R.C. JAIN AND ASSOCIATES LLP

NEWSLETTER

November 2023

"It always seems impossible until it is done"

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- **Corrigendum to Notification**

- **Corrigendum to Notification No. 3. of 2021**

  Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for Depository Transaction (SFT) for Mutual Fund Transactions by Registrar & Share Transfer Agent

  The changes made in notification 3 of 2021 dated 30th April 2021 after consultation with representatives of Depository Institutions are as follows :

1) The existing notification mentions the following "The statement of financial transactions relating to Financial Year 2020- 21 shall be furnished on or before the 31st May 2021. Thereafter, the statement of financial transactions relating to the quarter ending 30th June, 31st September, 31st December and 31st March shall be furnished on or before 25th of July, October, January and April respectively.

   This should be read as following: "With effect from 1st April 2023 the statement of financial transactions data will be submitted on half yearly basis instead of existing quarterly basis i.e. data relating to 1st half of the Financial Year ending 30th September and remaining half of the Financials Year ending on 31st March shall be furnished on or before 31st of October and 30th of April respectively.

2) The existing notification mentions the following: "The Estimated Sale Consideration for the debit transaction should be determined on the best possible available price of the asset with the depository (e.g. end of day price). The taxpayer will be able to modify the sales consideration before filing the return.

   This should be read as following: "The Estimated Sale Consideration for the debit transaction should be determined on Weighted Average Price i.e., taking into actual value of the transactions executed. The taxpayer will be able to modify the sales consideration before filing the return."

3) In annexure A (Guidelines for Preparation of Statement of Financial Transactions (SFT)) of the existing notification, mentions the following:

Security Class Code	**Security Class Description**	**Minimum Period of Hoding**
LES	Listed Equity Share	12 months
LPS	Listed Preference Share	12 months
LDB	Listed Debenture	12 months
ZCB	Zero Coupon Bond	12 months
CIB	Listed Capital Indexed Bond	12 months
EMF	Unit of Equity Oriented Mutual Fund	12 months
UTI	Unit of UTI	12 months
UBT	Unit of Business Trust	36 months
OTU	Other Units	36 months
OTH	Other Listed Securities (Other than a unit	12 months

This should be read as following:

Security Class Code	**Security Class Description**	**Minimum Period of Holding**	**Remarks**
UTI	Unit of UTI	12 months	Where more than 35% of its total proceeds are invested in the equity shares of domestic companies, this information should be provided. Note: Where not more than 35% of its total proceeds are invested in the equity shares of domestic companies, (Specified Mutual Fund), it will

			always be classified as short-term capital asset (Applicable from 1st April 2023)
UBT	Unit of Business Trust	36 months	Where more than 35% of its total proceeds are invested in the equity shares of domestic companies, this information should be provided. Note: Where not more than 35% of its total proceeds are invested in the equity shares of domestic companies, (Specified Mutual Fund), it will always be classified as short-term capital asset (Applicable from 1st April 2023)
OTU	Other Units	36 months	Where more than 35% of its total proceeds are invested in the equity shares of domestic companies, this information should be provided. Note: Where not more than 35% of its total proceeds are invested in the equity shares of domestic companies, (Specified Mutual Fund), it will always be classified as short-term capital asset (Applicable from 1st April 2023)

4) In annexure A (Guidelines for Preparation of Statement of Financial Transactions (SFT)) of the existing notification, S.No.6 mentions the following: "For every debit transaction, the corresponding credit transaction should be identified using First in First Out (FIFO) method. The estimated cost of acquisition for the credit should be determined on the best possible available price with the depository . The cost of acquisition can be estimated as per the closing rate on the date (T-2) of transaction for market purchase. The estimated cost of acquisition is to be taken as NIL for Off Market purchase [PO or Corporate Action or for any transaction through other than Exchange.] The taxpayer will be able to modify the cost of acquisition before filing the return.

This should be read as following:

"For every debit transaction, the corresponding credit transaction should be identified using First in First Out (FIFO) method. The estimated cost of acquisition for the credit should be determined on weighted average price of the asset i.e taking into actual value of the transactions, if purchase was made after 1st February 2018 or End of the day price, if purchase was made before 1st February 2018, available with the depository. The estimated cost of acquisition is to be taken as NIL for Off Market purchase, Corporate Action or for any transaction through other than Exchange. IPO credit will be treated as Market credit and cost of the acquisition of the same will be arrived using the formula i.e. Number of shares allotted x Per unit price at which share is allotted. The taxpayer will be able to modify the cost of acquisition before filing the return."

5) In annexure D (D.3- Depository Transaction Summary (DEP 3RN_Summ.TXT)) of the existing notification, the data fields 16 ,17 & 18 is mentioned as following

	Field	**Mandatory**	**Format**	**Remarks**
16	Unit Sale Price	Y	DECIMAL (18,2)	Estimated Sale price per unit.
17	Sale Consideration	Y	DECIMAL (18,2)	Estimated Sale Consideration. Refer Guidelines
18	COA	Y	DECIMAL (18,2)	Estimated Cost of acquisition without indexation. Refer

				Guidelines

These should be read as following:

	Field	Mandatory	Format	Remarks
16	Unit Sale Price	Y	DECIMAL (18,2)	Weighted Average sale price per unit (taking into account the actual value of the transactions)
17	Sale Consideration	Y	DECIMAL (18,2)	Estimated Sale Consideration at Weighted Average price (taking into account the actual value of the transactions)
18	COA	Y	DECIMAL (18,2)	Estimated Cost of acquisition without indexation Refer Guidelines.

