Vishnu Daya & Co LLP

Chartered Accountants

Newsletter

November2020

INDEX

Indirect Taxes

GST Circulars and Notifications

E-invoicing implementation for the taxpayer having turnover more than 100 crores

With effect from 01.01.2021, E-invoicing is mandatory for the registered persons whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds 100 crore rupees.

Notification No. 88/2020 – Central Tax dated 10.11.2020

Extension of Due date for furnishing of Form ITC-04 for the period July-September 2020 till 30th November 2020

The Govt has extended the time limit for furnishing FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from July 2020 to September 2020 till the 30th day of November 2020.

Notification No. 87/2020 – Central Tax dated 10.11.2020

Rescind Notification 76/2020

The notification seeks to rescind Notification 76/2020-Central tax dated 15.08.2020 notifying due dates for FORM GSTR-3B for the months from Oct 2020 till March 2021.

Notification No. 86/2020 – Central Tax dated 10.11.2020

GST Circulars and Notifications

Special procedure for making payment of 35% as tax liability in the first two month for quarterly return

With effect from 01.01.2021, the small taxpayers whose aggregate turnover is less than 5 crores may pay the tax due by way of making a deposit of an amount in the electronic cash ledger equivalent to 35% of the tax liability paid for the last quarter where the return is furnished quarterly or may pay the tax liability paid in the return for the last month of the immediately preceding quarter where the return is furnished monthly.

Notification No. 85/2020 – Central Tax dated 10.11.2020

Class of persons under proviso to section 39(1)

The Govt. has allowed the registered persons having aggregate turnover of more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year to file quarterly GSTR-1. The portal has provided default option to file quarterly filing, however, if they wish to change, they can change it during the period from the 5th day of December 2020 to the 31st day of January 2021.

Notification No. 84/2020 – Central Tax dated 10.11.2020

Extension of the due date for FORM GSTR-1

With effect from 01.01.2021, the due date for furnishing monthly GSTR-1 shall be 11th day of next month and for furnishing quarterly GSTR-1 shall be 13th day of next month after ending such quarter.

Notification No. 83/2020 – Central Tax dated 10.11.2020

GST Circulars and Notifications

Amendments made to GST Rules

- The Govt. has given option for the tax payers opted for quarterly return to furnish their B2B invoices of first and second month of the quarter in Invoice Furnishing Facility (IFF) from the 1st day of the month succeeding such month till the 13th day of the said month. The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter. Total value for such B2B invoices is capped to INR 50 lakhs per month. The invoices reported in IFF shall be available in GSTR 2A or GSTR 2B of the recipient
- Quarterly return filers shall deposit tax in electronic cash ledger on or before 25th of next month for first and second months.

Notification No. 82/2020 – Central Tax dated 10.11.2020

Amendment carried out in sub-section (1), (2) and (7) of section 39 vide Finance (No.2) Act, 2019.

The CBIC has done amendment to Finance Act to give power to Central government to notify certain class of registered persons who shall furnish a quarterly GSTR-3B return.

Notification No. 81/2020 – Central Tax dated 10.11.2020

GST Circulars and Notifications

Provisions relating to Quarterly Return Monthly Payment Scheme(QRPM)

The CBIC has given following clarification on implementation of QRMP scheme:

- The registered person who has an aggregate turnover of up to 5 crores in the preceding financial year is eligible for the QRMP Scheme.
- The registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return on the date of exercising such option.
- Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.
- RPs migrated by default can choose to remain out of the scheme by exercising their option from 5thDec., 2020 till 31st Jan., 2021.
- For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility- IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month. The detail of invoices furnished in IFF has reflected in the FORM GSTR-2A and FORM GSTR-2B of the concerned recipient.
- The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1.

Continued……

GST Circulars and Notifications

Provisions relating to Quarterly Return Monthly Payment Scheme(QRPM)

Continued……

- There are two options available for assessing the Tax liability

a. *Fixed Sum Method:* A facility is being made available on the portal for generating a pre-filled challan in FORM GST PMT-06 for an amount equal to thirty five per cent. of the tax paid in cash in the preceding quarter where the return was furnished quarterly or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.

b. *Self-Assessment Method:* The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in FORM GST PMT-06.

- Such registered persons would be required to furnish FORM GSTR-3B for each quarter on or before 22nd or 24th day of the month succeeding such quarter.
- No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount as detailed in Fixed Sum Method above by the due date.
- It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

Circular No. 143/13/2020 dated 10.11.2020

GST Circulars and Notifications

Updates on the GST Portal Changes

Update on auto-population of e-invoice details into GSTR-1

The auto-population of e-invoice details pertaining to the period December, 2020 into GSTR-1 (in incremental manner on T+2 day basis) will start in the first week of December. Due to some unanticipated issues, there has been delay in auto-population of e-invoice details into GSTR-1. Hence, such taxpayers who had reported e-invoices has been suggested not to wait for auto-population of data and they have been advised to proceed with preparation and filing of GSTR-1 for the months of November, 2020 (before the due date) and for October, 2020 (in case not yet filed, as on date).

Online filing of application (Form GST EWB 05) by the taxpayer for un-blocking of E-Way Bill (EWB) generation facility

A facility has now been provided to the taxpayers on the GST Portal, from 28th November, 2020 onwards, to file an application online for unblocking of their EWB generation facility in Form EWB-05, in case their EWB generation facility has been blocked on the EWB Portal.

Auto-populated Form GSTR 3B (PDF) for the taxpayers, from the month of October 2020 onwards

GSTN has introduced a facility to download PDF statement to taxpayers, who are filing monthly GSTR-1 statement, with system computed values of Table 3 of Form GSTR-3B. This PDF will be prepared on the basis of the values reported by tax payers in their GSTR-1 statement for the said tax period. The PDF statement also include the ITC details which is auto-populates from GSTR-2B. This facility is made available in Form GSTR 3B dashboard from October 2020 tax period onwards.

