

**TAXPERT PHARMA SECTOR UPDATES  
December, 2021**

***“BE UPDATED, BE AHEAD”***

PHARMA SECTOR

**PHARMA SECTOR**

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**RECENT JUDICIAL PRONOUNCEMENTS**

* Non registered units eligible to claim Scheme of Budgetary Support under Goods and Service Tax’ [Glenmark Pharmaceuticals Limited V. Union of India (Sikkim High Court) Writ Petition (Civil) No. 48 of 2020][24/11/2021]
* Allowence of freebies by Pharmaceutical Companies referred to larger Bench [DCIT V. Macleods Pharmaceuticals Ltd. (ITAT Mumbai) ITA Nos. 5168 & 5169/Mum/2018 [14/10/2021]

**NOTIFICATIONS/CIRCULARS/ PRESS RELEASE……………….**

**TAX CALANDER………………………………………………………..**

# **RECENT JUDICIAL PRONOUNCEMENTS**

**Non registered units eligible to claim Scheme of Budgetary Support under Goods and Service Tax’ [****Glenmark Pharmaceuticals Limited V. Union of India (Sikkim High Court) Writ Petition (Civil) No. 48 of 2020][24/11/2021]**

**FACTS OF THE CASE:**

1) The Glenmark Pharmaceuticals Limited (*hereinafter referred to as petitioner)* is engaged in the manufacture and supply of pharmaceutical products at their unit situated in Sikkim.

2) The petitioner filed an application dated 02.11.2018 in terms of paragraph 7.1 of the scheme in the prescribed format claiming budgetary support for the quarters ending September, 2017, December, 2017, March, 2018 and June, 2018 in relation to supply of specified goods.

3) The petitioner had been issued UID on 31.10.2018, but they claimed for budgetary support for the period prior to the issuance of UID in terms of Notification dated 05.10.2017 which mandatorily required pre-registration.

4) Further, as per paragraph 7.1 claim for budgetary support is required to be submitted by the 15th of succeeding month after end of quarter after payment of tax relating to the quarter to which the claim relates.

5) A show-cause notice issued dated 28.06.2019 it has been alleged that the petitioner availed ineligible TRAN 1 credit which is yet to be proved otherwise by them.

6) As per the impugned orders since the petitioner had not complied with the provision of the notification dated 05.10.2017 their claim for budgetary support under the scheme is liable to be rejected. Hence, the petitioner filed the writ petition

**ISSUE:**

1. Whether the petitioners is eligible for claims for budgetary support under a ‘Scheme of Budgetary Support under Goods and Service Tax’ regime even after the claims were made for the period prior to the GST registration which is impermissible?

**OBSERVED:**

The Hon’ble High Court of Sikkim observed that the impugned orders rejected the petitioner claim for budgetary support on that sole ground without examining the application as to how much of the amount claimed was liable to be sanctioned as admissible amount of budgetary support. The stand of the respondents is fallacious. Once an unit is found to be an eligible unit the only question kept open to the authorities is the admissible amount of budgetary support from the claims made by the eligible unit on compliance of the requirement of the scheme. The respondents have rejected the claims of the petitioner on the technical ground.

# **RECENT JUDICIAL PRONOUNCEMENTS**

**HELD:**

The Hon’ble High Court of Sikkim set aside the impugned order and directed that the authorities shall process the four claims made by the petitioner for budgetary support and sanction reimbursements as found eligible within three months from the date of this judgment.

***Taxpert Professionals Insights:***

***Since the petitioner is eligible for Budgetary support the decision amount of such support remains with the Respondents. The rejection of the amount of budgetary support on the technical ground that the registration for that period not obtained is inadmissible by taking into consideration facts and circumstances of the case.***

**Allowance of freebies by Pharmaceutical Companies referred to larger Bench [DCIT V. Macleods Pharmaceuticals Ltd. (ITAT Mumbai)** **ITA Nos. 5168 & 5169/Mum/2018 [14/10/2021]**

**FACTS OF THE CASE:**

1. The Macleods Pharmaceuticals Ltd *(hereinafter referred to as Assessee)* is a company engaged in the business of manufacturing pharmaceutical products, such as tablets, capsules, liquids and injectable etc.
2. The assessee company was subjected to a search and seizure operation on 28th January 2016.
3. Consequently the assessments were reopened, and the present assessment proceedings under section 153A r.w.s 143(3) were initiated.
4. During the course of these assessment proceedings, the Assessing Officer (AO) noted that the assessee has Rs 221.25 crores on sales promotion so far as the assessment year 2012-13 is concerned, and Rs 139.07 crores so far as the assessment year 2011-12 is concerned, the amounts spent to the extent of Rs 137.62 crores for the assessment year 2012­-13 and Rs 111.11 crores for the assessment year 2011-12 pertains to payments of freebies to doctors.
5. These amounts, according to the Assessing Officer, included “payments made for gifts, promotion items, facilities etc. given to various medical practitioners within the country as well as abroad”.
6. The assessee was sent Show Cause Notice (SCN) as to why these expenses not be disallowed as per the Explanation 1 to Section 37 of the Income Tax Act (herein referred to as Act) and the guidelines issued by Medical Council of India (MCI) and the circular issued by the Central Board of Direct Taxes that the sales promotion expenses made by the assessee are prohibited in law (and) therefore, these are deemed to have been not incurred for the purpose of business and profession, and hence not an allowable expenditure”.
7. The Assesse contented that disallowance could not be sustained as the MCI guidelines bind only the medical professionals and not the pharmaceutical companies.
8. The AO, however the disallowed the amount of Rs 111,11,70,500 for the assessment year 2011-12 and of Rs 137,62,61,659 for the assessment year 2012-13, on account of payments made for freebies to the doctors .
9. The Assesse went to CIT(A) which granted the relief to the Assessee, thus aggrieved by the decision of CIT(A) the AO appealed Hon’ble ITAT.

