R.C.JAIN AND ASSOCIATES LLP

NEWSLETTER

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INDEX

Income Tax

Notification No. 119/2021/F. No. 225/76/2021-ITA.II

The Central Government, hereby **exempts the following class of persons** mentioned in column (2) of the Table below, subject to the conditions specified in column (3) of the said Table , **from the requirement of furnishing a return of income** under sub-section (1) of section 139 of the said Act from assessment year 2021-2022 onwards.

TABLE

Sr. No.	Class of Persons	Conditions
1.	(i) A non-resident, not being a company; or (ii) A foreign company	(i) The said class of persons does not earn any income in India, during the previous year, other than the income from investment in the specified fund referred to in sub-clause (i) of clause (c) of Explanation to clause (4D) of section 10 of the said Act; and (ii) The provisions of section 139A of the said Act are not applicable to the said class of persons subject to fulfilment of the conditions mentioned in sub-rule (1) of rule 114AAB of the Income-tax Rules, 1962 (hereinafter referred to as „said rules“) "**specified fund**" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate, which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

2.	A non-resident, being an Eligible foreign investor.	(i) The said class of persons, during the previous year, has made transaction only in capital asset referred to in clause (viiab) of section 47 of the said Act, which are listed on a recognized stock exchange located in any International Financial Services Centre and the consideration on transfer of such capital asset is paid or payable in foreign currency; (ii) The said class of persons does not earn any income in India, during the previous year, other than the income from transfer of capital asset referred to in clause (viiab) of section 47 of the said Act; and (iii) The provisions of section 139A of the said Act are not applicable to the said class of persons subject to fulfilment of the conditions mentioned in sub-rule (2A) of rule 114AAB of the said rules.

3. The above exemption from the requirement of furnishing a return of income shall not be available to the class of persons mentioned in the column (2) of the said Table where a notice under sub-section (1) of section 142 or section 148 or section 153A or section 153C of the said Act has been issued for filing a return of income for the assessment year specified therein.

DIRECT TAX

Circular No. 18/2021 : Clarification regarding Section 36(1)(xvii)

As per the Act, "***the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Govemment***"

The deduction under section 36(1)(vii) is allowed in respect of expenditure incurred by a cooperative society, which is engaged in the business of manufacture of sugar.

The deduction is allowed for the purchase of sugarcane at a price that is equal to or less than the 'price fixed or approved by the Government'. The deduction shall be lower of purchase price of the sugarcane or price fixed or approved by the Government.

Recently, the Central Board of Direct Taxes (CBDT) has clarified that the phrase 'price fixed or approved by the Government' in section 36(1)(xvii) includes price fixation by State Government through State-level Acts/Orders or other legal instruments that regulate the purchase price for sugarcane. It also includes State Advised Price, **which may be higher** than the Statutory Minimum price/Fair and remuneration price fixed by Central Government.

~Compiled by Manoj Kumar Jamda

Case Laws:

1) Issue Involved:

Whether section 40(b) of the Income-tax Act, 1961, is applicable to the amount of salary and bonus paid by the assessee-firm to its partners for their individual service as against their Hindu undivided family character?

- ***In the Hon'ble High Court of Punjab-Haryana, in the case of CIT v. Unimax Laboratories (2009)***

GIST OF THE CASE

The Assessing Officer made an addition under section 40(b) of the Income-tax Act, 1961, on account of salary and bonus paid by the assessee-firm to its four working partners. Those partners were partners in their representative capacity as karta of their Hindu undivided families.

Since these partners represented their respective Hindu undivided families, they were treated to be partners for the purpose of disallowance of benefits under section 40(b) of the Act by the Assessing Officer.

However, on appeal the addition was deleted on the ground that the salary and bonus were paid to these persons as individuals and in these circumstances section 40(b) of the Act had no application.

The High Court held that the Tribunal was right in allowing the amount of salary and bonus paid by the firm to partners for services rendered by them on the ground of having technical qualification and expertise, though they represented their Hindu undivided families and section 40(b) of the Act was not attracted.

