

**TAXPERT BPO/ SERVICE SECTOR UPDATES  
December, 2021**

***“BE UPDATED, BE AHEAD”***

BPO/SERVICE SECTOR

**BPO / Service Sector**

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**RECENT JUDICIAL PRONOUNCEMENTS**

* Limitation mentioned in para 3 of Press release dated 18-10-2018, clarifying that last date for availing ITC for invoices issued from July, 2017 to March, 2018 is last date for filing return FORM GSTR-3B for month of September, 2018 is valid. [Union of India V. AAP & Company [2021] 133 taxmann.com 168 (SC)[10-12-2021]
* ITAT has no powers u/s 254(2) to recall its earlier order [Commissioner of Income Tax (IT-4), Mumbai V. Reliance Telecom Ltd. [2021] 133 taxmann.com 41 (SC) [03-12-2021]
* No attribution of profit in absence of permanent establishment [ESPN Star Sports Mauritius V. DCIT (ITAT Delhi) ITA No. 1219/DEL/2017]
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* “GST Registration cancellation on Hyper-Technical grounds causes Revenue Loss” [CIGFIL Retail Pvt. Ltd. V. Union of India (Calcutta High Court) WPA 16415 of 2021]
* Delhi HC dismisses with Rs.50K costs vexatious appeal against CA whose report passed judicial scrutiny [Wholesale Trading Services (P.) Ltd. V. Institute of Chartered Accountants of India [2021] 133 taxmann.com 63 (Delhi)[11-11-2021]
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* FA 2021 amendment to section 36(1)(va) does not apply to any AY prior to AY 2021-22; New Explanation 2 to section 36(1)(va) does not apply to any AY prior to AY 2021-22 [Flying Fabrication V. Deputy Commissioner of Income-tax, [2021] 133 taxmann.com 84 (Delhi - Trib.)[17-11-2021]
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# **RECENT JUDICIAL PRONOUNCEMENTS**

**Limitation mentioned in para 3 of Press release dated 18-10-2018, clarifying that last date for availing ITC for invoices issued from July, 2017 to March, 2018 is last date for filing return FORM GSTR-3B for month of September, 2018 is valid. [Union of India V. AAP & Company [2021] 133 taxmann.com 168 (SC)[10-12-2021]**

**FACTS OF THE CASE:**

1. The AAP & Company (hereinafter referred to as Respondent) is a practicing Chartered Accountant having GST registration No. 24AARFA8951B1ZF.
2. According to Section 16(4) of the CGST Act/GGST Act that the last date for taking the input tax credit in respect of any invoice or debit note pertaining to a financial year is due date of furnishing of the return under Section 39 for the month of September following the end of financial year or furnishing of the relevant annual return, whichever is earlier.
3. In Section 61 of the CGST Rules/GGST Rules prescribes the form and manner of submission of monthly return. Sub-rule 1 of Rule 61 of the CGST Rules/GGST Rules provides that the return required to be filed in terms of Section 39(1) of the CGST/GGST Act is to be furnished in Form GSTR-3.
4. The Respondent filed a petition in Hon’ble High Court of Gujarat against Press release dated 18.10.2018 which gives clarification regarding last date of taking ITC for the invoices pertaining to 2017-18 as per Section 16(4) of the CGST Act, 2017. The due date of annual return for F.Y. 2017-18 as per Section 44 of CGST Act, 2017 is 31st December, 2018.
5. However, as per the request of trade the due date has been extended upto 31st August, 2019. The due date of filing of GSTR-3B for the month of September, 2018 was 20th October, 2018.
6. The Respondent contended that GSTR-3B is not a return under Section 39 of the CGST Act, 2017 and hence its due date cannot be considered for Section 16(4) of the CGST Act, 2017.
7. The Hon’ble High Court of Gujarat held that the impugned press release dated 18th October 2018 could be said to be illegal to the extent that its para-3 purports to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B.
8. Aggrieved by decision the Revenue (hereinafter referred to as Appellant) appealed to Hon’ble Supreme court

**ISSUE:**

1. Whether the Honorable Gujarat High Court erred in stating that para 3 of press release dated 18-10-2018, clarifying that last date for availing ITC relating to invoices issued during July 2017 to March 2018, as last date for filing return in Form GSTR-3B?

**OBSERVED:**

The Honorable Apex Court has referred its decision in case of Bharti Airtel Ltd. (SC) by a three-Judge Bench which disapproved the decision of Gujarat High Court. Since, the three-Judge Bench judgment expressly overruled the impugned judgment, in such a case, the argument of distinguishing the three-judge Bench judgment would not be available. Thus, the limitation mentioned in para 3 of Press release dated 18-10-2018, clarifying that last date for availing ITC for invoices issued from July, 2017 to March, 2018 shall be last date for filing return FORM GSTR-3B for month of September, 2018 would be valid.

# **RECENT JUDICIAL PRONOUNCEMENTS**

**HELD:**

The Hon’ble Supreme Court held that the appeal succeeds on the same terms as in Civil Appeal No. 6520 of 2021 titled Bharti Airtel Ltd.'s case and disposed the case in favour of Revenue

***Taxpert Professionals Insights:***

***The Honorable Apex Court has referred its decision in case of Bharti Airtel Ltd. (SC) wherein, the facts and circumstances of the case was different from the present case since the constitutional validity of Section 61 was not challenged. This raise a question whether the apex court can relay totally on the Bharti Airtel Ltd. (SC) and reverse the judgment of Hon’ble High Court of Gujarat?***

**ITAT has no powers u/s 254(2) to recall its earlier order [Commissioner of Income Tax (IT-4), Mumbai V. Reliance Telecom Ltd. [2021] 133 taxmann.com 41 (SC) [03-12-2021]**

**FACTS OF THE CASE:**

1. Commissioner of Income Tax (*herein referred to as the appellant)* and Reliance Telecom Ltd is the Respondent *(herein referred to as assessee*), who is engaged in the business of Telecom Industry. Here they have entered into supply contract agreement with Ericsson A.B. on 15-06-04.
2. Assessee purchased software from the Ericsson Company which is a non-resident company, assesse filed an application to assessing officer asking them whether they can purchase software without payment of tax as the Ericsson Company do not have any establishment in India.
3. Assessing officer rejected that application and asked the assesse to deduct tax @10% as royalty by holding into consideration that software licensing constituted under Section.9(i)(vi)of the act and under Article 12(3) of DTAA is liable to be taxed in India.
4. Assessee after deducting the tax appealed before Commissioner of Income Tax CIT vide order was dated in the favour of the assesse. Revenue appealed to the ITAT, which approved the Revenue's appeal and held that payments made for software purchases are in the type of royalty payments in a detailed judgment and order dated 06.09.2013.
5. The ITAT allowed the Assessee’s miscellaneous application filed under Section 254(2) of the Act and recalled its original order dated 06.09.2013. Immediately assesse withdrew their appeal which was made by them in the previous point.
6. ITAT recalled their orders, because of which revenue preferred writ petition before High Court, HC dismissed the said writ petition, hence revenue is present before this court by way of present appeal.