- **Corrigendum to Notification No. 4 of 2021**

  Format, Procedure and Guidelines for submission of Statement of Financial Transaction (SFT) for Mutual Fund Transactions by Registrar & Share Transfer Agent :

  The changes made in notification 3 of 2021 dated 30th April 2021 after consultation with representatives of Depository Institutions are as follows :

1) The existing notification mentions the following "The statement of financial transactions relating to Financial Year 2020- 21 shall be furnished on or before the 31st May 2021. Thereafter, the statement of financial transactions relating to the quarter ending 30th June, 31st September, 31st December and 31st March shall be furnished on or before 25th of July, October, January and April respectively.

   This should be read as following: "With effect from 1st April 2023 the statement of financial transactions data will be submitted on half yearly basis instead of existing quarterly basis i.e. data relating to 1st half of the Financial Year ending 30th September and remaining half of the Financials Year ending on 31st March shall be furnished on or before 31st of October and 30th of April respectively.

2) In Annexure A (Guidelines for Preparation of Statement of Financial Transactions (SFT), Sr No. 7 mentions the specified minimum period of holding for different asset class is as under:

Security Class Code	Security Class Description	Minimum Period of Code Holding
EMF	Unit of Equity Oriented Mutual Fund	12 months
UTI	Unit of UTI	12 months
OTU	Other Units	36 months

This should be read as :

Security Class Code	**Security Class Description**	**Minimum Period of Holding**	**Remarks**
EMF	Unit of Equity Oriented Mutual Fund	12 months	
UTI	Unit of UTI	12 months	Where more than 35% of its total proceeds are invested in the equity shares of domestic companies, this information should be provided. Note: Where not more than 35% of its total proceeds are invested in the equity shares of domestic companies, (Specified Mutual Fund), it will always be classified as short-term capital asset (Applicable from 1st April 2023)
OTU	Other Units	36 months	Where more than 35% of its total proceeds are invested in the equity shares of domestic companies, this

			information should be provided. Note: Where not more than 35% of its total proceeds are invested in the equity shares of domestic companies, (Specified Mutual Fund), it will always be classified as short-term capital asset (Applicable from 1st April 2023)

~ Compiled by Mihir Gohil

CASE LAW

A. INCOME TAX : Where entire actual sales consideration had been invested in purchase and construction of residential house by assessee, capital gain would be exempt under section 54F and provisions of section 50C would not be applicable

IN THE ITAT JAIPUR BENCH 'SMC'

Lalit Kumar Kalwar

v.

Income-tax Officer

IT APPEAL NO. 379 (JP) OF 2018

[ASSESSMENT YEAR 2013-14]

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GIST OF CASE

The assessee had sold shops and received actual sale consideration of Rs. 12 lakhs, which was less than the value accepted by the DLC of Rs. 20.78 lakhs. The assessee claimed long term capital gain (LTCG) at nil after seeking exemption under section 54F contending that the entire actual sale consideration was invested in the purchase and construction of the residential house.

The Assessing Officer disallowed the claim of the assessee for the reason that the assessee had not deposited the sale consideration received on transfer of the property in capital gain account as per provisions of section 54F(4).

On appeal, the Commissioner (Appeals) allowed the appeal of the assessee in part on the assessee's appeal to the Tribunal:

Held:

After analyzing the provisions of section 54F(1), net consideration means the full value of consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. The meaning of full value of consideration in Explanation to section 54F(1) will not be governed by meaning of words 'full value of consideration' as mentioned in section 50C. The value adopted for stamp duty is to be considered as full value of consideration for the purpose of computing the capital gains under section 48. In the instant case, **the cost of new asset is not less than the net consideration thus the**

whole of the capital gains will not be charged even if the capital gains has been computed by adopting the value adopted by stamp registration authority. It is clearly mentioned in section 54F(4) also that net consideration which is not appropriated towards the purchase of new asset then the same is to be taxed in case such net consideration not appropriated is not deposited in the capital gain account. It is not necessary that the new asset should be registered before filing of the return. The requirement of law is that net consideration is required to be appropriated towards the purchase of the new asset. Thus, deduction under section 54F is clearly applicable.

The natural meaning of full value of consideration refers to consideration specified in the sale deed. The Delhi High Court has referred to the decision of Apex Court wherein it was held that 'full value of consideration' is the full sale price actually paid. It was further of the view that the expression 'full value' means the whole price without any deduction, whatsoever, and it cannot refer to the adequacy of the price bargained for. Nor did it have any necessary references to the market value of the capital asset which is the subject-matter of the transfer.

The fiction under section 50C is extended only to the aspect of computation of capital gains and the same does not extend to the charging section or the exemptions to the charging section. The legislature consciously intended to apply the fiction under section 50C only to the expression used in section 48 and not in any other place. The exemption under sections 54, 54B, 54D, 54EA, 54EB, 54F, 54G and 54H, are self-contained sections which also include the method of computation of the exemption. The manner in which the profits or gains arising out of the transfer of the capital asset are to be computed as mentioned in section 48 which goes without saying that the charge is on the profits or gains so computed. While computing the profits or gains as per section 48, the deeming provision embedded in section 50C has to be given effect to. This aspect was justified by the Finance Minister in his Budget Speech that section 50C will curb the menace of unaccounted income in the property transactions by presuming the sale consideration to be the value of the guideline value for registration in case it is stated lower than that value of registration. Thus, when the assessee has invested entire actual sales consideration received by him in the purchase and construction of new house accordance with the provision of section 54F(1) thereafter the provision of section 50C were not applicable.

Therefore, considering the above discussions, it is to be held that the assessee is entitled to exemption under section 54F. Thus, the impugned disallowance made is to be deleted.