HELD :-

AO made an addition of Rs. 62,015 under Section 40(b) of the Act on account of salary and bonus paid by the assessee firm to its four working partners. Those partners were partners in their representative capacity as Karta of the HUF. Since these partners represented their respective HUFs, they were treated to be partners for the purpose of disallowance of benefits under Section 40(b) of the Act by the AO. However, on appeal the addition of Rs. 62,015 was deleted on the ground that

The salary and bonus were paid to these persons as individual and in these circumstances Section 40(b) of the Act has no application. The amount received by them was not assessed in the hands of the HUF. The assessee had pleaded that these persons rendered personal services to the firm because they had technical qualification and expertise. It was in lieu of rendering of personal services by them that the salary and bonus were claimed to have been paid.

The Revenue felt aggrieved by the order passed by the CIT (A) and preferred an appeal before the Tribunal. The appeal was dismissed vide order DT. 11th March, 1992

The Tribunal while passing its order has placed reliance on a judgment of *Andhra Pradesh High Court in the case of N.T.R. Estate v. CIT*, wherein it has been held that the salary and interest paid by the firm to some of the partners is to individual even if they had become partner in their capacity as Karta in HUF. Therefore, the same could not be disallowed by applying the provisions of Section 40(b) of the Act. The Tribunal has approved the reasoning adopted by the CIT (A) while applying the ratio of the judgment in the case of N.T.R. Estate (supra).

2) Issue Involved:

Whether the amount transferred to profit and loss account in case of waiver of loan taken by assessee for business purposes assessable as business income under section 41(1) of the Income-tax Act, 1961?

- ***In the Hon'ble High Court of Bombay, in the case of M/s Solid Containers Ltd vs CIT* (2009)**

GIST OF THE CASE

The assessee had taken a loan for business purposes which was written back and directly credited to the reserves account, as a result of consent terms arrived at in a suit.

The assessee claimed this amount as capital receipt, even though it had offered the interest on the said loan as its income by crediting the same to its profit and loss account.

The Assessing Officer added the amount to the total income of the assessee as its income and this was upheld by the Tribunal.
The High Court held that it was a loan taken for trading activity and ultimately, upon waiver the amount was retained in the business by the assessee. The amount had become the assessee's income and was assessable.

HELD:-

The assessee company had taken certain loan from M/s. P.S. Jain Motors. This amount was payable to them with interest of Rs.2,83,819/-. The party filed a suit for recovery and thereafter the assessee company filed counter-claims and the matter was settled out of the court whereby the assessee company was not to pay any amount. The assessee company credited to the profit and loss account the interest amount and offered the same for taxation. With regard to the addition of Rs.6,86,071/-, the assessee company directly credited the amount to the reserves account considering the same as capital receipt. It was claimed by the learned counsel that the amount was not a deemed profit under section 41(1) of the Act.

According to the learned counsel, this amount cannot be charged even under the provisions of section 28 of the Act as the amount earned is neither a revenue receipt nor intended for revenue account.

Refering to the decision of the Honourable Supreme Court in the case of CIT vs. T.V. Sundaram Iyengar and Sons Ltd. (1996), 222 ITR 344 wherein the Honourable Supreme Court has laid down that "*If the amount is received in the course of trading transactions, even though it is not taxable in the year of receipt as being of capital character, the amount changes its character when the amount becomes the assessee' s own money because of limitation or by any other statutory or contractual right. Where the assessee received deposits in the course of trading transactions, the amount of such credit balances which were barred by limitations and which were written back by the assessee to the profit and loss account were to be assessed as the assessee' s income*". In view of the above decisions of the Apex Court and also keeping in view the provisions of Section 28(iv) of the Act,making the addition of Rs.6,86,071/- is completely justified.

3) Issue Involved:

Whether expenditure for providing freebies to medical professionals can be allowed as a deduction in accordance with Section 37(1) of the Income Tax Act, 1961 (the Act)?

- **In the case of DCIT Vs Macleods Pharmaceuticals Ltd. (ITAT Mumbai)**

GIST OF THE CASE

Maceleods Pharmaceuticals Ltd. ("the assessee") a company engaged in the business of manufacturing tablets, capsules, liquids and injections etc. had incurred expenditure on providing freebies to the doctors to promote sales.

The assessee claimed the expenditure incurred on such freebies as deduction under section 37(1) which was disallowed by the Assessing Officer. Aggrieved by the same the Assessee had preferred an appeal before the Commissioner of income Tax (CIT).

The CIT had overtuned the order and had allowed the expenditure as a deduction to the Assessee.

HELD :-

The Assessee Maceleods Pharmaceutical Ltd. had incurred an expenditure of Rs. 111,11,70,500 for the assessment year 2011-12 and Rs. 137,62,61,659 for the assessment year 2012-13 aggregating to a total Rs. 137,62,61,659 on account of freebies to doctors.