**ISSUE:**

Whether ITAT has the right to recall their orders or not?

**OBSERVED:**

Hon’ High Court observed that under Section 254(2) ITAT has powers only to rectify/correct any mistake apparent from the record. In the give case High Court asked ITAT to set aside their order as they are beyond their power and ambit and asked if Assessee/s can file appeal/s before the High Court against the original order dated 6-9-2013 within a period of six weeks from today, the same may be decided and disposed of in accordance with law and on its/their own merits and without raising any objection with respect to limitation..

# **RECENT JUDICIAL PRONOUNCEMENTS**

**HELD:**

It is held that ITAT to set aside their order and court asked the Assessee to file appeal before the High Court within a period of 6 weeks so the High Court can decided and disposed of the case in accordance with law and on its/their own merits and without raising any objection with respect to limitation.

***Taxpert Professionals Insights:***

***ITAT can work under the power and ambit provided to it by the act. If any act done by them goes beyond their power in such case court can ask them to set aside the same order and ITAT will not have any power to reject the orders given by the court in any case. The Assessee is preferred to appeal before the High Court and not relied on any revered order of ITAT.***

**No attribution of profit in absence of permanent establishment** [**ESPN Star Sports Mauritius V. DCIT (ITAT Delhi) ITA No. 1219/DEL/2017]**

**FACTS OF THE CASE:**

1. The  **ESPN Star Sports Mauritius *(herein referred to as A****ppellant)* is a partnership firm established under the laws of Mauritius and is engaged in the business of selling advertisement time and programme sponsorship from Mauritius in connection with the programming via non-standard television on ESPN, Star Sports and Start Cricket programming services.
2. The appellant has also entered into such services with to ESPN HD Channel. Its partners are worldwide Wickets Mauritius having 99.9 shares in profit and ESS Asian Networks pvt Ltd New Tech Park, Singapore having 0.1% in the profit.
3. In form 3CEB gross receipts on sale of advertisement inventory from Associate Enterprise (AE) i.e. ESPN Software India Private Limited, have been shown at **Rs. 344,40,06,771.**
4. During the course of assessment ESPN India which is a dependent agent of PE certain changes in the activities were observed and hence, was asked to provide details regarding the model/factual matrix changes vide order-sheet note dated 29.01.2016, to which the Assessee stated that there were no changes.
5. The Assessing Officer contented that  the Assessee also has a fixed place PE in terms of provisions of Article 5(2)(a) of the India-Mauritius DTAA , in addition to a Dependent Agent Permanent Establishment in India and therefore attributed 30% of the gross advertising revenue and made attribution of **Rs. 103,32,02,031/-.**
6. Aggrieved by the order the Assessee took the matter to ld. CIT(A) which also held that ESPN India constitutes PE under the India-Mauritius DTAA.
7. Thus, Aggrieved by the decisions of both AO and CIT(A) the Assessee appealed to Hon’ble ITAT.

**ISSUE:**

1. Whether the appellant has a business connection in India and is taxable in terms of section 9(1) of the Act?
2. Whether the appellant has a permanent establishment (PE) under Article 5(2) & 5(4)/ 5(5) of the India-Mauritius DTAA ?

# **RECENT JUDICIAL PRONOUNCEMENTS**

1. When the purported PE is remunerated on an arm's length basis, no additional profits could be attributed to the appellant's income.

**OBSERVED:**

The Hon’ble ITAT relied on the decision of the Hon’ble Supreme Court in the case of E-funds IT Solutions Inc and Considering the past history of the assessee in light of the decision it held that the assessee has no business connection in India in terms of section 9(1) of the Act and has no PE under Article 5(2), 5(4) and 5(5) of India Mauritius DTAA.

**HELD:**

The Hon’ble ITAT held that there is no PE, we are of the considered view that there cannot be any attribution of profit as held by this Tribunal in assessee’s own case in A.Ys 2009-10 and 2011-12.

***Taxpert Professionals Insights:***

***The income neither raised nor accrued in India will be taxable in India only in case there is any Permanent establishment in India u/s 9(1) of the Income Tax Act and thus no tax should be deducted for the same at source.***

**HC quashed letter issued by Rajasthan Govt. which authorized royalty contractors to collect GST under forward charge [Smt. Anjana Choudhary and Ors V. State Of Rajasthan And Ors [2021] 132 taxmann.com 255 (Rajasthan)[11-11-2021]**

**FACTS OF THE CASE:**

1. The Smt. Anjana Choudhary and Ors *(hereinafter referred to as petitioners)* are engaged in the business activity of mining and are registered lease holders and have lawful mining lease in their favour.
2. The State Of Rajasthan (hereinafter referred to as Respondent no 1) was empowered to award the Excess Royalty Collection Contract (ERCC) to the Royalty Contractors. The Finance Department, Government of Rajasthan (hereinafter referred to as Respondent no 2) was empowered to authorize Royalty Contractors to collect GST on the amount of royalty collected for and on behalf of the Government.
3. The Royalty Contractors (termed as ERCC Contractors) was appointed by the Government exclusively for collecting the royalty on behalf of the Government from the mining lessee of natural resources without supply of such natural resources.
4. An impugned Letter No. P12(52) finance/tax/2017-III dated 8/11/2017 was issued by the Finance Department, Government of Rajasthan to authorize the contractor to collect the GST on the amount of royalty collected on behalf of the Government.
5. It was contented that the letter was against the provisions of Section 9 (3) of CGST Act, 2017 read with notification No.13/2017 Central Tax (Rate) dated 28.06.2017. Hence the writ petition was filed against the respondents.