GST Circulars and Notifications

Changes in Form GSTR 9 and 9C applicable for F Y 2019-20

CBIC has given following clarifications regarding options/ concession in filing Form GSTR 9 & 9C for FY 2019-20.

- Taxpayers has to report details pertaining to that Financial Year only in Tables 4,5,6 & 7. The values pertaining to the preceding financial year shall not be reported.
- With respect to **OUTPUT** - Concessions related to entering values

a) net of Credit notes in 4B to 4E/5A to 5F instead of separately in 4I/5H,

b) net of Debit Notes in 4B to 4E/5A to 5F instead of separately in 4J/5I.

c) Details of amendments in 4B to 4E/ 5A to 5E instead of separately in 4K & 4L/ 5J & 5K.

d) Exempted, nil rated and Non-GST supply or report consolidated information for all these three heads in the —"exempted" row only

- With respect to **INPUT**

a) ITC breakup to be given as 'Capital Goods' mandatorily. Inputs and Input Services can be cumulatively given.

b) RCM supplies concession continues i.e. no need of breakup of Inward supplies from unregistered persons in 6C and from registered persons in 6D separately. Instead, cumulative number can be given in 6D only.

c) Any Reversals in ITC can be shown in 7H instead of separately giving the break up in 7A to 7H.

- For Table 8A, details of GSTR 2A as on 01.11.2020 will be considered.
- Details of amendments made in GSTR 3B and GSTR 1 during April 2020 to September 2020 only are to be shown in Table 10 to 13.
- Concessions pertaining to details of demands, refunds, HSN summary of Outward Supplies and Inward Supplies are all continued for FY 2019-20

Central Excise and Customs Circulars and Notifications

Change in rate of BCD on specified items

The Govt. has amended Notification No. 50/2017-Customs dated 30th June 2017 so as to prescribe 5% BCD on specified parts for manufacture of Open Cell for LED/LCD TV Panels subject to end user condition. The new rate is applicable from 12.11.2020.

Notification No. 42/2020 – Customs dated 11.11.2020

Clarifications regarding availment of exemption on temporary import of durable Containers

The CBIC specifies the procedure to be followed in order to avail the exemption from the payment of Duty on durable containers which do not conform to the standard marine container dimensions, but which are intended for temporary import and eventual re-export.

- **When empty containers are imported into India:** The empty containers shall be required to be declared as an item in the bill of entry. The containers would be eligible for exemption from all the applicable customs provided that the bond for re-export and the security if applicable has been furnished at the time of import in the Customs System. Importers are advised to register the same as continuity bond for ease of compliance.

- **When empty containers are moved out of India by sea or air:** The empty containers shall be required to be declared as an item in the shipping bill filed. The unique identifier for the containers would require to be verified at the time of the export by Customs.

Continued……

Central Excise and Customs Circulars and Notifications

Clarifications regarding availment of exemption on temporary import of durable Containers

Continued……

- **When containers are imported laden with import cargo:** In addition to the declaration of items as per the invoice, such containers shall also be required to be declared as a separate item in the bill of entry. After Customs clearance, the empty containers can be moved, subject to the conditions of the bond and the security if applicable.

- **When containers are exported with export cargo:** The durable container shall be required to be filed as separate in addition to the export laden cargo, for the goods meant for export. The stuffing of the export cargo at the airport or the exporter`s premises would not be relevant to Customs, as long as the Unique Identifier for the container is verifiable at any time of the export by Customs. The export cargo and the declaration in the shipping bill will be subjected to assessment and examination as per instructions in the Customs Automated System.

- **Conditions of bond:**
  A continuity re-export bond and security, if applicable at the port of import shall be required to be furnished by the importer for the durable containers that are temporarily imported. The processes involved in imports of durable containers for re-export within the stipulated period including facility of partial crediting the bond after export are available in the Customs Automated System.

Circular No.51/2020- Customs dated 20.11.2020

Recent Judicial Pronouncements

The goods should not be confiscated during Transit in case of error in E-way bill

The goods of petitioner were detained for the reason of mis-match in the value of goods transported as shown in the e-way bill and job work invoice that accompanied the transportation of goods. In as much as there could be no doubt with regard to the identity of goods that were being transported, and the difference in the value shown in the e-way bill was only on account of the requirement of maintaining uniformity in the value shown in the tax invoice raised by the job worker and the e-way bill generated by him, the detention was wholly unjustified. Accordingly, the respondents are directed to release the goods and the vehicle to the petitioner on his producing a copy of this judgment before the respondent.

PH Muhammad Kunju And Brothers Vs ASTO 2020-TIOL-2029-HC-KERALA-GST

RCM is applicable on services received from the foreign entity through its branch in India

Facts: IZ-Kartex, the Russian company has entered into maintenance contract with BCCL in India. IZ-Kartex, has registered its branch in India and have taken GST registration. They have deployed DDP-N, an Indian company as the subcontractor. DDP-N issues invoice to the Russian company. Again, the Russian company is raising bills on BCCL against supply of service.

Held: It is clear that the service is being provided by the appellant's foreign entity. It also satisfied all the conditions defined in s.2(11) of the IGST Act, 2017. Therefore GST is payable on such import of service by BCCL under reverse charge mechanism.

IZ Kartex 2020-TIOL-66-AAAR-GST

Recent Judicial Pronouncements

Service Tax is not leviable if no monetary consideration is charged for the service

Facts: Appellant, an owner of a cinema hall called 'Golcha Cinema' and engaged in the business of exhibiting films in this theatre. A demand of service tax under "renting of immovable property" service with penalty and interest proposed was confirmed against the appellant for the reason that the Appellant is providing service to the film Distributors by way of renting its theatre for screening the films. Demand is also confirmed for income under the heads "miscellaneous receipt", "car parking hire", "shorts and slides" and "rent receipt" shown in the balance sheet - appeal to CESTAT.