B. INCOME TAX : where assessee-bar association of income tax consultants applied for registration under section 12aa, without fulfilling primary condition of registration under relevant statutory authorities , as required by amended rule 17a, cit(e) rightly rejected registration application of assesse

HIGH COURT OF INDIA

Income Tax Appellate Tribunal Bar Association

v.

Commissioner of Income-tax (Exemption)

IT APPEAL NO. 166 (SRT) OF 2022

[ASSESSMENT YEAR 2019-20]

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GIST OF CASE

Section 12AA of the Income-tax Act, 1961 read with Rule 17A of the Income Tax Rules, 1962 - Charitable or religious trust - Registration procedure - Assessment year 2019-20 - Assessee, a Bar Association of Income Tax consultants, applied for registration under section 12AA - Said application was rejected by CIT(E) due to a lack of registration with statutory authorities, as per amended Rule 17A - On appeal, Tribunal directed CIT(E) to pass a fresh order - After re-evaluation CIT(E) again denied registration - Whether since assessee failed to fulfil primary condition for registration under relevant statutory authorities and in absence of such registered instrument, application filed by assessee was premature and could not be proceeded to examine their object and activities, therefore, said application was liable to be rejected - Held, yes - Whether further, CIT(E) had nowhere exceeded his jurisdiction while passing order afresh, rather assessee itself failed to fulfil requisite conditions for making application as per condition of of said rule ,as a result application of assessee was rightly rejected - Held, yes - Whether however, keeping in view activities of assessee, it would be given liberty to apply for fresh registration in event of compiling with requirement of registration under any of relevant statutory authority - Held, yes

Held:

It is matter of fact that initially the assessee filed application for registration under section 12AA. The application of the assessee was rejected by CIT(E) vide order dated 28.12.2018. The sole basis of rejection of application under section 12AA is the want of registration with registrar of company, registrar of firm and society or registrar of trust as the case may be. It is an admitted fact that assessee / Bar Association has not obtained any registration either under Gujarat Public Trust Act or under any other statutory provision. It is found that Rule 17A, which deals with the registration under section 12AB has been substituted with effect from 01.04.2021 and as per substituted provision prescribed under clause-(c) of sub-Rule-2 of Rule 17A, the assessee is required to furnish certified copy of registration with registrar of Companies or registrar of firms and societies or registrar of Public Trusts, as the case may be. Since, the application of the assessee for registration was pending either before this Tribunal or restored back to CIT(E), therefore, this application is treated under section 12AB. This is a condition precedent for making application under Form 10A or 10AB, however, the assessee vehemently submitted that furnishing of self-certified copy is required only if it is so registered and it was also argued that there is no provision that institute should be constituted under any law. Such submission of the assessee is not acceptable, as Rule 17A is clear and unambiguous. Income Tax Rules 1962 amended from time to time is framed to supplement of statutory provision under the Act and have approval of Parliament. Thus, the assessee failed to fulfil the primary condition for registration under registrar of company, registrar of firm and society or registrar of Public Trust and in absence of such registered instrument, the application filed by assessee is premature and cannot be proceeded to examine their object and the activities, if in accordance with their object. Therefore, there was no merit in the submission of the assessee.

However, keeping in view the activities of the assessee, the assesse is given liberty to apply for fresh registration in the event of complying with the requirement of registration under any of the statutory authority like registrar of company, society and registrar of firms or Public Trust as the case may be.

In the result, appeal filed by assessee is dismissed.

~ Compiled by Abhinav Shandilya

The CBIC issued Instructions vide F. No. CBIC- 20006/15/2023-GST regarding the action in respect of non-issuance of e-invoices by notified class of taxpayers who are mandatorily required to issue e-invoice as per legal provisions.

With effect from 01st August, 2023 e-invoicing has been made mandatory for taxpayers having aggregate turnover of more than Rupees Five Crore in any financial year from 2017-18 onward. The intent behind e-invoicing is not only to automate tax relevant processes thereby reducing compliance burden on tax payers but also to ensure better management of taxes and significant reduction of tax evasion and siphoning or public funds by addressing various frauds like carousel fraud, no invoicing or invoicing with no goods supplied, fraudulent export ITC refunds, etc. Accordingly, through the above notifications, steps have been initiated to introduce 'e-invoicing' for reporting of Business to Business (B2B) and export supply transactions, barring certain classes of registered persons which have been exempted from issuing e-invoices.

The taxpayers, who have exceeded the prescribed threshold of aggregate turnover exceeds said limit but have been exempted from the issuance of e-invoices under relevant legal provisions are required to declare on their invoices that they are not required to issue invoice in the manner specified & they can file the declaration on the recently introduced functionality on the portal to make a self-declaration regarding category under which they are exempted from issuance of e-invoices.

In this regard, a list of such taxpayers who are mandatorily required to issue e-invoices through electronic invoicing under sub-rule (4) of Rule 48 of the CGST Rules but are not issuing the same will be shared by the GSTN. Accordingly, the field formations are advised to take the following action on the list provided by GSTN:

i. The tax authorities may find the reasons for non-issuance of B2B and export invoices through e-invoicing by such taxpayers. If it is reported by the taxpayers that they have not exceeded the prescribed threshold limit under sub-rule (4) of Rule 48 of the CGST Rules or are exempted from issuance of e-invoice under relevant legal provisions/notifications, they may be advised to declare their exempted category on the functionality on the portal by using the functionality recently provided by GSTN. If the reasons are not in accordance with the provisions of the Rules and the relevant notifications, the taxpayers may be nudged and advised to immediately start issuing invoices through e-invoicing.