**ISSUE:**

1. Whether the letter No. P12(52) finance/tax/2017-III dated 8/11/2017 (annex.4) issued by Finance (Tax) Department, Rajasthan government was correct in law?

# **RECENT JUDICIAL PRONOUNCEMENTS**

**OBSERVED:**

The reverse charge mechanism itself was not been contested by the respondents and it was accepted proposition and the same was further supported by the pleadings filed by the respective respondent parties, thus the Hon’ble High Court did not find any reason to make any further adjudication in the matter.

**HELD:**

TheHon’ble High Court of Rajasthan allowed the writ petition and quashed and set aside the letter dated 8-11-2017 issued by the Finance (Tax) Department, Government of Rajasthan. However, Hon’ble High Court held that if any letter has been issued in pursuance of the letter dated 8-11-2017, the same shall also stand quashed accordingly.

***Taxpert Professionals Insights:***

**According to Section 9(3) of CGST Act, 2017, the recipient of goods or services or both shall collect the GST and at applicable rate and pay it to the government on Reverse Charge Basis. In the instant case ERCC contractor is not engaged in supply of any good or services, as it is only collect the royalty on behalf of the government. So, the said decision given by the Hon’ble High Court is accordance with the law on understanding of facts and circumstances of the said case.**

**“GST Registration cancellation on Hyper-Technical grounds causes Revenue Loss”[ CIGFIL Retail Pvt. Ltd. V. Union of India (Calcutta High Court) WPA 16415 of 2021]**

**FACTS OF THE CASE:**

1. M/s **CIGFIL Retail Pvt. Ltd. (*hereinafter referred to as Petitioner)* is a Private Limited Company with its office registered in Karnataka which had** entered into an agreement with the lessor**. The lessor** has made some incorrect description about its status in the agreement.
2. A Show Cause Notice (SCN) was issued to the petitioner on 1st February and at the time of hearing of the show-cause-notice such incorrect description or such defect in the rent agreement was rectified by a supplementary agreement and this was produced before the authority concerned.
3. The petitioner contented that during Covid-19, to avoid the violation of Covid-19 protocol, it was carrying on business from some other places and during this period it had paid tax to the State respondents from time to time and the State respondents/GST Authority concerned have received taxes under the GST for carrying on business at the relevant period, which are all parts of record
4. The authority didn’t considered the contentions of the petitioner and cancelled the GST registration u/s Section 29(2) of the State GST Act (hereinafter referred to as Act) on hyper technical ground that registration in question was obtained by documents void ab initio and that there was no existence of business at the declared place.
5. The petitioner had also filed an application for revocation of cancellation which rejected the application vide order dated 16th April, 2021 the order of the Appellate authority dated 25th August, 2021.
6. Aggrieved by the order the petitioner **filed a writ petition against the impugned order dated 8th** February, 2021 cancelling its registration under GST under the provisions of Section 29(2) of the State GST Act

# **RECENT JUDICIAL PRONOUNCEMENTS**

**ISSUE:**

Whether the Authorities were correct in passing the impugned order for GST cancellation?

**OBSERVED:**

The Hon’ble High Court of Calcutta observed all the material facts and stated that the case is not of tax evasion or causing revenue loss in fact the activities of petitioner was helping the State solve the problem of unemployment a little bit. The Canceling the GST registration of the petitioner on such hyper technical ground will not help the State rather will cause revenue loss to the State as well as aggravate unemployment problem in the State which will be a social problem in the society.

**HELD:**

The Hon’ble High Court of Calcutta set aside the impugned order dated 16th April, 2021 and order of the Appellate Authority dated 25th August, 2021 and directed the State to concerned to consider afresh the case of the petitioner and take a final decision by not taking a hyper technical view and pass a reasoned and speaking order after giving opportunity of hearing to the petitioner or its authorized representatives

***Taxpert Professionals Insights:***

***It is interesting to note that “No person is willing to content for the Loss of Revenue or Loss of Income’’. In the instant case, the petitioner there is no evasion of tax from view point of payment of GST to the State Government in the form of CGST and SGST. So, the cancellation of the GST registration of the taxpayer on the basis of hyper technical view is not proper as rightly pointed out by the High Court of Calcutta.***

**Delhi HC dismisses with Rs.50K costs vexatious appeal against CA whose report passed judicial scrutiny [Wholesale Trading Services (P.) Ltd. V*.* Institute of Chartered Accountants of India [2021] 133 taxmann.com 63 (Delhi)[11-11-2021]**

**FACTS OF THE CASE:**

1. A petition for merger was filed before the High Court of Karnataka by three Companies viz. a) M/s Napean Trading and Investment Company Private Limited; b) M/s Regal Trading and Investment Company Private Limited;and c) M/s. Vidhya Trading and Investment Company Private Limited. The three Companies were to be amalgamated into the fourth Company, namely, M/s Hasham Investment and Trading Company Private Limited (*hereinafter referred to as Appellant*).
2. High Court of Karnataka appointed Chartered Accountant (*hereinafter referred to as Respondent)* for verification of the books and other documents of the three Transferor Companies and to submit his report.
3. The Karnataka High Court after taking cognizance of the Report and deliberating thereon, sanctioned the Scheme of merger vide order dated 26.03.2015.
4. The Appellant filed a complaint before the ICAI on 24.10.2016, alleging professional misconduct against Respondent, appointed by the Karnataka High Court, for verification of the documents, etc.
5. The Disciplinary Committee of ICAI dismissed the Complaint vide order dated 16.12.2020 and the Appellant challenged the order before the learned Single Judge of Ho’ble high Court of Delhi, in a writ petition being W.P.(C) 376/2021. Which faced the same fate and further, was dismissed by the learned Single Judge vide judgment dated 13.05.2021 imposing costs of Rs.50,000/- on the Appellant.
6. Therefore, aggrieved by the decision the Appellant appealed to larger bench.

# **RECENT JUDICIAL PRONOUNCEMENTS**

**ISSUE:**

Whether the ICAI and learned Single Judge has erred in upholding the order of the Disciplinary Committee?