Held: It was held that the demand of service tax under 'renting of immovable property' service was not justified for the reason that the Appellant had not provided any service to the Distributor, nor the Distributor had made any payment to the Appellant as a consideration for the alleged service. With respect to the demand on heads of 'Car Parking Hire', 'Shorts and Slides', 'Rent Received' and 'Miscellaneous Receipts' in its balance sheet under the category of renting of immovable property, for the period 2008-09 to 2013-20, the appellant has submitted that the demands are not sustainable as they are entitled for small scale exemption in terms of notification 6/2005-ST, 8/2008-ST, Sl. no. 24 of 25/2012-ST etc. Confirmation of the demands in the impugned order, therefore, cannot be sustained and are set aside.

Golcha Properties Pvt Ltd Vs Pr CST 2020-TIOL-1619-CESTAT-DEL

Recent Judicial Pronouncements

Advance ruling on GST applicability on subscription received by Housing Societies

Facts:

Applicant is a co-operative housing society registered under the Maharastra State Co-operative Societies Act, 1960 and formed by its members who are the shareholders. They had filed an application before the Authority seeking a ruling on whether the activities carried out by them would amount to supply and whether the same is liable to GST; whether they are correctly discharging GST liability for which they produced illustrative invoices raised on the members of the society.

Held:

The authority has stated that the activities carried out by the Appellant would amount to supply in terms of Section 7(1)(a) of the CGST Act, 2017, and the same would be liable for GST subject to the condition that the monthly subscription/contribution charged by the society from its members is more than Rs. 7500/- per month per member and the annual aggregate turnover of the society by way of supplying of services and goods is also Rs. 20 lakhs or more. Further, their second question regarding correctness of the GST liability on the basis of the illustrative invoices cannot be answered as such questions does not pertain to any matter in respect of which an Advance ruling can be sought under the GST Act. Hence the Authority did not pass any ruling on such matter.

Apsara Co-Operative Housing Society Ltd 2020-TIOL-65-AAAR-GST

Recent Judicial Pronouncements

HC restrains Revenue from recovering service tax refunded on Foreign agency commission prior to 18.04.2006

Facts: The appellant is a processor and exporter of seafood . The controversy is with respect to the refund of service tax paid by the appellant for services rendered prior to 18.04.2006 when service tax on foreign agency commission was not leviable. The appellant had paid tax without demur .The application for refund filed before Apex court and CESTAT was rejected. Therefore assessee filed an application before High Court.

Held: Court in *Southern Surface Finishers* considered the Constitution Bench decision in Mafatlal Industries Ltd. - 2002-TIOL-54-SC-CX-CB and found that the mistake, if committed by the assessee, whether it be on law or facts, the remedy would be only under the statute and if that be so, the questions of law put before the High Court would have to be answered in favour of the Revenue and against the assessee. However, the Bench observes that the amounts have been refunded to the Assessee as per the order of the original authority and in such circumstances, if Revenue is required to recover the amounts from the assessee, it would amount to Bench ordering recovery of an amount which cannot be treated as tax. Therefore, although Bench answers the question of law in favour of Revenue, it finds that the Revenue is incapable of recovery of the amounts refunded as tax due. Appeal is disposed of by answering the questions of law in favour of Revenue but restraining the Revenue from recovering the amounts refunded since as of now the levy of service tax on the payment in lieu of foreign agency commission will not be leviable as BAS prior to 18.04.2006.

Uniroyal Marine Exports Ltd Vs CCE 2020-TIOL-1996-HC-KERALA-ST

Recent Judicial Pronouncements

HC imposes cost on DGFT officer for passing order without any application of mind

Facts: Petitioner is challenging the order passed by the Joint Director General of Foreign Trade, placing the petitioner in the Denied Entity List (DEL). The petitioner further challenges the Show Cause Notice issued by the Assistant Director General of Foreign Trade, calling upon the petitioner to show cause as to why it be not placed in DEL. The SCN stated that the DRI had informed that an investigation is being carried out against the petitioner "for gross overvaluation to fraudulently avail export benefits" and had been requested not to issue any export incentives to the petitioner.

Held: In the present case, the counsel for the respondents has admitted that except for the reference on the website to the Impugned Order, there is no separate order recording reasons for placing the petitioner on DEL. The Show Cause Notice was given for "availing Special MEIS benefits fraudulently by mis-declaration and forgery of documents". The petitioner in its reply had categorically submitted that it had not claimed or submitted any documents for grant of Special MEIS benefits till date. The petitioner had also requested for a copy of the communication received from DRI to understand the background for the proposed action. The Impugned Order does not show any application of mind to these submissions as the order contains no reasons. Therefore Impugned Order and the Show Cause Notices are set aside and given order to Respondent to pay costs of Rs.25,000/- to the petitioner.

Nautilus Metal Crafts Pvt Ltd Vs Jt.DGFT 2020-TIOL-1980-HC-DEL-CUS

Recent Judicial Pronouncements

The Govt. should not refuse to return the duty in case of wrong deposit of Duty by the assessee

Facts: Challenge has been laid to an order dated 15.01.2014 passed by the appellate Committee in Appeal preferred against the order dated 11.02.2013 of the Development Commissioner, Cochin Special Economic Zone. Though the Development Commissioner noticed that petitioner had deposited the Terminal Excise duty (TED) which is not required in case of deemed exports, but in the absence of the provision of refund in the foreign trade policy, claim was rejected.