ii. The tax authorities may also inform the taxpayers (who have exceeded annual aggregate turnover and are mandatorily required to issue invoices through e-invoicing) about the provisions of sub-rule (5) of Rule 48 of CGST Rules providing that any invoice issued by such taxpayers, in the manner other than the manner prescribed under sub-rule (4) of Rule 48 of the CGST Rules, i.e. other than e-invoicing, shall not be treated as valid invoice. They may also be informed that they will be liable to penalty under Clause (c) of sub-section (3) of Section 122 of CGST Act, in case of their failure to issue invoices through e-invoicing system.

iii. In case of continuous non-compliance of the provisions of Rule 48(4) of CGST Rules by the taxpayers, who are otherwise required to issue invoices for B2B and export transactions through e-invoicing, appropriate penal action, as mentioned in sub-para (ii) above, may be initiated under the CGST Act and Rules made thereunder. To begin with, emphasis should be laid on the taxpayers who have exceeded aggregate turnover of more than Rupees Fifty Crore, as sufficient time has elapsed since e-invoicing has been made mandatory for these taxpayers from April, 2021.

iv. Any systemic issues, faced by such taxpayers for issuance of e-invoices, may be brought to the notice of GSTN/NIC for subsequent remedial action

- **Important Advisory No. 614**

GSTN issued Important Advisory for Online Compliance Pertaining to ITC mismatch –

The GSTN issued Important Advisory No. 614 for Online Compliance Pertaining to ITC mismatch - GST DRC-01C. It is informed that GSTN has developed a functionality to generate automated intimation in Form GST DRC01C which enables the taxpayer to explain the difference in Input tax credit available in GSTR-2B statement & ITC claimed in GSTR-3B return online as directed by the GST Council.

This feature is now live on the GST portal. This functionality compares the ITC declared in GSTR-3B/3BQ with the ITC available in GSTR-2B/2BQ for each return period. If the claimed ITC in GSTR 3B exceeds the available ITC in GSTR-2B by a predefined limit or the percentage difference exceeds the configurable threshold, taxpayer will receive an intimation in the form of DRC-01C.

Upon receiving an intimation, the taxpayer must file a response using Form DRC-01C Part B. The taxpayer has the option to either provide details of the payment made to settle the difference using Form DRC-03, or provide an explanation for the difference, or even choose a combination of both options. In case, no response is filed by the impacted taxpayers in Form DRC-01C Part B, such taxpayers will not be able to file their subsequent period GSTR-1/IFF.

- **Notification No 53/2023**

GSTN issued Important advisory for procedures and provisions related to Amnesty for taxpayers who missed the appeal filing deadline for the orders passed on or before March 31, 2023

The Goods and Services Tax Network (GSTN) issued Advisory No. 612 outlining procedures and provisions for an amnesty scheme benefiting taxpayers who missed the appeal filing deadline for orders issued on or before March 31, 2023. The scheme, recommended in the 52nd meeting of the GST Council, aims to grant amnesty to taxpayers unable to file an appeal under section 107 of the CGST Act against demand orders under section 73 or 74 of the CGST Act, issued on or before March 31, 2023.

In compliance with the GST Council's recommendation, the government issued Notification No. 53/2023 for taxpayers can now file appeals using FORM GST APL-01 on the GST portal until January 31, 2024, for orders passed by the proper officer on or before March 31, 2023. The advisory emphasizes that taxpayers must make payments for appeal processing in accordance with the provisions of Notification No. 53/2023.

Taxpayers can choose their mode of payment (electronic Credit/Cash ledger) on the GST Portal. It is the taxpayer's responsibility to select the appropriate ledgers and make correct payments. The Appellate Authority will verify the correctness of the payment before processing the appeal, and appeals filed without proper payment may face legal consequences.

If a taxpayer has already filed an appeal and wishes to benefit from the amnesty scheme, they must make differential payments to comply with Notification No. 53/2023. This payment should be made against the demand order using the 'Payment towards demand' facility on the GST portal. The process for making this payment involves logging in, accessing Services, navigating to Ledgers, and selecting 'Payment towards Demand.'

- **Case Laws**

Assessee is not liable to suffer due to fraudulent and negligent conduct of CA

The Hon’ble Calcutta High Court in the case of Jayshree Bhardwah v. Deputy Commissioner of Revenue W.B. State Tax & Ors. [WPA 1504 of 2023 dated August 7, 2023] allowed the writ petition and held that the Petitioner's appeal was dismissed by the Revenue Department on the ground of limitation wherein the delay has been caused due to the conduct of Chartered Accountant, should be reconsidered and be decided on merits.

Penalty and Interest could not be imposed when Credit was erroneously availed but not utilized

The Punjab and Haryana High Court in the case of M/s. Deepak Sales Corporation v. Union of India [CWP No. 283 of 2023 dated September 21, 2023] allowed the appeal filed by the Assessee by way of the writ petition and held that, the demand of interest and penalty is not tenable when the credit erroneously availed is reversed and such credit is not utilized by the Assessee.

Demand Notice cannot be enforced during the pendency of the Stay Application

The Hon'ble Kerala High Court in the case M/s. Mathew Scaria v. Deputy Commissioner of State Tax and Ors. [WP(C) 33099 of 2023 dated October 16, 2023] disposed of the writ petition, thereby directing the Revenue Department to dispose Stay Application within one month and not enforce the proceeding of Demand Notice during the pendency of the Stay Application.

No Recovery proceedings can be initiated until Investigation is completed

The Hon'ble Madras High Court in the case of M/s. Shewil Trading Company v. The Commissioner of Commercial Taxes & Ors. [W.P. No. 26493 of 2022 dated November 02, 2023] directed the Cyber Crime Cell Inspector to complete the investigation within eighteen (18) months from receipt of a copy of the order. Till such investigation is completed, all revenue recovery proceedings against the Petitioner shall be kept in abeyance. In case, the complaint of the Petitioner turns out to be untrue or was intended to facilitate fraud being committed using the login ID of the Petitioner, the assets of the Petitioner shall be brought to sale and the writ petition stands disposed.