**OBSERVED:**

The Hon’ble High Court of Delhi observed that the Appellant had no locus standi to file a complaint against Respondent. Moreover, the three Transferor Companies which have already merged into Hasham Investment and Trading Private Ltd. a 4th Company have 100% shareholding by the Azim Premji Group. The Transferee Company, i.e. M/s Hasham Investment and Trading Private Limited, does not have any public shareholding and also has 100% shareholding by the Azim Premji Group. Therefore, a stranger can have nothing to do with the Company, least of all to make allegations of fraud or professional misconduct against a Chartered Accountant. Since, the report rendered by Respondent has been tested and has passed the muster of judicial several times, both by the learned Single Judge and the Division Bench and neither of the Courts found anything wrong with the same. Hence, several filing by the Appellant is abuse of the process of law.

**HELD:**

The Hon’ble High Court of Delhi dismissed all pending applications of the case along with costs of Rs.50,000/- to be deposited by the Appellant with the Delhi State Legal Service Authority.

***Taxpert Professionals Insights:***

***The Hon’ble Court had already sanctioned the scheme of Amalgamation vide judgment dated 26.03.2015. On the f ace of the records it was apparent that there was no fault or error in the report. Hence, the adjudication of Disciplinary Committee of ICAI was baseless.***

**Where TDS has been deducted by employer of assessee, it will always been open for department to recover same from said employer and credit of same could not have been denied to assessee [Kartik Vijaysinh Sonavane V. Deputy Commissioner of Income-tax, [2021] 132 taxmann.com 293 (Gujarat)[15-11-2021]**

**FACTS OF THE CASE:**

1. KARTIK VIJAYSINH SONAVANE *(hereinafter referred to as Assessee)* is a pilot by profession and was an employee of M/s. Kingfisher Airlines.
2. The Kingfisher Airlines deducted the Tax Deducted at Source (TDS) to the tune of Rs. 7,20,100/- for the Assessment Year 2009-10 and Rs. 8,70,757/- for the Assessment Year 2011-12 in case of the petitioner.
3. The amount since then had not been deposited by the Airlines in the Central Government Account, the credit was claimed by the petitioner, the same was not given by the Deputy Commissioner of Income-tax *(hereinafter referred to as Respondent)* but instead a demand had been raised with interest.
4. The assessee filed rectification applications under section 154 and asked for cancellation of demand. These were ignored and recovery notice was issued to assessee by respondent Income-tax Department. Aggrieved by the actions the Assessee filed a writ petition under article 226 of the Constitution of India.

# **RECENT JUDICIAL PRONOUNCEMENTS**

**ISSUE:**

1. Issue a writ of certiorari and/or a writ of mandamus and/or any other writ direction or order directing the respondent to cancel the outstanding demand as reflected on IT Portal and to cancel the unjust demand raised by the respondent by issuance of recovery notices dated 19-11-2013, notices dated 21-8-2014 and notice issued on 22-12-2015.
2. Issue a writ of certiorari and/or a writ of mandamus and/or any other writ direction or order directing the respondent to cancel the outstanding demand as reflected on IT Portal and to cancel unjust demand raised by the respondent by issuance of recovery notices dated 19-11-2013, notices dated 21-8-2014 and notice issued on 22-12-2015 and to return the amount already adjusted by the respondent along with statutory interest.

**OBSERVED:**

The Hon’ble High Court of Gujarat relied on the decision of the Gauhati High Court rendered in case of Asstt. CIT v. Om Prakash Gattani and Bombay High Court in case of Asst. CIT v. Om Prakash Gattani and observed that the factual matrix of the both the cases is similar to the present case. Further, under Section 201 of the Income-tax Act it has been aptly provided that the person responsible to deduct the tax would be deemed to be an assessee in default so that he can be proceeded against for recovery of the amount instead of the assessee who has already parted with the amount, but due to some commission or omission on the part of the person responsible to deduct the amount at source over whose activity he has no control, he may not be subjected to double payment of tax and brunt of arduous recovery proceeding. The provisions as contained in Section 201 of the Act provide a kind of protection to the assessee where tax liability as standing against him is not yet discharged and credit for the amount deducted cannot be given in terms of Section 199 of the Income-tax Act.

**HELD:**

The Hon’ble High Court allowed the petition of the Assessee and held that the credit of the tax shall be given to the petitioner he shall be entitled to the refund of the same.

***Taxpert Professionals Insights:***

***Section 201(1) of Income Tax Act expressly states that any person liable to deduct TDS on the income distributed, makes default in the deduction and/or payment of TDS, shall be treated “assessee in default” and penalty U/s 221 of Income Tax Act shall be payable by such assessee. After the introduction of this section the vulnerable position of bonafide Assessee is backed. As stated in this judicial pronouncement the benefit to the bonafide Assessee who’s TDS have been deducted cannot be denied visa versa he cannot be held liable for fault of the person who deduct the TDS.***

# **RECENT JUDICIAL PRONOUNCEMENTS**

**FA 2021 amendment to section 36(1)(va) does not apply to any AY prior to AY 2021-22; New Explanation 2 to section 36(1)(va) does not apply to any AY prior to AY 2021-22 [Flying Fabrication V. Deputy Commissioner of Income-tax, [2021] 133 taxmann.com 84 (Delhi - Trib.)[17-11-2021]**

**FACTS OF THE CASE:**

1. The Flying Fabrication (*hereinafter referred to as Assessee)* is engaged in the business of providing security/labour / manpower Services.
2. The Assessee has E-filed its return of Income on 22-10-2018 declaring income of Rs. 1,18,35,513/- for AY 2018-19 and Rs.99,19,070/- for the AY 2019-20 which was filed on 06.10.2019.
3. Thereafter, assessee had received notice via ITBA portal proposing certain adjustments o/s. 143(1)(a) on 21.01.2019 for the Assessment Year 2018-19; and similar adjustments u/s. 143(1)(a) 12.10.2020 for the Assessment Year 2019-20 on disallowance under section 36(1) (va) on account of delay in deposit of employee’s contribution towards PF/ESI. The Assesse filed its submissions.
4. Thereafter, intimation order u/s. 143(1) was passed from CPC, Bengaluru wherein additions have been made and disallowing Rs88, 58,042/ - u/s.36 (1)(va) for the Assessment Year 2018-19; and Rs.2,11,28,940/ - for the Assessment Year 2019-20.
5. Aggrieved by the decision the Assessee appealed before ITAT.

**ISSUE:**

Whether the National Faceless Appeal Center and DCIT erred in disallowing due to delay in deposit of employee’s contribution to PF/ESI u/s.36(1)((va) in the intimation order u/s.143(1)?