Held: Under the different provisions of the Act, an alternative remedy has been provided for the affected parties to seek the vindication of the grievances, if any, but the quasi judicial authorities are also legitimately expected to take the cognizance of the matter in correct perspective by giving due consideration to the respective contentions and the law cited at the Bar, but should not pass an order in a most mechanical and sketchy manner, which is reflected from the impugned order Ext. P1. Development Commissioner in his order submitted that if the credit is availed, levy is certain, but if not availed, final goods are exempted, and in the absence of any provision of refund in the FTP, the case has been rejected. Appellate Authority ought to have examined the matter in the background that it is a welfare State and the Department/ Government does not indulge into profit making; that if inadvertently certain amount has been paid, even if there is no provision in the Foreign Trade Policy, Government cannot unduly retain the amount. For the reason aforementioned, the impugned order Ext. P1 is set aside and the matter is remitted to the Appellate Authority by reviving the appeal Ext. P14. Appellate Authority is directed to decide the appeal afresh in accordance with law, by assigning reasons, but not in the manner as reflected above. Such exercise is to be undertaken within a period of two months. Writ petition stands disposed of.

Carlo Technical Plastics Pvt Ltd Vs UoI 2020-TIOL-1928-HC-KERALA-CUS

Recent Judicial Pronouncements

Non applicability of penalty for violation of provision under 171(1) before 01.01.2020

Facts: Applicant alleged that the respondent had not passed on the benefit of Input Tax Credit by way of commensurate reduction in the price of the flat on introduction of GST w.e.f 01.07.2017. Director General Of Anti-Profiteering (DGAP) has computed the profiteered amount and which the Authority in its order held to be correct. It was also held that the respondent had, by not passing on the benefit of ITC committed an offence u/s 122(1)(i) of the Act and hence was liable for imposition of penalty. Respondent was issued notice asking him to explain as to why the penalty should not be imposed.

Held: From the perusal of Section 122(1)(i) it is clear that the violation of the provisions of Section 171(1) is not covered under it as it does not provide penalty for not passing on the benefits of tax reduction and ITC and hence the above penalty cannot be imposed for violation of the anti-profiteering provisions made under Section 171 of the above Act. It is further revealed that vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171(1) which have come in to force w.e.f. 01.01.2020, by inserting Section 171 (3A). Since, no penalty provisions were in existence between the period w.e.f. 01.07.2017 to 31.01.2018 when the Respondent had violated the provisions of Section 171(1), the penalty prescribed under Section 171(3A) also cannot be imposed on the Respondent retrospectively. Accordingly, the notice issued to the Respondent for imposition of penalty under Section 122(1)(i) is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.

DGAP Vs Sattva Developers Pvt Ltd 2020-TIOL-71-NAA-GST
DGAP Vs TTK Prestige Ltd 2020-TIOL-75-NAA-GST

Recent Judicial Pronouncements

Service Tax is not chargeable on the infrastructures provided to the contracted doctors by the Hospitals

The assessee provides various categories of health care services to its patients and for this purpose appointed professionals/doctors/ consultants on contractual basis. The doctors were given designated space in hospital premises in the form of chambers with an examination table for examining the patients coming to the hospital. The Department alleged that the 'collection charges'/'facilitation fee' retained by assessee should be subjected to service tax as they were rendering infrastructural support services to the doctors. This precise issue was considered by Tribunal in connection with the earlier SCN to the assessee which involved the period both before and after July 1, 2012. The Tribunal held, after a careful consideration of conditions prescribed in agreement, that the arrangement was for joint benefit of both the parties with shared obligations, responsibilities and benefits. The aforesaid decision of Tribunal has been accepted by Department as is clear from the communication dated August 20, 2018 sent by the department. Thus, it has to be held that the Commissioner was not justified in confirming the demand of service tax under "business support service". The impugned order, therefore, is set aside.

- Appeal allowed: DELHI CESTAT

Sir Ganga Ram Hospital Vs CST 2020-TIOL-1603-CESTAT-DEL

Recent Judicial Pronouncements

Assessee is entitled for Interest on Refund of Cenvat Credit

The assessee, a 100% EOU has imported 'Netcool suite' from M/s Softential Inc, USA which they used in the services which they exported. They took CENVAT credit of the service tax paid by them on Netcool Suite imported by them. Thereafter, they filed a refund claim for Cenvat credit for period January to March, 2010 and the same was rejected. The service tax on imported input service was paid by assessee themselves under reverse charge mechanism. After paying the service tax, assesee has taken Cenvat Credit of service tax paid treating the same as input service. The Department has not objected to assessee's taking Cenvat Credit. No proceedings were initiated to deny and recover the Cenvat Credit. Therefore, it is evident that the Department has accepted that the Cenvat Credit has been taken on the "input service" by assessee. It is now a well established principle that once Cenvat Credit is allowed on any goods or services as inputs or input service they do not cease to be so while processing a refund claim. Therefore, the definition under Rule 2 of CCR, 2004 applies both to taking CENVAT credit and claiming its refund. The assessee is entitled to refund claimed by them under Rule 5 of CCR, 2004 as claimed. These Rules do not provide for grant of interest. However, High Court of Gujarat, has, in the case of Reliance Industries Limited. *2010-TIOL-928-HC-AHM-CX* held that refund of Cenvat Credit under Rule 5 of CCR, 2004 is also a refund under section 11B of CEA, 1944 and therefore, the provisions of interest under Section 11BB apply and this decision was upheld by Supreme Court by dismissing the SLP filed by the Revenue. Therefore, the assessee is also entitled to interest on refund.