No recovery to be effected based on difference in GSTR-1 and GSTR-3B without complying with Rule 88C of the CGST Rules

The Madras High Court in the case of M/s. Caterpillar India Pvt. Ltd. v. The Assistant Commissioner Chennai [WP No. 28092 of 2023 dated September 25, 2023] allowed the writ petition and held that, no recovery can be effected directly based on the difference in Form GSTR-1 and Form GSTR-3B without complying with the requirements stated in Rule 88C of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules").

Cash cannot be considered as Goods for seizure proceedings under GST Law

The Hon'ble Gujarat High Court in the case of M/s. Bharatkumar Pravinkumar and Co. v. State of Gujarat [Special Civil Application No. 26222 of 2022 dated October 26, 2023] allowed the writ petition and held that cash would not be considered as goods for the purpose of seizure proceedings, and it is not justified to retain cash seized by the Revenue Department for more than six months, without issuance of Show Cause Notice ("SCN").

Refund allowed in case of inverted duty structure on account of Multiple Input having higher GST rate than output

The Hon'ble Rajasthan High Court (Jaipur Bench) in the case of M/s. Nahar Industrial Enterprises Limited v. Union of India [Civil Writ Petition No. 8476 of 20/21 dated October 31, 2023], allowed the Writ Petition and held that refund of Input Tax Credit ("ITC") can be claimed when there are multiple inputs having a higher rate of GST than the rate of GST on output supplies.

Penalty imposed on GST collected but not deposited to Government even after Tax payment within 30 days from Notice

The Hon'ble Kerala High Court in the case of M/s. Global Plasto Wares V. Assistant State Tax Officer [WP (C) No. 33787 of 2023 dated October 17, 2023] dismissed the writ petition and held that Assessee is liable to pay a penalty when the amount of GST collected has not been credited to the government even when GST along with interest has been paid within 30 days of Notice issued for raising demand concerning non-payment of GST

SCN quashed due to inordinate and unreasonable delay in the adjudication proceeding

The Hon'ble Jharkhand High Court in the case of M/s. Kamaladitya Construction (P) Ltd vs. The Principal Commissioner of CGST, Ranchi and Ors. [W.P.(T) No. 2890 of 2022 dated October 09, 2023] allowed the writ petition and held the delay of seven (7) years in the adjudication of Show Cause Notice ("SCN") proceedings would amount to inordinate and unreasonable delay and violate Article 14 of the Indian Constitution. Therefore, the Show Cause Notice and Notice issued for the fixation of personal hearing is liable to be quashed and set aside.

Tax Invoices, E-way bills, and Goods Receipts are not sufficient proof to avail ITC

The Allahabad High Court in the case of M/s. Malik Traders v. State of Uttar Pradesh and Ors. [Writ Tax No. 1237 of 2021 dated October 18, 2023], dismissed the writ petition and held that, details of the Tax Invoice, EWay bill, and Goods Receipt are not sufficient to prove the genuineness of the transaction beyond a reasonable doubt, to avail Input Tax Credit ("ITC"). The recipient of purchased goods must provide essential information, including vehicle numbers used for transporting the goods, payment of freight charge, and acknowledgment of receipt, in order to substantiate the genuine physical movement of goods for availment of ITC.

Section 56 prescribes interest on delayed refunds after 60 days from date of refund application

In the case of Bansal International vs. Commissioner of DGST and Another, the Delhi High Court clarified the application of interest on delayed refunds under Section 56 of the Delhi Goods and Services Tax Act, 2017. The court held that interest is payable when a refund remains unpaid even after sixty days from the date of the application for the refund.

The petitioner filed a petition against the rejection of their claim for interest of ₹13,12,761 on a GST refund already granted. The Additional Commissioner, relying on Section 56 of the DGST Act, held that interest is payable only if the refund is not made within sixty days from the receipt of the application filed after the order passed by the Appellate Authority. Since the refund in this case was processed within sixty days from the date of such application, no interest was deemed payable under Section 56 of the DGST Act.

The petitioner argued that the Adjudicating Authority misinterpreted Section 56, claiming entitlement to interest after the expiry of sixty days from the date of the first refund application, not from the application filed after succeeding in the claim before the Appellate Authority.

The Delhi High Court concluded that, based on a straightforward interpretation of Section 56 of the CGST Act, a taxpayer is entitled to interest from the day immediately following the expiration of sixty days from the receipt of the initial application under Section 54(1) of the CGST Act, accompanied by the specified documents under Section 54(4) of the CGST Act, read with Rule 89 of the Rules.

Principal place of business of 3rd person will be place of supply where supply is made on direction of 3rd person

In the case of Philips Carbon Black Limited vs. State of Kerala, the Kerala High Court interpreted Section 10(1)(b) of the Integrated Goods and Services Tax (IGST) Act, 2017. According to the court's ruling, when a supply is made on the direction of a third person, the place of supply is deemed to be the principal place of business of that third person.

The petitioner, a dealer under the Central Goods and Services Tax Act and Kerala Goods and Services Tax Act, challenged proceedings initiated under Section 149 of the CGST Act, contending that they were without jurisdiction and lacked legal authority.

The dispute arose from a communication received by the petitioner, stating that since the destination of the transport was Kannur in Kerala, the State Goods and Services Tax (SGST) component of the Goods and Services Tax (GST) was creditable to Kerala State. The communication also emphasized the need for supply documents (Delivery challan) for monitoring the nature of supply, transaction accountability, and further movement of goods.