Section 37(1) of Income Tax Act provides for deduction of any revenue expenditure (other than those failing under section 30 to 36) from business Income if such expense is laid out/expended wholly or exclusively for the purpose of business or profession. However, the explanation appended to this sub-section denies claim of any such expense, if the same has been incurred for a purpose which is either an offence or prohibited by law.Thus, the claim of any expense incurred in providing freebies in violation of the provisions of Indian Medical Council (Professional

Conduct, Etiquette and Ethics) Regulations, 2002 shall not be admissible under section 370) of the Income Tax Act being an expense prohibited by the law.

The Assessing officer has disallowed the claim as the officer was of the view that such expenditures incurred on account of freebies in the nature of gifts to the doctors is an expense prohibited by the law. However the CIT has passed the order in the favour of the assesee on the grounds that:

The expenditures were incurred wholly and exclusively for the purpose of business, therefore, same cannot be disallowed by applying CBDT Circular dated 1-8-2012 in respect of years under consideration.

~Complied by Abhya Mishra

GST

Circular

Circular No. 164/20/2021–GST, Dated 6th October, 2021

This circular is issued by the Central Government in respect of Clarification regarding applicable GST rates & exemptions on certain services–reg.

- **Services by cloud kitchens/central kitchens:**

  Service provided by way of cooking and supply of food by cloud kitchens/central kitchens are covered under 'restaurant service', as defined in notification No. 11/2017- Central Tax (rate) and will attract 5% GST [without ITC].

- **Supply of ice cream by ice cream parlors.**

  Where ice cream parlors sell already manufactured ice- cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

- **Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities"**

  Where total expenditure is borne by the Government, such coaching services are covered under entry 72 of **notification No. 12/2017-Central Tax (Rate) dated June 28, 2017** and hence exempt from GST.

- **Satellite launch services provided by NSIL**

  It has been clarified via GST circular no. 2/1/2017-IGST dated 27.09.2017 that Place of Supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd. to customers located outside India is considered as export. It meets the requirements of section 2(6) of IGST Act and constitutes export of service and shall be considered as **zero rated supply** under GST. If the service recipient is located in India, the satellite launch services would be **taxable.**

As the satellite launch services supplied by NSIL are similar to those supplied by ANTRIX Corporation Ltd, the said circular No. 2/1/2017-IGST dated 27.09.2017, is applicable to them.

- **GST on overloading charges at toll plaza.**

Overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll. Therefore, it essence overloading fees are effectively higher toll charges. As recommended by the GST Council, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.

- **Renting of vehicles to State Transport Undertakings and Local Authorities**

Services, where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities, are eligible for the **exemption**. This exemption is irrespective of whether such vehicles are run on route timings as decided by the State Transport Undertakings or Local Authorities. It falls under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.

- **Services by way of grant of mineral exploration and mining rights**

The licensing services for the right to use minerals including its exploration and evaluation" falling under service code 997337 were taxable @ 18% during July 01, 2017 to December 31, 2018. Post, January 01, 2019 no dispute remains as stated above.

- **Admission to indoor amusement parks having rides etc.**

28% rate [entry 34 (iiia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like **IPL**.

Entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry-go rounds, go-carting etc, whether indoor or outdoor, so long as no access is provided to a casino or race club.

- **Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption**

  The expression "food and food products" excludes alcoholic beverages for human consumption. Alcoholic liquor is not considered as food in common context. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are eligible for the GST rate of 18%.

Circular No. 163/19/2021-GST –

Clarification regarding GST rates & classification (goods)

- **Applicability of GST on fresh and dried fruits and nuts:**

  Representations have been received seeking clarification regarding the distinction between fresh and dried fruits and nuts and applicable GST rates.

  At present, fresh nuts (almond, walnut, hazelnut, pistachio etc) falling under heading 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5%/ 12%. The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be **fresh (including chilled)**, **frozen** (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or **dried (including dehydrated, evaporated or freeze-dried**).Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts. Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note 3 to Chapter 8, dried fruits, even if partially re-hydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts.

  Therefore, exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5%/12% as specified in the respective rate Schedules.

- **Applicability of GST on tamarind seeds:**

Representations have been received seeking clarification regarding classification and applicable GST rates on tamarind seeds. The dispute is in classification of tamarind seeds between tariff heading 1207 and 1209.