Sentini Technologies Pvt Ltd Vs CCE & ST 2020-TIOL-1618-CESTAT-HYD

Recent Judicial Pronouncements

The limitation of six months are not applicable for the aggrieved party to file an application for ROM in the Final order

The Rectification of Mistake(ROM) application has been filed by assessee along with Condonation of Delay(COD) application against the Final Order in 2019-TIOL-128-CESTAT-DEL. Pursuant to the passing of final order, assessee had filed refund claim. Thereafter, assessee received a letter, wherein, he was asked to give clarification and it appeared that the demand of only Rs.1,10,40,683/- has been set aside in the operative part of the order, instead of the full amount of demand of Rs.4,10,40,683/-. Although the assessee explained before Asstt. Commissioner that this is only a typographical error and they are entitled to refund of entire amount that they have deposited. In reply, the Asstt. Commissioner has expressed his difficulty in processing the refund claim in absence of proper clarification of the Final Order by this Tribunal. The Revenue agrees that there is a typographical error on the face of record, which needs to be corrected. However, he has expressed doubt as to the powers of this Tribunal to condone the delay in filing of the rectification mistake beyond the period of six months from the date of receipt of the final order. In view of the rulings of the Apex Court, the limitation was applicable to the Tribunal for taking suo moto action for rectification of mistake, but the aggrieved party can file an application for rectification of mistake at any time, but showing the reasons for causing the delay, that there has been injustice done to them due to error in the order of this Tribunal. Accordingly, the delay in filing ROM Application is condoned as the delay has been reasonably explained. The amount as appearing in the final order shall be read as - Rs.4,10,40,683/. Accordingly, both the ROM application as well as COD application are allowed.

India Trade Promotion Organisation Vs CST 2020-TIOL-1649-CESTAT-DEL

Foreign Trade Policy

Foreign Trade Policy Updates

Export Data Processing and Monitoring System (EDPMS) Module for 'Caution / De-Caution Listing of Exporters' – Review

In connection with Para 4 of Statement on Development and Regulatory Policies issued on October 09, 2020, RBI has decided to withdraw the existing Paras 3(1)(i) and 3(1)(ii) of A.P. DIR Circular No. 74 dated May 26, 2016 on Module for 'Caution/De-Caution Listing of Exporters' in EDPMS. The said paras are withdrawn with a intent to make system more exporter friendly and equitable.

As per revised procedure, an exporter would be caution-listed by RBI based on recommendations of AD Bank concerned, depending upon the exporters track record with AD Bank and investigative agencies. The AD Bank would make recommendations in this regard to the Regional Office concerned of the Foreign Exchange Department of RBI in case the exporter has come to adverse notice of Enforcement Directorate (ED)/ Central Bureau of Investigation (CBI)/Directorate of Revenue Intelligence (DRI)/any such other law enforcement agency and/or exporter is not traceable and/or is not making sincere efforts to realize the exports proceeds.

AD Bank would also made recommendations to the Regional office of the RBI for de-caution listing an exporter as per the laid procedure. The procedural aspects of handling shipping documents of caution-listed exporters by the AD Banks as outlined in para 3.2 of circular ibid, remain unchanged.
Master Direction 16/2015 dated January 1, 2016 is updated to reflect the above changes.
RBI/2020-2021/50 A.P. (DIR Series) Circular No.03

Foreign Trade Policy Updates

Consolidated FDI Policy Circular of 2020

DPIIT has issued Consolidated FDI Policy Circular 2020 which amends the Consolidated FDI Policy Circular of 2017.
The present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/ Circulars issued by the DPIIT, which were in force as on October 15, 2020 and reflects the FDI Policy as on October 15, 2020. This Circular accordingly will take effect from October 15, 2020 and will remain in force until superseded in totality or in part thereof. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.

Notwithstanding the rescission of earlier Press Notes/Press Releases/Clarifications/Circulars, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications/Circulars prior to October 15, 2020, shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications/Circulars, and applicable provisions under the FEMA and Rules/Regulations thereunder, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective

Detailed FDI Policy Circular 0f 2020 can be accessed at following link –

FDI-PolicyCircular-2020-29October2020

Foreign Trade Policy Updates

Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign law firms

The Hon'ble Supreme Court has while disposing of the case, held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice profession of law in India. As such, foreign law firms/companies or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession. Accordingly, AD Category – I banks are directed not to grant any approval to any branch office, project office, liaison office or other place of business in India under FEMA for the purpose of practicing legal profession in India. Further, they shall bring to the notice of the Reserve Bank in case any such violation of the provisions of the Advocates Act comes to their notice.

All other provisions of the BO/LO/PO policy shall remain unchanged. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers.

RBI/2020-21/69 A.P. (DIR Series) Circular No. 07

Direct Taxes

Direct Tax Circulars and Notifications

CBDT condones delay in filing of audit report for Sec.10(23C) entities from AYs 2016-17 onwards

CBDT issues circular u/s119(2) for condoning delay in filing of audit report in Form 10BB applicable to entities claiming exemption u/s 10(23C). Condones delay in filing of the audit report for AY 2016-17 and AY 2017-18; Also empowers CIT to condone delay of upto 365 days for AYs 2018-19 onwards.

Click here to read and download the CBDT Circular 19/2020.

CBDT issues Press Release on Income tax relief for Real Estate Developers & Home Buyers

In a recent press conference conducted by the Hon'ble Finance Minister Ms. Nirmala Sitharaman on 12th November 2020 followed by a press release dated 13th November 2020, for the real estate developers and home buyers it was announced in the form of income tax relief where a new amendment was proposed in section 43CA and Section 56(2)(x) of the Income Tax Act, 1961 ("Act").

Increased the safe harbour from 10% to 20% under section 43CA of the Act for the period from 12th November, 2020 to 30th June, 2021 in respect of only primary sale of residential units of value up to Rs. 2 crore. Consequential relief by increasing the safe harbour from 10% to 20% shall also be allowed to buyers of these residential units under section 56(2)(x) of the Act for the said period. Therefore, for these transactions, circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.

Click here to read and download the CBDT press release.

Direct Tax Circulars and Notifications

CBDT to validate ICAI generated UDIN for uploading Tax Audit Report

In an effort to weed out fake/ incorrect Tax Audit Reports, Income-tax e-filing portal has integrated with ICAI for validation of Unique Document Identification Number (UDIN) generated by CAs for certifying and attesting documents uploaded through the e-filing portal. This follows Income Tax Department's ongoing initiative to integrate with other Government bodies and agencies. A grace period of 15 calendar days from the date of submission of audit report/ certificate in e-filing portal is awarded to CAs unable to generate UDIN within the date of submission.