# **RECENT JUDICIAL PRONOUNCEMENTS**

**ISSUE:**

Whether an item of expenditure on account of freebies to medical professionals, which is hit by rule 6.8.1 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002- as amended from time to time, read with section 20A of the Indian Medical Council Act 1956, can be allowed as a deduction under section 37(1) of the Income Tax Act, 1961 read with Explanation thereto, in the hands of the pharmaceutical companies?

**OBSERVED:**

The Hon’ble ITAT observed the factual points of AO’s contentions and was of the view that the AO shall succeed. However due to large number of judicial pronouncements in favour of Assessee on the point of issue. iii. Thus, the coordinate bench of the Hon’ble ITAT Mumbai observed that the present Appeal is a fit case for the constitution of a special bench.

**HELD:**

1. The ITAT Mumbai held that conclusions arrived in all the decisions didn’t reflect correct legal position, and same is the position with respect to a large number of other co-ordinate bench decisions.
2. Hence, decision in PHL Pharma (supra) calls for reconsideration by a larger bench and thus constitution of a bench of three or more Members was recommended to consider question as to whether or not an item of expenditure on account of freebies to medical professionals, could be allowed as a deduction under section 37(1) read with Explanation thereto, in hands of pharmaceutical companies.

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***Taxpert Professionals Insights:***

***As the conclusion arrived by different benches marked different legal positions regarding the matter of consideration of deduction of freebies to medical professionals under section 31(1) of the Income tax act, the new bench of three or more Members is recommended to consider this question with respect to allowance or disallowance of deduction.***

# **notifications/ circulars / press releases**

**NOTIFICATIONS**

1. **Filing of GSTR-1 for the current month required the Filed GSTR-3B for the preceding month.**

The Government vide **Notification No 35 2021 Central Tax dated September 24, 2021** amended **59(6)** of the CGST Rules, 2017 with effect from **01.01.2022** to provide that a registered person shall not be allowed to furnish **FORM GSTR-1**, if he has not furnished the return in FORM **GSTR-3B** for the preceding month.

1. **Recovery of self-assessed tax without notices if there is difference between GSTR 1 and GSTR 3B.**

The CBIC vide Notification No 39 2021 Central Tax dated December 21 2021 notified the amendment made vide Section 114 of the Finance Act, 2021 w e f January 01 2022 by way of insertion of an explanation has been inserted to Section 75 (12) of the CGST Act, 2017 to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies, the details of which have been furnished in Form GSTR 1 under Section 37 of the CGST Act, 2017 but not included in the return furnished in Form GSTR 3B under Section 39 of the CGST Act, 2017**.**

1. **Aadhaar authentication is compulsory under GST w e f January 01 2022 for filing refund claim and application for revocation of cancellation of registration.**

The CBIC vide Notification No 38 2021 Central Tax dated December 21 2021 has notified the amendments w r t Rule 10 (B), 23 (1), 89 (1) and 96 (1) of the CGST Rules, 2017 made vide Notification No 35 2021 Central Tax dated September 24 2021 for mandatory aadhaar authentication of registration for being eligible for filing refund claim and application for revocation of cancellation of registration under GST w e f January 01 2022 as recommended in GST Council’s 45 the meeting was held on September 17 2021.

1. **GST Dept can collect data from any person under GST.[ Notification No 39 2021 Central Tax dated December 21 2021]**

The CBIC vide **Notification No 39 2021 Central Tax dated December 21 2021** notified the amendment made vide **Section 119 and 121 of the Finance Act, 2021 w e f January 01 2022 to substitute Section 151** of the CGST Act, 2017 in a manner to empower the jurisdictional commissioners to call for information from any person relating to any matter dealt with in connection with the CGST Act, 2017 within such time, in such form, and in such manner, as may be specified therein

Correspondingly, Section 168 2 of the CGST Act, 2017 has been amended to omit the power of the jurisdictional commissioner to exercise powers under Section 151 1 of the CGST Act, 2017.

# **notifications/ circulars / press releases**

**PRESS RELEASES**

1. **Jammu pharmaceutical wholesalers urge Prime Minister Modi to pass directions on MRP**

"The bigger mandate of the NPPA was to seal the MRP keeping in view the margins permitted beneath the Drug Cost Control Order to the wholesalers and retailers," Rakesh Gupta, president of the Jammu Pharmaceutical Wholesalers Affiliation said in Srinagar. He was accompanied by Naveen Kumar Bali, president of Jammu.

