAT-2023(DEL)] Innio Jenbacher GmbH & Co. OG [TS-670-ITAT-2023(DEL)] Keller Asia Pacific Limited [TS-711-ITAT-2023(DEL)]
8	Non-Quoting of DIN in CIT(A)	Gupta Domestic Fuels (Nagpur) Ltd [TS-649-ITAT-2023(NAG)]

Validity and Binding nature of the Circular

The Hon'ble Apex Court in the **UCO Bank**[19] case had dealt with the legal status of circulars and observed that the powers conferred under Section 119 are beneficial powers for a proper administration of fiscal law so that undue hardship may not be caused to the assesses and law can be correctly applied. It further held that the circulars are binding on the authorities. The Hon'ble Supreme Court consistently upheld the binding nature of circulars on income-tax authorities in several decisions.

In **Ratan Melting & Wire Industries,** the Supreme Court,[20] while dealing with the issue of whether the Tribunal will give effect to the circulars that are contrary to the decision declared by the Supreme/High Court. The Court, in para 6, held as follows:

> 6. *Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and the State Government are concerned they represent merely their understanding of the statutory provisions.* ***They are not binding upon the court. It is for the Court to declare what the particular provision of the statute says, and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.***

[19] [1999] 237 ITR 889 (SC)
[20] [2008] 17 STT 103 (SC)

On reading the SC's observation in the last sentence (quoted above), a question arises as to whether the CBDT's Circular on DIN is against the statutory provisions of the IT Act. The erstwhile section, i.e., 282B of the Act, treating the order as non-est, was withdrawn prospectively. Further, Section 144B(9), treating the order passed in violation of faceless procedure, was also withdrawn with a retrospective effect. This gives the impression that the Act never intended to invalidate the orders passed with some defect (although certain services-related defects are regularized by Section 292B of the Act). Therefore, is the action of CBDT in treating the order as non-est against the provisions of the law, which were not intended?

Another way of looking at the Circular is that the Act does not bar the CBDTs from issuing a circular / instruction for administrative purposes. The rationale for the withdrawal of Section 282B, coupled with the object behind the introduction of DIN on all notices, converges with the technological advancements and ability to process & select the returns for scrutiny proceedings. Hence, in my view, the action of CBDT in issuing the circular is not contrary to any provision of the Statute, and it is well within the powers of the CBDT.

With so much dilemma creating rifts between the judiciary (pointed out above), the CBDT remained stern in its position and has not withdrawn the Circular. This indicates that the CBDT is firm on its stand that the communication/orders passed in violation of the DIN are non-est. It will be interesting to see how the CBDTs respond in this regard when the matter is heard before the Supreme Court (supra).

Relevance of Press Release

It is a fact that the press release is not binding in nature and may not be regarded as a primary basis for interpretation. At best, it may be regarded as the personal view of the person/bureaucracy. Unless such a view is reflected in the statute, the Court may not inclined to take the view on the basis of the press release. It is pertinent to note that press releases often represented the sentiments and have been relied upon by the Courts to arrive at the intent of the particular legislation. For e.g., regarding the concerns on the language of Section 90(5) dealing with Tax Residency Certificates and other requirements, a press release explaining the position by the Finance Ministry was relied on by the Courts[21].

In the case of DIN, the press release (Supra) quoted the view of the Hon'ble Finance Minister and Hon'ble Revenue Secretary, validating DIN's requirement on all communication and consequences attached to it. Therefore, in my view, the validity of the circular must be considered in light of these sentiments expressed in the press release.

Issues before the Supreme Court

Recently, the Department has filed a Special Leave Petition[22] before the Supreme Court challenging the order of the Delhi High Court and ITAT in the case of Brandix Mauritius (supra). After hearing the arguments, the Apex Court stayed the orders of the Delhi High Court and the Tribunal in the case of Brandix. It is yet to be seen

[21] Blackstone Capital Partners (Singapore) VI FDI Three Pte Ltd vs. ACIT - CM Appeal 7332/2023 vide order dated 31.01.2023 - SLP pending before the Supreme Court against the order of the High Court; Sapien Funds Ltd vs CIT (Intl Tax) - ITA 976/Del/2022

[22] SLP Civil Diary No (s) 46964/2023

how the other benches would dispose of the matter in case of DIN-less orders/communication, though the ruling of Delhi High Court and ITAT in the Brandix alone stayed.

In the batch of appeals concerning the reopening of assessment in **Ashish Agarwal vs. UOI,** the Supreme Court swayed away by the arguments that invalidating the notices which were issued under erstwhile procedure were treated as show cause notice considering a bonafide mistake on the part of the assessing officer in interpreting the relevant provisions along with the extended notification[23]. The Top court felt that Revenue cannot be left remediless, and the object and purpose of reassessment proceedings cannot be frustrated.

Concluding thoughts

Given the significant litigation pending on the DIN matter, will the top court again take a pause and treat the orders/communication as mere irregularity and decide the same cannot be quashed, or will they consider the object and purpose of introducing the DIN and hold the circular as valid. Interesting times are ahead for the tax world; the revenue and taxpayers will keep their armor ready for another battle.

[23]Para 8 of Ashish Agarwal (supra)

EXCEL TIPS

The CONCAT function combines the text from multiple ranges and/or strings, but it doesn't provide delimiter or Ignore Empty arguments.

CONCAT replaces the CONCATENATE function. However, the CONCATENATE function is available for compatibility with earlier versions of Excel.