The court clarified that, as per Section 10(1)(b) of the IGST Act, when a supply is made on the direction of a third party, the place of supply is considered to be the principal place of business of that third person. In the case at hand, the delivery of goods was directed to M/s. Carbomix Polymers (India) Pvt. Limited, Kannur, Kerala, on instructions by MRF Limited, to whom the goods were sold and invoiced. The court determined that the supply of goods was inter-state and not intra-state, and thus, attracted tax under the IGST Act.

In summary, the Kerala High Court upheld the principle that when a supply is made at the direction of a third party, the place of supply is deemed to be the principal place of business of that third party, as per Section 10(1)(b) of the IGST Act. This decision had implications for the tax treatment of the goods supplied in the case, classifying it as an inter-state supply subject to IGST.

Advance Rulings

Aluminium Foil Container is classified under Heading 7615 with a GST rate of 12%

The Hon'ble Madras High Court in M/s. Veeram Natural Products v. The Additional Commissioner of GST and Central Excise [W.P.(MD) Nos. 6485 to 6492 of 2023 dated September 13, 2023] held that aluminium foil container should be classified under Chapter Heading 7615 under the Customs Tariff Act, 1975 ("the Customs Tariff Act") with a GST rate of 12%.

Services of Printing Question Papers for Examinations to Educational Institutions is exempt from GST

The AAR, West Bengal, in M/s. Saraswaty Press Limited [Advance Ruling No. 20/WBAAR/2023-24 dated September 13, 2023], ruled that the services of printing question papers for conducting examinations to educational institutions, will be covered under Sl. No. 66 of the Notification No. 12/2017-Central tax (Rate) dated June 28, 2017 ("the Service Exemption Notification") shall be treated as exempt supply.

GST on lease renewal amount: AAR Gujrat ruling

In the case of M/s The Surat Textile Market Cooperative Shops & Warehouses Society Ltd, Gujarat, the Authority for Advance Ruling (AAR) provided several key points related to GST implications on lease renewal and premium payments. Here is a summary of the ruling:

1. GST on Lease Renewal Amount:

The applicant is liable to pay GST under Reverse Charge Mechanism (RCM) as per Section 9(3) of the CGST Act, 2017, for the lease renewal amount payable to Surat Municipal Corporation (SMC).

2. GST on Premium on Lease Renewal Amount:

The applicant is also liable to pay GST under Reverse Charge Mechanism (RCM) in terms of Section 9(3) of the CGST Act, 2017, for the premium on the lease renewal amount payable to SMC.

3. GST on Collection from Shareholders/Shop Owners:

The collection made from shareholders/shop owners by the applicant for lease and lease premium payments is considered a supply under Section 7 of the CGST Act, 2017. GST under forward charge is applicable to these collections.

4. Effect of Circular No. 101/20/2019-GST:

The applicant is not entitled to exemption under Sr. No. 41 of Notification No. 12/2017-CT (Rate) dated 28.6.2017, as amended, and clarification issued vide Circular 101/20/2019-GST dated 30.4.2019.

5. Input Tax Credit (ITC) for Shareholders/Shop Owners:

The ruling does not provide a clear answer regarding whether the applicant's shareholders/shop owners, who reimburse the lease and lease premium amount, are eligible for ITC of the GST charged by the applicant. The ruling suggests that the applicant does not have the locus standi (legal standing) to seek a ruling on behalf of their members in this regard.

The case of Shree Avani Pharma, considered by the Gujarat Authority for Advance Ruling (AAR), involves the Goods and Services Tax (GST) implications of job work, specifically the conversion of raw materials owned by other registered dealers. Here is a summary of the key points and findings:

Background:

- Shree Avani Pharma is a registered partnership firm engaged in the job work of converting raw materials owned by other registered dealers.

- The raw materials include Nitroantraquinone, Monon methyl Amine, and Bromine, which are converted into Antraquinone derivatives through a specific process.

Process Description:

The conversion process involves various steps such as mixing raw materials, heating, adding liquid Bromine, centrifugation, distillation, filtration, chilling, and separation to obtain the final product in dry/powder form.

Applicant's Query:

The applicant believes their job work service falls under SAC 9988.

They seek clarification on whether their service falls within entry Sr. No. 26(id) of Notification No. 11/2017-CT (Rate), and whether GST at the rate of 12% (CGST 6% + SGST 6%) is applicable.

Discussion and Findings:

The definition of "job work" from the Central Goods and Services Tax (CGST) Act is cited, emphasizing any treatment or process on goods belonging to another registered person.

The applicant's service is categorized as job work, and the ruling revolves around the interpretation of entry Sr. No. 26(id) of Notification No. 11/2017-CT (Rate).

Entry (id) specifically covers job work services where inputs are sent by a registered person. The distinction between entry (id) and entry (iv) under heading 9988 is clarified, with (id) covering job work for registered persons, and (iv) covering manufacturing services on inputs owned by unregistered persons.

As the applicant's job work involves processing inputs sent by a registered client, it falls within entry Sr. No. 26(id) and is classifiable under SAC 9988.

The ruling concludes that GST at the rate of 12% (CGST 6% + SGST 6%) is applicable to this service.

Ruling:

The service provided by Shree Avani Pharma falls within entry Sr. No. 26(id) of Notification No. 11/2017-CT (Rate).

The service is classifiable under SAC 9988.

GST at the rate of 12% (CGST 6% + SGST 6%) is applicable to this service.