Click here to read and download the CBDT Press Release.

Direct Tax Rulings

ITAT excludes Infosys Technologies, Wipro Ltd, Persistent Systems citing huge turnover, brand value etc.

ITAT rules on comparables in respect of assessee's software development services segment for AY 2007-08.

Accepts assessee's plea and excludes Infosys Technologies Ltd citing huge brand value.

Also excludes Wipro Ltd on the premise of having a turnover of Rs.9668 crores against assessee's turnover of Rs.17 crores which was more than 500 times the size of the assessee.

ITAT also excludes Persistent Systems Ltd citing functional dissimilarity, unavailability of segmental details.

Follows coordinate bench ruling in assessee's own case for AY 2010-11(subsequently upheld by jurisdictional HC), Bombay HC ruling in Pentair Water. Separately, considering assessee's submission of not pressing any other grounds if the said comparables are excluded, ITAT clarifies that "As we have already directed the learned AO/TPO to exclude the above three comparables, all other grounds of appeal are disposed of as dismissed without further adjudication".

Click here to download the copy of the Judgement.

Direct Tax Rulings

ITAT: Substantial Revenue locked in sundry debtors justifies TPO's grant of working capital adjustment

ITAT upholds working capital adjustment granted by TPO and rules on comparables selection for assessee engaged in medical transcription service for AY 2011-12.

ITAT rejects assessee's plea that being a captive entity, it does not bear any working capital risk; Noting that assessee has sundry debtors of Rs.19.76 crores whereas its revenue is only Rs.33.36 crores, ITAT states that "it is apparent that substantial revenue of the assessee is locked into the sundry debtors".

Accordingly, ITAT rejects assessee's cross objection and upholds working capital adjustment granted by TPO.

Thereafter, dismisses Revenue's plea and excludes 4 companies, namely, Acropetal technologies Ltd, Eclerx Services Ltd, Infosys BPO Ltd and TCS E serve limited citing functional dissimilarity, huge turnover etc.

However, accepts Revenue's plea to include Accentia technologies Ltd noting that revenue shown by this company was only medical transcription, billing and collection and income from coding.

Click here to download the copy of the Judgement.

Direct Tax Rulings

Karnataka High Court affirms Special Bench's Biocon ruling allowing ESOP discount u/s 37

- HC affirms ITAT Special Bench ruling and dismisses Revenue's appeal, holds that discount on issue of ESOPs, i.e. difference between grant price and the market price on the shares as on the date of grant of options is allowable as deduction u/s.37 to BIOCON LTD [TS-608-HC-2020(KAR)] (assessee-company) for AY 2004-05.

- HC refers to Sec.37(1) and holds that "The expression 'expenditure' will also include a loss and therefore, issuance of shares at a discount where the assessee absorbs the difference between the price at which it is issued and the market value of shares would also be expenditure incurred for the purposes of Sec.37(1)…"

- Relies on SC ruling in Bharat Movers and Rotork Controls India P. Ltd to hold that discount on issue of ESOPs is not a contingent liability but is an ascertained liability.

- Agrees with Madras HC ruling in PVP Ventures and Delhi HC ruling in Lemon Tree Hotels Ltd. Moreover, notes that AO in subsequent AY (2009-10) had permitted deduction of ESOP expenses and states that in view of SC ruling in Radhasoami Satsang, "the Revenue cannot be permitted to take a different stand with regard to assessment year in question."

Click here to download the copy of the Judgement.

Direct Tax Rulings

Time charter receipts for vessel and crew not 'royalty' under India-Singapore DTAA

- ITAT allows Non-Resident assessee's appeal for AY 2014-15, holds consideration from time charter of vessel and crew received by assessee (engaged in the business of salvage, wreck removal, and environment protection) not 'royalty' under India- Singapore DTAA; ITAT examines the agreement entered into between assessee and Indian entity for time chartering of vessel and crew for exploration/ extraction of mineral oils;
- While examining taxability under the Act, ITAT rejects the assessee's stand that since the time charter receipts were covered by Sec. 44BB, the same would fall within the exclusion carved out in Explanation 2 (iva) to Sec. 9(1)(vi) of the Act, remarks that "in the absence of the assessee's PE in India, the aforesaid time charter receipts could not have been brought to tax under Sec.44BB of the Act";
- With respect to assessee's second limb of argument for non-taxability under the Act, ITAT finds force in assessee's stand that the nature of agreement with Indian charterer was for providing of time charter services, and not for hiring of any equipment and as such, it had not parted with the 'use' or 'right to use' of the said vessel to the charterer;
- However, since assessee could not dislodge the Revenue's claim that as per Explanation 5 to Sec. 9(i)(vi), the 'use' or 'right to use' of the vessel is independent of possession/ control/ direct use by charterer, ITAT proceeds to examine taxability under treaty in view of Delhi HC ruling in Asia Satellite Telecommunications Co. Ltd;

Continued…….

Direct Tax Rulings

Time charter receipts for vessel and crew not 'royalty' under India-Singapore DTAA

Continued……

- As regards taxability under the DTAA, ITAT observes that the control of the equipment throughout had remained with the assessee and the entire operation, navigation and management of the vessel was in the exclusive control and command of the assessee, opines that "there is a subtle distinction between the 'use' of an equipment by the assessee 'for' the charterer, and the use of the equipment 'by' the charterer.";
- Relies on Delhi HC ruling in Technip Singapore Pte. Ltd. to hold that the consideration cannot be brought under the ambit of 'royalty', distinguishes Madras HC ruling in Poompuhar Shipping Corporation wherein the charterer (unlike the owner in present case) had the right to use the ship, select the time and decide the route as per its requirement.

Click here to download the copy of the Judgement.