As per general Explanatory Notes to HS 2017, heading 1209, covering seeds, fruit and spores, of a kind used for sowing, covers tamarind seeds. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species *Vicia faba*) or of lupines are to be regarded as "seeds of a kind used for sowing". Thus, tamarind seeds, even if used for any purpose other than sowing, is liable to be classified under heading 1209 and hitherto attracted nil GST rate, irrespective of its use (for the period 01.07.2017 to 30.09.2021).

The GST council recommended GST rate on seeds, falling under heading 1209, meant for any use other than sowing to 5% and Nil rate would apply only to seeds for this heading if used for sowing purposes. Hence, with effect from 1.10.2021, tamarind and other seeds falling under heading 1209, (i.e. including tamarind seeds), if not supplied as seed for sowing, would attract GST at the rate of 5%.

- **Clarification of definition of *Copra:***

Representations have been received seeking clarification regarding the definition of *Copra* and applicable GST rates.

As per Explanatory Notes to HS (2017 edition) to heading 1203, *Copra* is dried flesh of coconut generally used for the extraction of coconut oil. Coconut kernel turns into *copra*, when it separates from the shell skin, while still being inside the shell. The whole unbroken kernel could be taken out of shell only when it converts to *copra*. Once taken out of shell, *copra* could be supplied either whole or broken.

As per the Explanatory Notes to HS, the heading 0801 covers coconut fresh or dried but excludes *Copra*. Thus, exemption available to Coconut, fresh or dried,

whether or not shelled or peeled is not available to *Copra*. Accordingly, *Copra*, classified under heading 1203, attracts GST rate of 5%, irrespective of use.

- **Applicability of GST on pure *henna* powder and leaves:**

Representations have been received seeking clarification regarding classification and applicable GST rates on henna powder and henna leaves.

As per the Explanatory Notes to HS 2017, heading 1404 is vegetable products not elsewhere specified or included. Further, as per the said Explanatory Notes, heading 1404 includes raw vegetable materials of a kind used primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).

Accordingly, it is clarified that pure *henna* powder and *henna* leaves, having no additives, is classifiable under tariff item 1404 90 90 and shall attract GST rate of 5%.

Further, the GST rate on *mehndi* paste in cones falling under heading 1404 and 3305 shall be 5%.

- **Applicability of GST on scented sweet *supari* & flavored and coated *illaichi*:**

Representations have been received seeking clarification regarding classification and applicable GST rates on flavored and coated *illaichi*, and scented sweet *supari*.

Scented sweet *supari* falls under tariff item 2106 90 30 as "Betel nut product" known as "*Supari*" and attracts GST rate of 18%.

Flavored and coated *illaichi* generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from *illaichi* or cardamom (which falls under heading 0908). It is clarified that flavored and coated *illaichi* is a value added product and falls under sub-heading 2106. It accordingly attract GST at the rate of 18%.

- **Applicability of GST on Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues:**

Representations have been received seeking clarification regarding classification and applicable GST rates on Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets.

As per the Explanatory Notes to the HSN, heading 2303 includes residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.); beet-pulp; bagasse; other waste products of sugar manufacture; brewing or distilling dregs and waste, which comprises in particular - dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; malts sprouts separated from the malted grain during the kilning process; spent hops; Dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc; beet pulp wash (residues from the distillation of beet molasses).All these products remain classified in the heading whether presented in wet or dry.

Thus, Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST at the rate of 5%.

- **Scope of GST rate on all pharmaceutical goods falling under heading 3006.**

Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, reads as "*Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]*"

S. No. 65 of Second Schedule of Notification 1/2017- Central Tax (Rate) dated 28.6.2017 refers to the note 4 to Chapter 30 of the First schedule of the

Customs Tariff Act, 1975 while mentioning an illustrative list. Certain representations were received seeking clarification on the applicable rate of goods falling under heading 3006 that are not specifically mentioned in the Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

Note 4 to Chapter 30 of the First schedule of the Custom Tariff Act, 1975 reads as follows:

"(a) sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure;

(b) sterile laminaria and sterile laminaria tents;

(c) sterile absorbable surgical or dental haemostatics sterile surgical or dental adhesion barriers, whether or not absorbable;

(d) opacifying preparations for X-ray examinations and diagnostic reagents designed to be administered to the patient, being unmixed products put up in measured doses or products consisting of two or more ingredients which have been mixed together for such uses;

(e) blood-grouping reagents;

(f) dental cements and other dental fillings; bone reconstruction cements;

(g) first-aid boxes and kits;

(h) chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides;

(i) gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments; and

(j) waste pharmaceuticals, that is, pharmaceutical products which are unfit for their original intended purpose due to, for example, expiry of shelf-life.