GST on supply of food to employees and contract workers : AAAR Himachal Pradesh

The questions relate to the applicability of Goods and Services Tax (GST) on the subsidized deduction made by the appellant from employees who avail food in the factory. Here are the answers:

Question 1: Whether the subsidized deduction made by the Appellant from the Employees who are availing food in the factory would be considered as a "supply" by the Appellant under the provisions of Section 7 of the Central Goods and Service Tax Act, 2017, and Himachal Pradesh Goods and Service Tax Act, 2017?

Answer 1: Yes, the supply of food to employees and contract workers is considered a supply under Section 7 of the CGST Act, 2017, and the Himachal Pradesh Factories Rules, 1950. Accordingly, it is leviable to GST.

Question 2: Whether GST is applicable on the nominal amount deducted from the salaries of its employees?

Answer 2: Yes, GST is applicable on the nominal amount deducted from the salaries of employees as it is considered a supply of food, and therefore, subject to GST.

Question 3: Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees?

Answer 3: Yes, GST would be applicable on the nominal amount deducted from the Manpower supply contractor in the case of contractual employees, as it is treated as a supply of food and falls under the purview of GST.

Question 4: Whether Input Tax Credit (ITC) of the GST charged by the Canteen Service Provider would be eligible for availment to the Appellant?

Answer 4: No, Input Tax Credit will not be available to the Appellant on GST charged by the canteen service provider, as per the provisions of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 20/2019-C.T. (Rate) dated 30.09.2019.

~ Compiled by Shaikh Usama

RBI

1. RBI/2023-2024/86
   FED Circular No.08
   November 17, 2023

International Trade Settlement in Indian Rupees (INR) – Opening of additional Current Account for exports proceeds

AD Category-I Banks' Notices

- AD Category-I banks are invited to A.P. (DIR Series) Circular No.10 dated July 11, 2022, for additional arrangements for invoicing, payment, and settlement of exports/imports in INR.

- AD Category-I banks are also invited to Para 4.1 of circular DOR.CRE.REC.23/21.08.008/2022-23 dated April 19, 2022 on Opening of Current Accounts and CC/OD Accounts by Banks.

- AD Category-I banks maintaining Special Rupee Vostro Account are permitted to open an additional special current account for exporter constituent exclusively for settlement of export transactions

2. RBI/2023-2024/83
   A.P. (DIR Series) Circular No. 07
   November 10, 2023.

Guidelines on import of silver by Qualified Jewellers as notified by -The International Financial Services Centres Authority (IFSCA)

Authorised Dealer Category – I (AD Category – I) Banks' Notice

- AD Category-I banks invited to A.P. (DIR Series) Circular No.04 dated May 25, 2022.
- Circular allows AD Category-I banks to remit advance payments for Qualified Jewellers for eleven days for gold import through India International Bullion Exchange IFSC Ltd (IIBX).

- Notification No.35/2023 issued by DGFT allows Qualified Jewellers to import silver under specific ITC (HS) Codes through IIBX.

- AD Category-I banks allowed to bring the circular to their constituents and customers.

- Directions issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act (FEMA), 1999.

3. RBI/2023-24/81
   FMRD.FMID.No. 04/14.01.006/2023-24
   November 08, 2023

‘Fully Accessible Route’ for Investment by Non-residents in Government Securities – Inclusion of Sovereign Green BondsAmendment to the Master Direction (MD) on KYC

Reserve Bank of India's Press Release on Sovereign Green Bonds

- Notifies issuance calendar for Sovereign Green Bonds for fiscal year 2023-24.
- Introduces Fully Accessible Route (FAR) for non-resident investors and domestic investors.
- Notifies Government Securities eligible for FAR investment.
- Designates all Sovereign Green Bonds issued by the Government in fiscal year 2023-24 as ‘specified securities' under FAR.
- Directions issued under Section 45W of Chapter IIID of the Reserve Bank of India Act, 1934.
- Directions apply with immediate effect.

~ Compiled by Prachi Dubey

LIMITED LIABILITY PARTNERSHIP (SIGNIFICANT BENEFICIAL OWNERS) RULES, 2023.

Applicability- The provisions of these rules shall apply to any Limited Liability Partnership.

Duty of the reporting limited liability partnership.-

1. Every reporting limited liability partnership shall take necessary steps to find out if there is any individual who is a significant beneficial owner, in relation to that reporting Limited Liability Partnership, and if so, identify him and cause such individual to make a declaration in Form No. LLP BEN-1.
2. Without prejudice to sub-rule (I), every reporting limited liability partnership shall in all cases where its partner (other than an individual), holds not less than 10 per cent. of its-
   (a) contribution; or
   (b) voting rights; or
   (c) right to receive or participate in the distributable profits or any other distribution payable in a financial year,-
   give notice to such partner in Form No. LLP BEN-4, seeking information in accordance with sub-section (5) of section 90 of the Companies Act, 20 13 as applied to the LLP as per the notification.

Declaration of significant beneficial ownership.-

On the commencement of these rules every individual who is a significant beneficial owner in a reporting limited liability partnership, shall file declaration in Form No. LLP BEN-1 to the reporting limited liability partnership within ninety days from such commencement.

Every individual, who subsequently becomes a significant beneficial owner or where his Significant beneficial ownership undergoes any change shall file a declaration in Form No. LLP BEN-1 to the reporting limited liability partnership, within thirty days of acquiring such significant beneficial ownership or any change there in.

Where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change within ninety days of the commencement of these rules, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from such commencement. And the period of thirty days for filing will be reckoned accordingly.

Return of Significant beneficial owners in contribution.-

Upon receipt or declaration under rule 5, the reporting LLP shall file a return in Form No. LLP BEN- 2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of such declaration by it along with the fees as prescribed in the Limited Liability Partnership Rules, 2009.

Register of significant beneficial owners.-

The limited liability partnership shall maintain a register of significant beneficial owners in Form No. LLP BEN -3.