ITAT Honours 'sovereign right' to tax shipping income by resident state; Rejects LOB invocation

- ITAT grants exemption to a Singaporean Shipping co. (assessee) under Article 8 of India-Singapore DTAA with respect to income received from shipping operations in India during AY 2015-16.
- AO had denied Article 8 benefit on the ground that 1) Since assessee's shipping income is exempt under domestic tax law of Singapore, it was not 'subject to tax' in Singapore as envisaged in Article 24 and moreover, 2) Article 24 exemption would apply only to the extent of the amount 'repatriated / remitted' to Singapore which was not the case here.

Continued……

Direct Tax Rulings

ITAT Honours 'sovereign right' to tax shipping income by resident state; Rejects LOB invocation

- Noting that Article 24 is applicable for income which is exempt from tax as per the tax treaty, ITAT at the outset clarifies that Article 8(1) "is not an exemption provision but an enabling provision which provides an exclusive right of taxation of income to the residence country."
- Remarks that "by entering into treaty with Singapore, India has given up its right to tax shipping income of a non-resident in India.... India has no jurisdiction for taxing any income which are covered by Article 8."
- On the applicability of Article 24 (first condition) on merits, ITAT holds that "the shipping income earned in India is neither exempt nor taxed at reduced rate as per Article 8 of DTAA which is a condition precedent for applicability of Article 24.
- Likewise, on second condition in Article 24 which requires taxation on "receipt" basis in Singapore, ITAT remarks that " Once the income is taxable in the country of residence on “accrual” basis, the second condition prescribed under Article 24 of India Singapore DTAA is not satisfied.", cites plethora of cases and letters issued by Inland Revenue Authority Singapore in this regard.
- ITAT also remarks that "two sovereign nations have entered into a bilateral agreement and specifically agreed on the taxing rights of particular streams of income, the provisions of such agreement should be merely given effect to and as such the action of the AO to claim taxing right over the said income which is not provided in the treaty is ultravires the power of the AO and will amount to dishonoring the bilateral agreement between two sovereign nations."

Click here to download the copy of the Judgement.

Direct Tax Rulings

Madras HC directs condonation of delay for restoring appeal on rejection of declaration under VsV Scheme

- HC grants assessee the liberty for restoration of appeal, in case, ultimate decision taken on the declaration under Vivad se Vishwas Scheme does not favour the assessee.

- Directs that the Registry shall not insist on application for condonation of delay for restoration of such appeal.

- States that "on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders."

- Notes that the assessee intended to avail benefits of VsV Scheme and is taking steps to file the declaration, thus holds that "It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration…"

- Directs assessee to file Declaration in Form-I and "the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form."

Click here to download the copy of the Judgement.

Direct Tax Rulings

Capital gains, not salary, arises from cashless exercise of stock option by consultant

- HC reverses ITAT order for AY 2006-07, rules that income from 'cashless' exercise of stock options given by a US-based company to an independent Indian consultant (assessee) taxable as capital gains and not salary.
- Assessee, a software engineer was deputed to the US Co. between 1995-1998 by his Indian employer, as an independent consultant. From 2001-2004, the assessee served as an employee of the US Co.
- While on deputation, assessee was granted stock option by the US Co. and exercised the cashless stock options during subject AY.
- HC observes that the assessee was an independent consultant to the US Co. and was not an employee at the relevant time. HC remarks that "there was no relationship of employer and employee between the SiRF USA and the assessee and therefore, the finding recorded by the tribunal that the income from the exercise of stock option has to be treated as income from salaries is perverse as it is trite law that unless the relationship of employer and employee exists, the income cannot be treated as salary."
- HC relies on SC ruling in Dhun Dadabhoy Kapadia and Hari Brothers P Ltd. and rules that "The stock option being a right to purchase the shares underlying the options is a capital asset in the hands of the assessee under Section 2(14) of the Act.."
- Thus, concludes that the cashless exercise of option was a transfer of capital asset by way of a relinquishment / extinguishment of right in capital asset in terms of Section 2(47) of the Act, rejects ITAT's reliance on Special Bench ruling in Sumit Bhattacharya.
- Also, observes that at the time of grant of options to the assessee in the year 1996, Sec.17(2)(iiia) of the Act was not present in the statute.
- Click here to download the copy of the Judgement.

November 2020

Corporate & Other Laws

Vishnu Daya & Co LLP

MCA Updates

MCA Extends LLP Settlement Scheme, 2020 applicability to documents with due dates November 30

- MCA extends the date of applicability of the LLP Settlement Scheme, 2020 to defaulting LLPs, to November 30, 2020, owing to the large scale disruption caused by the COVID-19 pandemic.
- The Circular, states that Any “defaulting LLP” is permitted to file belated documents, which were due for filing till November 30, 2020, in accordance with the provisions of this Scheme on or before December 31, 2020.
- It further stated that if a statement of account and solvency for the financial year 2019-2020 has been signed beyond the period of 6 months from the end of FY but not later than November 30, 2020, the same shall not be deemed as non-compliance.

MCA further extends due date for filing cost audit report

MCA further extends the last date for filing Form CRA-4 (Cost Audit Report) and relaxes additional fees, in view of the large scale disruption caused by COVID-19 pandemic.
Allows cost auditors to submit their report for FY 2019-20 to the Board of Directors of Companies by December 31, 2020 (earlier, November 30)
Companies are required to file Form CRA-4 within 30 days from receipt of copy of the Cost Audit Report.

MCA Updates

IBBI: Allows creditors to assign/transfer debt during liquidation process

IBBI amends Liquidation Process Regulations to inter alia provide that a creditor may assign or transfer the debt due to him or it to any other person during the liquidation process in accordance with the laws for the time being in force dealing with such assignment or transfer.

The amendment States that where any creditor assigns or transfers the debt, both parties shall provide to the liquidator the terms of such assignment or transfer and the identity of the assignee or transferee.