(k) Appliances identifiable for ostomy use that is colostomy, ileostomy and urostomy pouches cut to shape and their adhesive wafers or faceplates."

Thus, it is clarified that said entry 65 covers all goods as specified in Chapter Note 4 and Chapter Note 4 in turn covers all goods covered under Heading 3006. Therefore, said entry 65 covers all goods falling under heading 3006, irrespective of the fact that such goods are specifically mentioned in said entry. Therefore, all goods falling under heading 3006 attract GST rate of 12% under entry 65 in the 12% rate schedule.

- **All laboratory reagents and other goods falling under heading 3822:**

Entry at S. No. 80 of Schedule II of notification No.1/2017- Integrated Tax (Rate) dated 28.6.2017 prescribes GST rate of 12% for "All diagnostic kits and reagents".

Representations have been received whether the benefit of concessional rate of 12% would be available to laboratory agents and other goods falling under heading 3822.

Heading 3822 covers "Diagnostic or Laboratory Reagents, Certified Reference Materials etc."

The issue was placed before the GST Council and on its recommendations, it is clarified that the intention of this entry was to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory regents, falling under heading 3822.

It is accordingly clarified that concessional GST rate of 12% is applicable on all goods falling under heading 3822.

- **Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations**

Notification No. 3/2017-Central Tax (Rate) prescribes concessional rate of 5% for specified goods which are used in connection with specified petroleum operations. Condition 1 (d) in notification No. 03/2017-Central Tax dated 28.06.2017 prescribes that *"whenever goods so supplied are transferred to other licensee or sub-contractor a certificate from Directorate General of Hydrocarbons (DGH) is to be produced that the goods may be transferred to the transferee"*.

As per Section 7 read with Schedule-I of the CGST Act 2017, inter-state stock transfer between distinct persons (establishment of same person located in two different states) is considered as 'supply 'of goods.

Representations have been received seeking clarification whether the original/ import Essentiality certificate can be used for such inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer as it is being treated as supply subject to IGST.

GST Council deliberated upon this issue and a decision was taken that the original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) is sufficient and there is no need for taking a certificate every time on inter-state movement of goods within the same company / stock transfer so long as the goods are the same as those imported by the company at concessional rate.

The importer is required to maintain records and should be able to establish nexus between the stock transfer of goods and the description in the essentiality certificate.

- **GST rates applicable on External batteries sold along with UPS Systems/ Inverter**

References have been received seeking clarification about whether, 'UPS Systems/inverter sold along with batteries as integral part' are classified under heading 8507 at 28% GST or under heading 8504 at 18% GST.

The matter has been examined and it is observed that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice. Therefore, it is clarified that in such supplies, UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery).

- **Applicability of GST rates on Solar PV Power Projects**

Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1st January, 2019. The

issue seems to have arisen in the context of Notification No.24/2018- Central Tax (Rate), dated 31st December, 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1.1.2019.

As per this explanation, if the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service. This mechanism for valuation of supply was recommended by the Council considering that it adequately represented the value of goods and services involved in the supply.

The GST Council has now decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1st July, 2017 to 31st December, 2018, in the same manner as has been prescribed for the period on or after 1st January, 2019, as per the explanation in the Notification No.24/2018 dated 31st December, 2018. However, it is specified that, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.

- **Applicability of GST rates on Fibre Drums, whether corrugated or non-corrugated**

Hitherto, corrugated boxes and cartons, falling under heading 4819 attracted GST at the rate of 12% (entry 122 of 12% rate schedule), while other cartons falling under this heading attracted GST at the rate of 18%. Disputes have arisen as regards applicable GST on fibre drums, which is partially corrugated (as to whether it is be treated as corrugated or otherwise). This dispute gets resolved on account of the recommendation of the GST Council, in its 45th meeting, to prescribe a uniform

INDIRECT TAX

GST rate of 18% on all goods classifiable under heading 4819 with effect from 1st October, 2021.