**OBSERVED:**

The Hon’ble ITAT observed that the series of judgments of various Tribunals and High Courts it has been held that the payment of employee’s contribution fee if has been made before the due date for filing of return of income u/s.139 1), the same is allowable deduction. It has been further held that amendment brought by the Finance Act, 2021 in the provision of Section 36(1)(va) as well as Section 43B by insertion of Explanation-2, is prospective and cannot be held as retrospective and would apply from Assessment Year 2021-22 onwards.

**HELD:**

The Hon’ble ITAT allowed the appeal of Assessee and held that no disallowance can be made in Assessment Year prior to Assessment year Prior to Assessment year 2021-22. Subsequently deleted the confirmed disallowance by Appeal center.

***Taxpert Professionals Insights:***

***As clarification 2 to section 36(1)(va) has no retrospective relevance, deduction claimed 36(1)(va) cannot be disallowed for any Assessment Years before Assessment Year 2021-22, if employees' contribution to PF/ESI is deposited with relevant authorities by assessee-employer on or before the due date for filing ITR u/s 139(1). Since the deduction u/s 36(1)(va) has been claimed by assessee in ITR for Assessment Years before Assessment Year 2021-22 on the premise of bound judicial decisions, this is often a debatable issue and can't be disallowed by the Department in an intimation issued u/s 143(1).***

# **RECENT JUDICIAL PRONOUNCEMENTS**

**Section 50 of SIDBI Act exempts SIDBI from paying DDT on dividends u/s 115-O of the Income-tax Act [Small Industries Development Bank of India V. Central Board of Direct Taxes [2021] 133 taxmann.com 158 (Bombay)[02-12-2021]**

**FACTS OF THE CASE:**

Small Industries Development Bank of India *(herein referred to as “petitioner”*), is a financial institution established under SIDBI Act.

2. On 7/06/1997 Finance Act amended the Income tax act which made petitioner to make tax payment on distributable profit.

3. Petitioner transferred a sum of Rs. 54 Crores to IDBI on which they made tax payment of 5.4 crores for the year ended 1996-97, in the year 1997-98 petitioner transferred a sum of Rs. 67.5 Crores on which they made tax payment of Rs. 6.75 Crores and in 1998-99 tax payment worth Rs. 7.425 Cores were made.

4. In the year 1999-2000, dividend @15% was declared for which petitioner paid tax amount of Rs. 6,88,50,000.

5. Petitioner was not cleared regarding the tax payment in the year 1999-2000, so they made an clarification application to CBDT on which CBDT said that they are liable for tax payment under 115-O.

6. Petitioner filled present petition challenging the order by which Central Board of Direct Taxes (CBDT) denies exemption of SIDBI to not tax under section 50 of the SIDBI Act and asking for clarification seeking refund of income tax paid.

**ISSUE:**

Whether any amount declared, distributed or paid by Petitioner by way of dividend does not fall under the category of income, profits or gains derived or any amount received by Petitioner and no exemption from tax under Section 115-O of the Income Tax Act, 1961.

**OBSERVED:**

In the present case, Hon’ High Court observed that Under Section 50 of SIDBI Act, petitioner is exempt from any income tax payment or any other tax regarding any income, profits, gains derived by the petitioner, Tax on payment of dividend under Section 115-O is exempt under Section 50 of SIDBI Act. Therefore, in the present given case petitioner is not liable for any tax payment. From the judgement passed in Godrej and Boyce Mfg. Co. Ltd. vs. Deputy Commissioner of Income-Tax and Another 1, it is observed that petitioner is entitled for the refund of tax payment made by him.

**HELD:**

It was held that the petitioner is not liable for the payment of tax ant the CBDT was instructed to refund the tax of Rs.5,40,00,000/- , Rs.6,75,00,000/- , Rs.7,42,50,000/- and Rs.7,42,50,000/- paid in AY 1997-98, 1998-1999, 1999-2000 and 2000-2001 respectively .

***Taxpert Professionals Insights:***

***When any act has any non-obstante clause that clause will always take precedence over the provisions over any other Act. It is widely accepted that a clause beginning with the phrase “non- obstante” must be enforced and implemented by giving effect to the Act’s provisions while restricting the provisions of other laws.***

# **AUTHORITY OF ADVANCE RULINGS**

**ITC will be available on plant and machinery including machine foundation [Vijayneha Polymers (P.) Ltd., *In re* [2021] 133 taxmann.com 223 (AAR - TELANGANA)[09-12-2021]**

**FACTS OF THE CASE:**

1. The applicant M/s. Vijayaneha Polymers Pvt Ltd. (hereinafter referred to as Applicant), has constructed a factory building wherein they have hired works contractors for executing the construction in two different ways.
2. Where the applicant provided material and contractor provided construction services.
3. The contractor provided both material and services.
4. Such construction included foundation of machinery, rooms for chillers, boilers, generators and transformers, erecting of electrical poles, laying of internal roads, factory building, internal drainage, laboratory etc.,
5. The applicant is desirous of obtaining clarification regarding eligibility of ITC on the amounts charged by the contractor for these services. Hence the application.

**ISSUE:**

The advance ruling is sought on availability of ITC on GST charged by the contractor supplying service of works contract.

**OBSERVED:**

The Authority of Advanced Ruling observed the following:

The queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. It was noted that the Applicant has either purchased goods or services for construction of immovable property on his own account or engaged the works contractor for supply of construction services. The Authority of Advanced Ruling construed the Section 17(5) of the CGST/SGST Act and stated that the Applicant:

1. ITC cannot be availed on works contract services for construction of an immovable property except for erection of plant & machinery.
2. ITC can be availed on plant & machinery as defined in the explanation to Section 17 *i.e.,* on apparatus, equipment & machinery fixed to earth by foundation or structural support; which means plant & machinery and machine foundation are eligible for ITC.
3. Plant & machinery will not include building or other civil structures and pipelines laid outside factory premises.
4. ITC cannot be availed on goods or services or both received by a tax payer on his own account for construction of immovable property.

**HELD:** we pronounce the ruling**:**

The applicant is eligible for ITC to the extent of machine foundation only.