The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as may be decided by limited liability partnership agreement, or by partners of the limited liability partnership on payment of such fee as may be specified by the limited liability partnership but not exceeding fifty rupees for each inspection.

Notice seeking information about significant beneficial owners.-

A limited li ability partnership shall give notice in Form No. LLP BEN-4 seeking information in accordance with sub-section (5) of section 90 as applied to the limited liability partnership by the notification.

Application to the Tribunal.-

The reporting LLP shall apply to the Tribunal,

i. where any person fails to give the information required by the notice in Form No. LLP BEN-4, within the time specified therein; or
ii. where the information given is not satisfactory, under sub-section (7) of section 90 of Companies Act, 2013 for order directing that the contribution in question be subject to such restrictions as Tribunal deems fit, including-

a) restrictions on the transfer of interest attached to the contribution in question:
b) suspension of the right to receive pro fits or any other distribution in relation to the contribution in question;
c) suspension of voting rights in relation to the contribution in question;
d) any other restriction on all or any of the rights attached with the contribution in question.

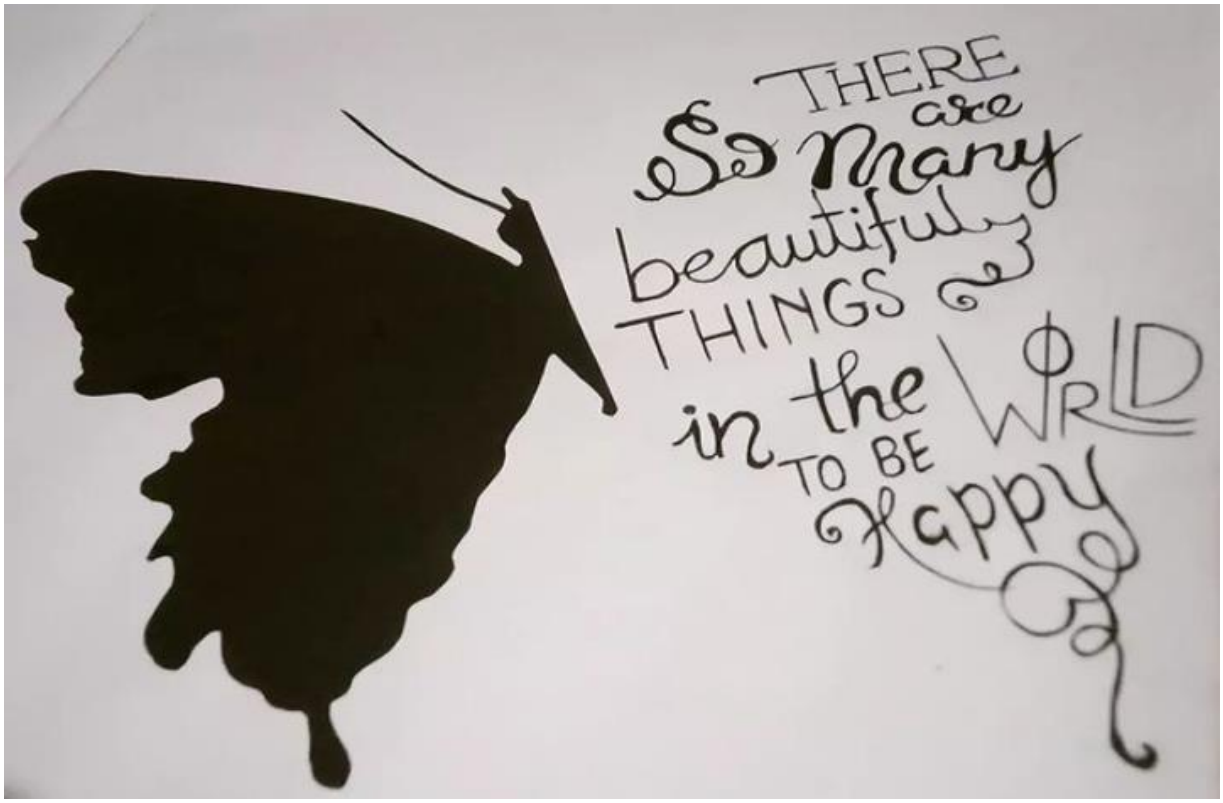
•Non-applicability .- These rules shall not apply to the extent the contribution of the

reporting limited liability partnership is held by.-

a. the Central Government, State Government or any local authority;
b. A reporting limited liability partnership, or a body corporate, or an entity, controlled by the Central Government or by one or more State Government
c. An investment vehicles registered with, and regulated by the Securities and Exchange Board of India, such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs).
d. An investment vehicles regulated by the Reserve Bank of India. or the Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority.

~ Compiled by Omkar Pawar

#HUNAAR ART



~ Compiled by Priya Suthar

Allow us to tell you more!

R.C. JAIN & ASSOCIATES LLP
Chartered Accountants
Website: www.rcjainca.com

Head Office:

Mumbai -

622-624, The Corporate Centre,
Nirmal Lifestyles, L.B.S. Marg,
Mulund (W),
Mumbai – 400080.
Email: info@rcjainca.com
Phone: **25628290/91, 67700107**

Branch Offices:

Bhopal -

M-272, Near Arya Samaj Bhawan,
Gautam Nagar, Bhopal,
Madhya Pradesh– 462 023
Email: hmjainca@rediffmail.com
Phone: **0755-2600646**

Aurangabad -

Su-Shobha, Plot No.7,
Mitranagar, Behind Akashwani,
Near Maratha Darbar Hotel,
Aurangabad - 431001.
Email: sskasliwal@gmail.com
Phone: **0240-2357556**