For the period prior to 1.10.2021, the Council upon taking note of the fact that there was an ambiguity regarding the GST rates applicable on a Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1.7.2017 to 30.9.2021), would be treated as fully GST-paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, no refund of GST already paid shall be allowed if already paid at 18%.

~Complied by Adarsh Shah

1) RBI/2021-2022/102
A.P. (DIR Series) Circular No.14

Exim Bank's Government of India supported Line of Credit (LoC) of USD 15 million to the Government of the Republic of Sierra Leone

a. Export-Import Bank of India (Exim Bank) has entered into an **agreement** dated December 17, 2020, **with the Government of the Republic of Sierra Leone,** for making available to the latter, Government of India supported Line of Credit (LoC) of USD 15 million (USD Fifteen Million only) **for the purpose of expansion of the ongoing projects for rehabilitation of existing potable water facilities** in four communities in the Republic of Sierra Leone. Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement.

b. Out of the total credit by Exim Bank under the agreement, goods, works and services of the value of **at least 75 per cent of the contract price shall be supplied by the seller from India**, and the **remaining 25 per cent of goods and services may be procured by the seller** for the purpose of the eligible contract from outside India.

c. The Agreement under the LoC is **effective from August 31, 2021**. Under the LoC, the **terminal utilization period is 60 months** from the scheduled completion date of the project.

d. Shipments under the LoC shall be declared in Export Declaration Form as per instructions issued by the Reserve Bank from time to time.

e. No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer (AD) Category- I banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

2) RBI/2021-2022/103
A.P. (DIR Series) Circular No.15

Exim Bank's Government of India supported Line of Credit (LoC) of USD 100 million to the Government of Democratic Socialist Republic of Sri Lanka

a. Export-Import Bank of India (Exim Bank) has entered into an **agreement** dated March 16, 2021, **with the Government of the Democratic Socialist Republic of Sri Lanka (Borrower)**, for making available to the latter, Government of India supported Line of Credit (LoC) of USD 100 million (USD One Hundred Million only) for the purpose of financing projects in the Solar Energy Sector in the Democratic Socialist Republic of Sri Lanka. Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement.

b. Out of the total credit by Exim Bank under the agreement, goods, works and services of the value of **at least 75 per cent of the contract price shall be supplied by the seller from India**, and the remaining **25 per cent of goods and services may be procured by the seller** for the purpose of the eligible contract from outside India. Provided however at the request of the

borrower and with the approval of the Government of India, **Exim Bank may consider reduction in the India content not exceeding 10% of contract**

price on a case to case basis. Provided further that such view/consent of Government of India be obtained before a project procurement is initiated and the said goods or services shall not be from a country other than that of the Borrower or India.

c. The Agreement under the LoC is effective from **September 13, 2021**. Under the LoC, the **terminal utilization period is 60 months** from the scheduled completion date of specified in the eligible contract.

d. Shipments under the LoC shall be declared in Export Declaration Form as per instructions issued by the Reserve Bank from time to time.

e. No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer (AD) Category- I banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

3) RBI/2021-22/106
DOR.CAP.REC.No.56/21.06.201/2021-22

Basel III Capital Regulations - Perpetual Debt Instruments (PDI) in Additional Tier 1 Capital – Eligible Limit for Instruments Denominated in Foreign Currency/Rupee Denominated Bonds Overseas

Please refer to paragraph 1.16 of Annex 4 (Criteria for Inclusion of Perpetual Debt Instruments (PDI) in Additional Tier 1 Capital) to the Master Circular Ref DBR.No.BP.BC.1/21.06.201/2015-16 dated July 1, 2015 on 'Basel III Capital Regulations' and the circular Ref. DBR.BP.BC.

No. 28/21.06.001/2016-17 dated November 3, 2016 on Issue of Rupee Denominated Bonds Overseas.

Several banks have approached us to clarify the amount of capital funds that can be raised overseas. The issue has been examined and it is clarified that the "eligible amount" for purpose of issue of PDIs in foreign currency as per para 1.16 (ii) of Annex 4 to the Master Circular dated July 1, 2015 referred to above, would mean the higher of:

(a) 1.5% of Risk Weighted Assets (RWAs) and

(b) Total Additional Tier 1 capital (AT1)

as on March 31 of the previous financial year.

Not more than 49% of the "eligible amount" as above can be issued in foreign currency and/or in rupee denominated bonds overseas.