***Taxpert Professionals Insights:***

***The Authority for Advance Ruling observed that Section 17(5) of the CGST Act, 2017 confines the availment of ITC in regard of works contract services when provided for construction of an immovable property (other than plant and machinery) but where it is an input service for further supply of works contract service. In this way, it was held that ITC can’t be availed on works contract services for construction of an immovable property but for erection of plant & machinery.***

# **AUTHORITY OF ADVANCE RULINGS**

**No requirement of separate GST registration in Karnataka and that the supplier of services can charge IGST by raising the invoices from their registered office the Karnataka Authority of Advance Ruling (KAAR) ruled [M/s. GEW (INDIA) PVT. LTD. 132 taxmann.com 139 (AAR - KARNATAKA)**

**FACTS OF THE CASE:**

1. The M/s GEW (India) Pvt. Ltd*. (hereinafter referred to as Applicant)* is a company, which got a sub-contract work from M/s L&T for erecting steel structure cast and bolted on the ground in the civil foundation, at the site at Karwar, Karnataka.
2. The scope of the contract involves Procurement of structural steel from approved suppliers such as SAIL/JSPL/Tata, Fabrication at GEW India factory premises, at Noida, as per the drawings, Transportation of material, and erection at Karwar site.
3. The applicant deploy in the nature of composite supply of goods and services (a supply is comprising two or more goods/services) involving supply, erection, and installation of steel after fabrication used for harboring/anchoring of ships.
4. M/s L&T would levy **IGST @12 p.a** on all the invoices of the applicant’s supply of goods or services as the services are classified under SAC (Service Accounting Code) 995416.

**ISSUE:**

The applicant sought Advance Ruling on the following question:

1. **(a)** When goods which requires movement from a different place to the work sites forming part of works contract and should we use or mention SAC as against HSN code in the accompanying Tax Invoice for the goods being moved? For the reason work order issued by main contractor in the name of a subcontractor mentioning only SAC for the reason the whole contract is classified as services by the main contractor and if SAC is used in tax invoice it might not be same in e-way bill for the goods which are carried in transport vehicle as there shall be HSN code and not SAC.

**(b)** To corroborate the description as mentioned in the work order irrespective of description of goods being carried or actually transported before installation or erection is done at works site which eventually shall end up to a immovable property liable to get taxed at the applicable rate for such contract classified as services specified in the notification 11/2017-Central Tax (Rate) vis a vis 8/2017-Integrated Tax dated 28.06.2017 read with work order which might be more or less than the goods being transported, in such situation what should we classify for such goods on transportation? How do we mention SAC as against HSN? and to levy the tax rate as applicable to works contract while issuing tax invoice when only the goods are billed for recovering money towards supply of goods as per work order which are part and parcel of the principal supply when it is categorized as service

1. Whether the company is required to be registered in the state of Karnataka for executing the works contract? Nevertheless work/ purchase order being received from L&T (main contractor) on our NOIDA GSTIN ordering us to be bill them on their (L&T's) Karnataka GSTIN?
2. **(a)** If the answer to the above question no.2 is in negative we mean interstate works contract are allowed than should it be registered as a regular dealer or as an Input Service Distributor to distribute the input tax credits relating to services to the actual recipient of services being our NOIDA GSTIN office in the manner as provided under Section 20(2)(c) of CGST Act for having received the tax invoices on Karnataka GSTIN if we register in Karnataka issued by local laborers or contractors registered in Karnataka for having

# **AUTHORITY OF ADVANCE RULINGS**

supplied the services at Karwar by levying CGST and SGST to the applicant treating it to be intra state supply to comply Section 8 read with Section 12(3) of the IGST Act.

**(b)** If the answer to the above question 3(a) is affirmed as either this or that we mean registering as regular or ISD we seek your opinion as to distribute the input tax credit by cross charging the input tax being received from supplier of services by obtaining regular registration which otherwise NOIDA office bearing GSTIN with the same PAN are the actual recipient of services who are actually the supplier of services to L&T as per the work order # EL573W0D1000105 dated 23.06.2021 rather than taking an ISD registration.

**OBSERVED:**

The Authority of Advanced Ruling observed the following:

In case of first issue the applicant is neither seeks the classification of goods nor services but seeks whether the HSN or SAC that need to be mentioned in the invoice. Thus the question is not covered under the issues mention in Section 97(2) of the CGST Act 2017. Therefore the authority refrained from answering this question as it is not within the jurisdiction of this authority.

Secondly the applicant is registered under state of UP and has principal place of business at Noida thus having no intension whatsoever to work undertaken at Karnataka. Thus they also cannot obtain ISD registration for the site at which they are delivering service.

Thirdly the authority referred to Section 2(61) of the CGST Act which provides Input Service Distributors (ISD). Thus the supplier should obtain the Input Service Distributor registration for the premises from where they intend to distribute the credit. In this case the applicant neither have not intend to have any establishment at the site

**HELD:** we pronounce the ruling**:**

1. This authority refrains from giving any ruling in respect of the question that whether HSN or SAC that need to be mentioned in the invoice raised by the applicant from their registered office at Noida, UP, as the said question is beyond the jurisdiction of this authority, in terms of Section 97(2) of the CGST Act 2017.
2. The applicant need not obtain separate registration in Karnataka, for supply of services and can raise the invoice by charging IGST from their registered office at Noida, UP, with place of supply as Karnataka.
3. Since the applicant are neither having nor intending to have any establishment at the site at Karwar, Karnataka, they cannot obtain ISD registration for the site at which they are delivering service.

***Taxpert Professionals Insights:***

***As a person has a registration in the state of UP where he has Principle Place of Business. Further, the person also do not have any intension to take the registration in the state of Karnataka. According to the Section 12 of IGST Act, 2017, "The place of supply of services,–– (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located or intended to be located". In said case, the taxpayer is engaged in supply, erection, and installation of steel after fabrication used for harboring/anchoring of ships. So, it may occur that the registration in the state of Karnataka. But, AAR clarified the same that he has no need to take registration in Karnataka.***

# **AUTHORITY OF ADVANCE RULINGS**

**“Input Tax Credit cannot be claimed if the concessional rate of 5% GST is opted” [M/s. Sri Krishna Logistics (GST AAR Telangana)]**

**FACTS OF THE CASE:**

1. M/s. Sri Krishna Logistics *(hereinafter referred to as Applicant)* Logistics is in the business of transportation of goods as a GTA.
2. The Appellant have stated that they are desirous of starting business of transportation of passengers in Telangana State by deploying Air Conditioned buses as Stage carriages.
3. The Appellant have stated in the application that there is ambiguity regarding applicability of rate of tax for their proposed business with respect to Sl.No.8(ii) “Air Conditioned Stage Carriage” and 8(vi) “transport of passengers in any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charges from the service recipient” of Notification 11 of 2017.