CA. Dungar Chand U Jain

In other words, CONCAT function is a versatile tool used to combine two or more strings (text values) into one string.

Syntax:

The syntax for the CONCAT function is straightforward:

CONCAT(text1, [text2], ...)

text1, text2, ...: These are the strings or references to the cells containing the strings that you want to concatenate.

Key features:

Simplicity: CONCAT has a simpler syntax compared to CONCATENATE.

Flexibility: It can combine any number of strings.

Range Concatenation: Unlike CONCATENATE, CONCAT can combine a range of cells.

Examples of CONCAT function

Example 1: Basic Text Concatenation

Formula: =CONCAT("Hello, ", "World!")

Result: **Hello, World!**

Example 2: Combining Text Strings and Numbers

Formula: =CONCAT("Year: ", 2024)

Result: **Year: 2024**

Example 3: Concatenating Cell References

Cells: A1 = "New", B1 = "Delhi"

Formula: =CONCAT(A1, " ", B1)

Result: **New Delhi**

Example 4: Concatenating a Range of Cells

Cells: A1 = "Sun", B1 = "Mon", C1 = "Tue"

Formula: =CONCAT(A1:C1)

Result: **SunMonTue**

Example 5: Concatenating with Line Breaks

Cells: A1 = "DC Jain", B1 = "Madurai"

Formula: =CONCAT(A1, CHAR(10), B1)

Result: **DC Jain**
Madurai

Example 6: Concatenating with Delimiters

Cells: A1 = "Apple", B1 = "Banana", C1 = "Cherry"

Formula: =CONCAT(A1, ", ", B1, ", ", C1)

Result: **Apple, Banana, Cherry**

Example 7: Concatenating with Dates

Cells: A1 = 26/01/2024 (Date), B1 = "Due Date:"

Formula: =CONCAT(B1, " ", TEXT(A1, "dd-mm-yyyy"))

Result: Due Date: **26-01-2024**

Example 8: Concatenating with Conditional Logic
Cells: A1 = "Product", B1 = "Price", C1 = 100
Formula: =CONCAT(A1, " ", IF(C1>50, "Expensive", "Cheap"))
Result: **Product Expensive**

Example 9: Combining CONCAT with Other Functions
Cells: A1 = "First", B1 = "Last"
Formula: =CONCAT(PROPER(A1), " ", UPPER(B1))
Result: **First LAST**

Example 10: Range Concatenation with Separators
Formula: =TEXTJOIN(", ", TRUE, A1:C1)
Result: **Sun, Mon, Tue**

CONCAT vs CONCATENATE Function :

While CONCAT and CONCATENATE serve similar purposes, differences are as follows :

Range Reference: CONCAT can concatenate a range of cells directly (e.g., =CONCAT(A1:C1)), which CONCATENATE cannot do.

Simplicity: CONCAT has a more streamlined syntax.

Legacy: CONCATENATE, being older, is available in earlier versions of Excel. However, it may be phased out in future versions.

In conclusion, the CONCAT function offers improved functionality and simplicity over the older CONCATENATE function. It's a powerful tool for combining text strings, making it invaluable for data management and reporting in Excel. The examples provided demonstrate its versatility in different scenarios, highlighting its utility in everyday Excel tasks.

(The author is a Madurai based Chartered Accountant in Practice. He can be reached at dungarchand@hotmail.com)

ABOUT OURSELVES

The Chartered Accountants Study Circle (Regd.)

During the middle of 1978 a handful of young chartered accountants, based on MADRAS (as it then was) met periodically to discuss matters of professional relevance and significance and to widen the knowledge exposure and skills. From a limited role of discussions on tax laws and corporate laws, we have become full fledged treasure-house of talent mobilization. More than two third of our speakers / Chief guests have made their first ever public Speech under our banner.

The organization is proud that many of its members have become men of great eminence including three of its members being occupants of coveted position of the President of the Institute of Chartered Accountants of India and a number of members have been serving in the Regional and Central Councils of ICAI, ICSI, Chambers of Commerce and other Bodies. The members of CASC are interspersed in the society and more particularly in practice and in the industry.

The membership of CASC is in the form of Life, Corporate and Annual Membership.

The Composition of the members includes lawyers, company secretaries, consultants and members of the other allied and related professions. Besides our regular meetings, the CASC organizes with regularity, workshop, refresher courses, seminars and group discussions on all professional related subjects and topics in its self owned fully Air-Conditioned Premises at central location in Chennai with the state of the art infrastructure.

Every Year, scholarship are granted to meritorious students of the CA Course through the various endowments created by members and their families.

The residential Conference conducted by CASC, an annual feature is awaited eagerly by all the members. The programmes are conducted in exotic places at affordable rates coupled with good learning experience are booked well in advance.

Our monthly publication, the CASC bulletin contains thought provoking articles, exchange of problems and solution and digest of recent discussions, notifications and circulars.

Our Other Regular Publications are "Cenvat - Demysified", "User Guide to TNVAT", "Corporate Audit Check List", "Anti Dumping Measures in the WTO frame work" 'A Handy Booklet on Bank Branch Audit', and "Guide to Tax Audit".

Published by :
THE CHARTERED ACCOUNTANTS STUDY CIRCLE
2-L, Prince Arcade, 22-A, Cathedral Road, Chennai - 600086
✆ : 044 2811 4283 : 90031 03420 : admin@casconline.org

Book
Designed by
T. Babu (GB Designs)