Illustration:-

We consider the RWAs of the bank as on March 31 of previous financial year as ₹ 1000 crore.

	Scenario	Maximum amount of AT1 bonds that can be raised overseas (in foreign currency and/or in rupee denominated bonds overseas)
Case I	The bank had AT1 capital of less than or equal to 1.5% of RWAs as on March 31 of the previous financial year. Illustratively, the bank did not have any AT1 capital as on March 31 of the previous financial year.	Equals ₹ 7.35 crore (49% of 1.5% of RWAs).

Case II	The bank had AT1 capital more than 1.5% of RWAs as on March 31 of previous financial year. Illustratively, the bank had AT1 capital of ₹ 50 crore as on March 31 of the previous financial year.	Equals 49% of ₹ 50 crore i.e. ₹ 24.5 crore (49% of total AT1 capital as it is more than 1.5% of RWAs).

4) RBI/2021-22/111
DoR.FIN.REC.59/20.16.056/2021-22

Data Format for Furnishing of Credit Information to Credit Information Companies

Please refer to our circular DBOD.No.CID.BC.127/20.16.056/2013-14 dated June 27, 2014, inter alia setting out a Uniform Credit Reporting Format for reporting credit information to the Credit Information Companies (CICs). The Uniform Credit Reporting Format has two Annexes, Annex-I contains two formats for credit reporting, viz., Consumer Bureau and Commercial Bureau, whereas Annex-II contains credit reporting format for Micro Finance Institution (MFI) segment.

The Relationship Segment (RS) in the Commercial Bureau format inter alia captures information on relationship fields of the corporates, viz., business category and type of relationship (i.e. contains information on directors, shareholders, proprietors, partners, trustees, holding companies, subsidiary companies and associated companies related to the borrower). It is observed that there is a low level of RS details in the databases of CICs.

The RS details are very important in establishing cross-linkages across the three modules, viz., Consumer, Commercial and MFI Bureaus, while providing comprehensive credit information of a borrower to Credit

Institutions (CIs) by CICs. Accordingly, it has now been decided that the reporting of RS data by CIs to CICs would henceforth be mandatory.

In order to ensure implementation in a non-disruptive manner, the reporting requirement may be staggered in the manner indicated below.

(i) The reporting would be mandatory in respect of new loan accounts opened after July 1, 2022.

(ii) A phased approach shall be followed for reporting of legacy data as detailed below:

a. The accounts opened during the period (July 1, 2021, to June 30, 2022) have to be updated by January 1, 2023.
b. The accounts opened in past three years (July 1, 2018, to June 30, 2021) have to be updated by July 1, 2023.
c. A timeline for reporting of the remainder legacy data would be reviewed by the Technical Working Group and the CIs would be advised in due course.

~Complied by Piyush Motwani.

CORPORATE LAW

1. **Relaxations in paying additional fees in case of delay in filing Form 8 (the Statement of Account and Solvency) by Limited Liability Partnerships up to 30th December, 2021.**

   The MCA has decided to allow LLPs to file Form 8 (the Statement of Account and Solvency) for the Financial Year 2020-2021 without paying additional fees up to 30th December, 2021.

2. **New Version of Forms**

   Form MGT-7and MGT-7A is revised on MCA website under Company Forms Download page w.e.f . 14th October, 2021. Stakeholders are advised to download the latest version of Form and file the same.

3. **Relaxation on levy of additional fees**

   MCA vide its Circular No 17/2021 dated 29th October has decided to provide relaxation on levy of additional fees for filing of e-forms AOC-4, AOC-4 (CFS), AOC-4, AOC-4-XBRL, AOC-4 Non-XBRL and MGT-7 / MGT-7A.

   Thus no additional fees shall be levied up to 31st December, 2021 on late filing of the above mentioned forms for the FY ended 31st March 2021.

4. **Extension for filing Cost Audit Report**

   MCA vide its Circular No 15/2021 dated 27th September 2021, the MCA had relaxed the timeline for submitting of Cost Audit Report by Auditor to the Board by one month i.e. 31st October, 2021.

   On receipt of further representations from stakeholders, MCA has decided to further extend the above time by 30th November, 2021.

   Thus, a cost auditor may submit the Cost Audit Report to the Board by 30th November, 2021 without attracting any non-compliance.

- Compiled by Devang Thakkar

“Being a artist is same as being a wizard , only instead of a wand you use your pencil for your magic”

Allow us to tell you more!

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