1. **Hetero gets DCGI nod to manufacture, market Molnupiravir capsules**

Under the authorizing bargain, Hetero will be permitted to expand access of Molnupiravir in India and in other low-and middle-income nations, following the endorsements for crisis use authorisation by local administrative agencies.

1. **Pharma, healthcare industry looks to maintain energy in 2022**

Listing out troubles for the domestic pharma industry, Sun Pharma CEO (India Business) Kirti Ganorkar said that cash variances, intrigued rate uncertainty and noteworthy increment in raw material and transportation costs have been a few of the major challenges.

1. **Serum Institute seeks DCGI's approval for Covishield as booster dose**

In an application to the Drugs Controller General of India (DCGI), Prakash Kumar Singh, the Director, Government and Regulatory Affairs at Serum Institute of India (SII) cited that the UK's Medicines and Healthcare products Regulatory Agency has already approved the booster dose of AstraZeneca ChAdOx1 nCoV-19 vaccine, they said.

1. **Tata-owned 1mg, Pharm Easy go offline for omni channel presence**

Tata-owned 1mg is set to open its first physical store in Gurugram next month while rival PharmEasy has started to expand across the offline channel through franchise stores.

1. **PLI scheme for pharma to benefit 55 firms, says Centre**

The Ministry of Chemicals and Fertilisers on Friday said that a total of 55 companies are set to benefit from the Production-linked Incentive Scheme (PLI) approved in February to boost domestic drug production. The financial outlay under the PLI scheme is ₹15,000 crore.

1. **Pharma companies seek govt nod to hike medicine prices**

The lobby group asked to allow prices of all scheduled formulations to be increased by 10% with immediate effect. Scheduled drugs are those which are under price control and low priced.

# **TAx Calendar**

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| **DIRECT TAX CALANDER** | |
| DUE DATES | PARTICULARS |
| **07th Jan , 2022** | Due date for deposit of Tax deducted/collected for the month of December, 2021. |
| **15th Jan, 2022** | Quarterly TCS Return for the quarter ending January 31, 2021 |
| Tax Audit Report for AY 2021-22 in case of assessee who has not entered into an international or specified domestic transaction |
| **31st Jan, 2022** | Quarterly TDS certificate (in respect of tax deducted for payments other than salary and salary) for the quarter ending January 31, 2021 |
| Quarterly TDS certificate (in respect of tax deducted for payments other than salary and salary) for the quarter ending January 31, 2021 |
| **INDIRECT TAX CALANDER** | |
| DUE DATES | PARTICULARS |
| **10th Jan, 2022** | GSTR-7 (Monthly)- Summary of Tax Deducted at Source (TDS) and deposited under GST laws |
| GSTR 8- Summary of Tax Collected at Source (TCS) and deposited by e-commerce operators under GST laws |
| **11th Jan, 2022** | GSTR 1- Summary of outward supplies where turnover exceeds Rs.5 crore or have not chosen the QRMP scheme for the quarter of Oct-Dec 2021 |
| **13th Jan, 2022** | GSTR 6- Details of ITC received and distributed by an ISD |
| GSTR 1- Summary of outward supplies by taxpayers who have opted for the QRMP scheme\*\* |
| **18th Jan, 2022** | CMP-08 - Quarterly challan-cum-statement to be furnished by composition taxpayers |
| **20th Jan, 2022** | GSTR 5- Summary of outward taxable supplies and tax payable by a non-resident taxable person |
| GSTR-5A - Summary of outward supplies, ITC claimed, and net tax payable for taxpayers with turnover more than Rs.5 crore in the last FY or have not opted for the QRMP scheme for the quarter of Oct-Dec 202 |
| GSTR 3B- Summary of outward supplies, ITC claimed, and net tax payable for taxpayers with turnover more than Rs.5 crore in the last FY or have not chosen the QRMP scheme for the quarter of Jul- Sept 2021 |
| **22nd Jan, 2022** | GSTR-3B- Summary of outward supplies, ITC claimed, and net tax payable by taxpayers who have opted for the QRMP scheme and registered in category X states or UTs |
| **24th Jan, 2022** | GSTR-3B- Summary of outward supplies, ITC claimed, and net tax payable by taxpayers who have opted for the QRMP scheme and registered in category Y states or UTs |

# **Tax calander**

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| **CORPORATE LAW COMPLIANCE CALANDER** | |
| **DUE DATES** | **PARTICULARS** |
| **30TH Dec, 2021** | Due date of filing AOC-4 as per rule 12 of companies (Accounts) Rules 2014 within 30 days of Annual General meeting. |
| **30TH Dec, 2021** | Form LLP -8 Extended till 30th December 2021 |
| **within 60 days of Annual General meeting** | MGT-7 as per Section 92 of Companies Act, 2013 if AGM is held on or before 1st November 2021 |

We hope these updates would have enlightened you. For further information, feel free to connect with us at:

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