Further, allows a Liquidator to assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders' consultation committee, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

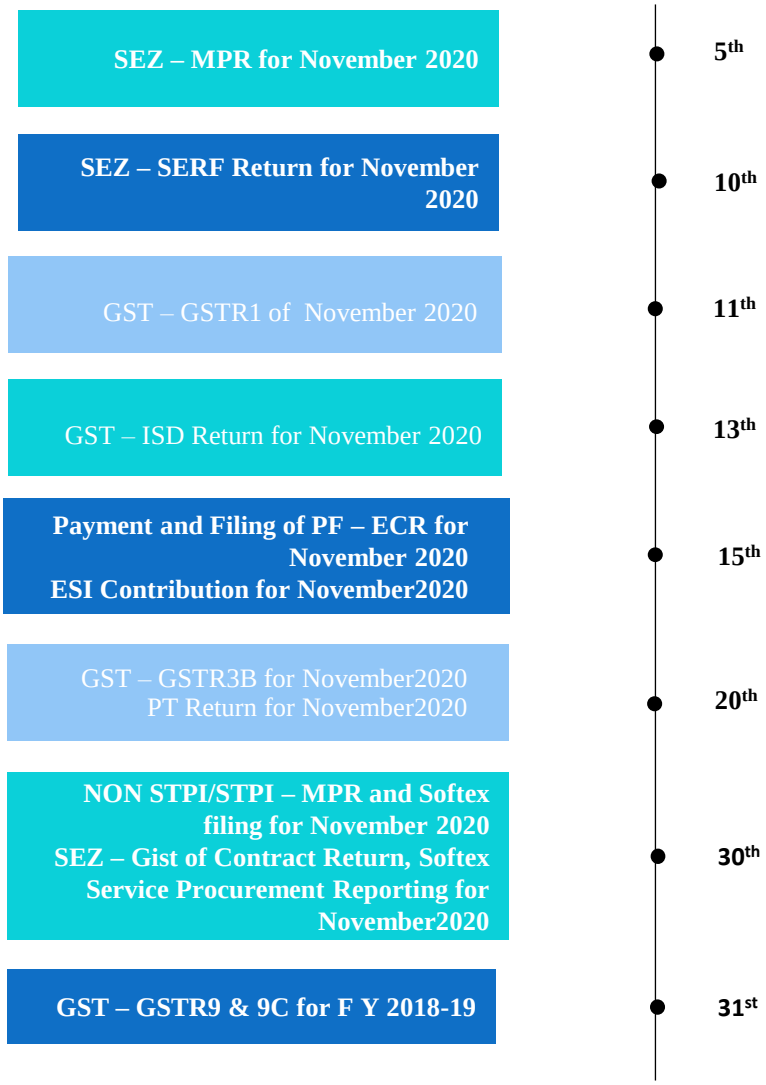
Clarifies that, "not readily realisable asset" means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions.

Due Dates

Due dates in December 2020 – GST, STPI, SEZ, PF, ESI

December 2020

Week	S	M	T	W	T	F	S
49	29	30	1	2	3	4	5
50	6	7	8	9	10	11	12
51	13	14	15	16	17	18	19
52	20	21	22	23	24	25	26
53	27	28	29	30	31	1	2



Due dates in December 2020 – Direct Taxes

December 2020

Week	S	M	T	W	T	F	S
49	29	30	1	2	3	4	5
50	6	7	8	9	10	11	12
51	13	14	15	16	17	18	19
52	20	21	22	23	24	25	26
53	27	28	29	30	31	1	2

7th

Deposit of TDS/TCS for the month of November 2020

15th

- Third instalment of advance tax for the assessment year 2021-22
- Due date for issue of TDS Certificate for tax deducted under section 194-IA/ 194-IB and 194M in the month of October, 2020

30th

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA/ 194-IB/ 194M in the month of November, 2020
- Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2019 to December 31, 2019) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2)or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.

31st

- Return of income for the assessment year 2020-21 for all non-audit assesses.
- Due date for furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction for the Assessment Year 2020-21

Due dates in December 2020 – MCA

December 2020

Week	S	M	T	W	T	F	S
49	29	30	1	2	3	4	5
50	6	7	8	9	10	11	12
51	13	14	15	16	17	18	19
52	20	21	22	23	24	25	26
53	27	28	29	30	31	1	2

- MCA ‘s Companies Fresh Start Scheme 2020 – The Scheme is ending on December 31, 2020
- MCA’s LLP Settlement Scheme 2020 - The Scheme is ending on December 31, 2020
- Due date to hold Annual General Meeting for all the Companies for the year ended March 31, 2020 is December 31, 2020.
- Time limit for creation of the deposit repayment reserve of 20% u/s 73(2)(c) of the Companies Act, 2013 is December 31, 2020
- Time limit for investing/depositing 15% of amount of debentures under Rule 18 of the Companies (Share capital and Debentures) Rules 2014, is December 31, 2020

31st

Contact Us

About Us

Vishnu Daya & Co LLP is a Professional Services Firm under which dedicated professionals have developed core competence in the field of audit, financial consulting services, financial advisory, risk management, direct and indirect taxation services to the clients.

Started in the year 1994 as audit firm in Bangalore with an ambition to provide services in the area of accountancy and audit, our legacy of vast experience and exposures to different types of industries made us rapidly adaptable to the changing needs of the time and technology by not only increasing our ranges of services but also by increasing quality of service. With diversification, our professional practice is not only limited to Bangalore but has crossed over to the other parts of India with a motto to provide "One Stop Solutions" to all our clients.

OUR ADRESS

Bangalore:
GF 7 & 3rd Floor, Karuna Complex,
No. 337, Sampige Road,
Malleswaram, Bangalore-560003

Chennai:
Amber Crest Apartment
No 37, 3A, 3rd Floor, Pantheon
Road, Egmore, Chennai- 600 008

OUR EMAIL

daya@vishnudaya.com
shankar@vishnudaya.com

OUR PHONE

Bangalore: +91-80-23312779
Chennai: +91-044-28554447

OUR WEBSITE

www.vishnudaya.com

For private circulation only