**ISSUE:**

1. Whether the rate of GST of 5% (2.5% each towards CGST & SGST) as per Sl.No.8 (ii)(b) of Notification No.11/2017-Central Tax (Rates), dated: 28-06-2017 with the condition that input tax credit is not allowed on goods and services.
2. Whether input tax credit on inward supply of services received from the suppliers who are in the same line of business as this condition is not mentioned against the said serial no.
3. Whether the rate of GST 5% (2.5% each towards CGST & SGST) as per Sl.No.8(vi) of Notification No.11/2017-Central Tax (Rates), dated: 28-06-2017 with the condition that input ax credit is not allowed on goods and services used in our outward supply of services other than that of similar inward supply of services received from another service provide.
4. Whether option of 12% (6% each towards CGST & SGST) with no conditions attributed to it is applicable.

**OBSERVED:**

The Authority of Advance ruling observed the following:

That the entry at Sl.No.8(vi) is a general entry whereas the entry at Sl.No.8(ii)(b) is the specific entry, i.e., Air Conditioned Stage Carriage. It is the principle of interpretation of statute that general things do not derogate from special things and therefore that special provision prevails over the general provision. Hence, the applicable entry in view of the above discussions is Sl.No.8(ii)(b) of Notification No.11 of 2017, dt: 28-06-2017.

Secondly they are liable to pay tax at the rate of 2.5% under CGST & SGST respectively if they are not claiming any ITC on goods and services used in supplying service in the said entry.

Since, the ITC should not be taken on “Goods & Service used in supplying the service”. Therefore if they are recipient of services from other suppliers who are in the same line of business and would like to claim a lower rate of tax under Sl.No.8(ii)(b), they cannot claim the credit of input tax charged on services from these other suppliers of similar service.

Therefore Sl.No.8(vi) is not applicable to the nature of business of the applicant.

# **AUTHORITY OF ADVANCE RULINGS**

**HELD:** We pronounce the ruling:

1. ITC is not allowed to be claimed if concessional rate of 5% GST is opted to be paid on service supplied under Sl.No.8(ii)(b) of Notification No.11/2017
2. Input tax credit is not allowed on any goods or services received by the applicant if tax is paid at the rate of 5% GST.
3. This entry is not applicable to the business of applicant
4. This is not applicable to the business of the applicant.

***Taxpert Professionals Insights:***

***It would be pertinent to note the term used ‘special provisions will override the general provisions’. Hence, as per said notification the taxpayer should pay GST @ 5% and should not claim any Input Tax Credit of any type of inputs or input services availed once the option of the same is opted by the taxpayer. As it is a special provision the same will override the actual general provision.***

**The services by the Airbus Group India Pvt. Ltd are held to be “Intermediary Service” and hence taxable under GST [In re Airbus Group India Pvt. Ltd.  (GST AAAR Karnataka) Advance Ruling No. AR/AAAR/Appeal dated 09/11/2021]**

**FACTS OF THE CASE:**

1. The **Airbus Group India Pvt. Ltd *(hereinafter referred to as*** *Appellant)* is a Private Limited Company and operating as a subsidiary of Airbus Invest SAS, France. The Airbus Group generally procures parts, components or services from both domestic and international markets which are required for manufacturing and assembly of aerospace products like aircrafts, helicopters, etc.
2. The Airbus Group has a specialized global sourcing team which is responsible for sourcing of relevant products from various international market. Airbus France has entered into an “lntra-Group Services Agreement” with effect from 1st April 2020 with the Appellant.
3. The Appellant is required to perform two functions; i.e (i) Procurement Operations —rendering of various technical advisory and business support services in relation to supplier development activities; and  
   (ii) Procurement Transformation & Central Services — procurement ethics & compliance, procurement process and key projects management, strategy, business intelligence and digital procurement, flying part procurement and general procurement.
4. For the services the Appellant would be remunerated with a service fee computed on a `cost plus mark-up’ basis.
5. The Agreement specifically restricts the Appellant to decide or select any supplier and agree upon the terms and conditions of the supply and the said decisions are the prerogative of Airbus France. The Appellant is also not responsible for issuance of purchase order or payment for the supply made by the vendor.
6. The classification of the service provided by them, the Appellant approached the Authority for Advance Ruling (AAR).

# **AUTHORITY OF ADVANCE RULINGS**

1. The AAR held that the activities carried out in India by the Applicant would constitute a supply as “Intermediary services” classifiable under SAC 998599 and the services rendered by the Applicant do not qualify as ‘export of services’ in terms of sub-section 2 of Section 6 of the IGST 2017 and consequently, are exigible to GST at the rate of 18% in terms of clause (iii) of entry no. 23 of Notification No. 11/ 2017-Central Tax ( R ) dated 28.06.2017.” aggrieved by the order the Appellant filed an appeal.

**ISSUE:**

1. Whether the activities carried out by the Appellant in India would constitute a supply of “Other Support Services” falling under Heading 9985 or as “Intermediary Service” classifiable under Heading 9961/9962 or any other classification of services as specified under GST laws?
2. Whether the services rendered by the Appellant would not be liable to GST, owing to the reason that such services may qualify as “export of services” in terms of clause 6 of Section 2 of the IGST Act, 2017 and consequently, be construed as a ‘zero-rated supply’ in terms of Section 16 of the IGST Act?

**OBSERVED:**

The Hon’ble Karnataka AAAR observed that the service of facilitating the main supply of goods between the Indian supplier and the Principal is provided by the Appellant to Airbus France. The Appellant is not supplying such goods on his own account and hence, the Appellant does not fall within the ambit of the exclusion contained in the definition of ‘intermediary’.

Section 13 of the IGST Act, 2017. Section 13(8)(b) of the said Act stipulates that the place of supply in the case of intermediary services will be the location of the supplier of service. In this case, the activity of the Appellant who is the supplier of intermediary service i.e. collection of information of parties in India, analysis of potential suppliers and skill development of existing suppliers, are all very much done in India, which is the location of the supplier of intermediary service. Thus, by virtue of Section 13(8) (b) of the IGST Act, it automatically flows that the place of supply of the intermediary service provided by the Appellant to Airbus France, is in India. Since, the place of supply is in India the service of Appellant do not qualify as exports of service.

**HELD:**

The Hon’ble Karnataka AAAR upheld the decision of the order No. KAR ADRG 31/2021 dated 01/07/2021 and dismissed the appeal By the Appellant.

***Taxpert Professionals Insights:***

***The CBIC has issued the clarification vide Circular No. 159/19/2021-GST which stats that the intermediary services shall not be provided own behalf. In the given case the taxpayer is not acting on own behalf as its supplying the services on behalf of its holding and related party. So, it would be treated as the Intermediary and the same contention is held in above AAR held by Karnataka Authorities.***

# **nOTIFICATIONS/ CIRCULARS/ PRESS RELEASE**

**NOTIFICATIONS**

1. **Recovery of self-assessed tax without notices if there is difference between GSTR 1 and GSTR 3B.[ 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 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. **Retrospectively GST leviable on services provided by Club or Association to its members.** [**Notification No 39 2021 Central Tax dated December 21 2021]**

The CBIC vide Notification No 39 2021 Central Tax dated December 21 2021 notified amendments made vide Section 108 in Section 7 (1) of the CGST Act, 2017 and 122 (omitted para 7 of Schedule II of the GST Act, 2017 of the Finance Act, 2021 w e f January 01 2022 to be effective from July 01 2017 retrospectively to widen the scope of term ‘ by including therein activities or transactions of supply of goods or services or both between any person (other than individual) to its members or constituents or vice versa for cash, deferred payment or other valuable consideration.

1. **ITC available only when supplier pay and file GSTR 1 which matches with GSTR 2A/ 2B.[ Notification No 39 2021 Central Tax dated December 21 2021]**

As per recommendations made in GST Council meeting, The CBIC vide Notification No 39 2021 Central Tax dated December 21 2021 notified the amendment made vide Section 109 of the Finance Act, 2021 w e f January 01 2022 to insert the new clause ‘( in Section 16 (2) of the CGST Act, 2017 that provides an additional condition to claim ITC based on GSTR 2 A and newly introduced GSTR 2 B i e ITC on invoice or debit note can be availed only when details of such invoice/debit note have been furnished by the supplier in his outward supplies (GSTR 1) and such details have been communicated to the recipient of such invoice or debit note.

Consequently, further w e f January 01 2022 there would be no relevance of 5 limit mentioned in Rule 36 (4) of the CGST Rules, 2017 as the recipient would not be able to take any ITC if the same is not coming in recipients GSTR 2 A and/or 2B.

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 RELEASE**

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.[** **Notification No 38 2021 Central Tax dated December 21 2021]**

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. **Composite supply of works contract services to Governmental Authority or Government Entity made taxable @18% GST Rate.[ Notification No 15 2021 Central Tax dated November 18 2021]**

The CBIC vide Notification No 15 2021 Central Tax dated November 18 2021 has further amended the S No 03 of the Services Rate Notification in order to make composite supply of works contract services supplied to Governmental Authority or Government Entity taxable @18% and to apply GST tariff on the said services.

Similarly, amendments have also been made in Serial No 3 (Pure Service) and 3 A (Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply)

It is pertinent to note that the Government Entity shall no longer be exempt from January 01 2022 and shall attract GST as applicable under Services.

Similar notifications were issued under IGST Act, 2017 and UTGST Act, 2017**.**

1. **Food delivery apps like Zomato, Swiggy etc and Cloud kitchens brought within the restaurant services, liable to pay GST @5% with no ITC.** **vide [Notification No 17 2021 Central Tax dated November 18 2021]**

As recommended in the GST Council meeting, the CBIC issued notification in order to bring the Online Food Service providers under payment of GST without ITC availment. So, The CBIC vide Notification No 17 2021 Central Tax dated November 18 2021 amended Notification No 17 2017 Central Tax dated June 28 2017 to bring food delivery apps like Zomato Swiggy and Cloud kitchens brought within the restaurant services.

Accordingly, CBIC vide Notification No 16 2021 Central Tax ( dated November 18 2021 amended Services Exemption Notification to insert proviso in S No 15 and 16.

Similar notifications were issued under IGST Act, 2017 and UTGST Act, 2017.

1. **The ministry of finance seeks to amended the following through [Notification No. 16/2021 (Rate) 18/11/2021]**

This Notification Seeks to amend the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.12/2017- Central Tax (Rate) 28th June, 2017. In the said notification, in the TABLE, -

* 1. against serial number 3, in column (3), in the heading “ Description of Services” , the words “or a Governmental authority or a Government Entity” shall be omitted;
  2. against serial number 3A, in column (3), in the heading “ Description of Services “, the words “or a Governmental authority or a Government Entity” shall be omitted;

# **RECENT JUDICIAL PRONOUNCEMENTS**

* 1. against serial number 15, in column (3), in the heading “Description of Services “, after item (c), the following shall be inserted, namely, - “Provided that nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017).”;
  2. against serial number 17, in column (3), in the heading “ Description of Services “, after item (e), the following shall be inserted, namely, - “Provided that nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017).This notification shall come into force with effect from 1st day of January, 2022.

1. **Approval Of Additional unit for Social Science Or Statistical Research Associations Or Institutions Under Section 35(1)(Iii)**

**(NOTIFICATION S.O. 4530(E) [NO. 128/2021/F. NO. 203/08/2020/ITA-II], DATED 31-10-2021)**

‘Pimpri Chinchwad College of Engineering’ has been approved by CBDT under the category "University, College or Other Institution" for Scientific Research. Thus for the purposes of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 with effect from FY 2021-22 to FY 2026-27.

1. **CBDT notifies tolerance limit under transfer pricing for Assessment Year 2021-22**

**(NOTIFICATION S.O. 4586(E) [NO. 124/2021/F. NO. 500/1/2014-APA-II], DATED 29-10-2021)**

Under Section 92C Of the Income-Tax Act, 1961, read With Rule 10CA Of The Income-Tax Rules, 1962 for Computation Of Arm's Length Price the price difference of 1% in case of wholesale trading and 3% other cases will be Deemed to be Arm's Length Price For Assessment Year 2021-22.

1. **FinMin invites tax suggestions from Industry and Trade Associations for formulating Budget 2022-23 proposals (F.NO. 334/2/2021-TRU)**

In the context of formulating the proposals for the Union Budget fo 2022-23, Ministry of Finance has open the doors of suggestions for changes in the duty structure, rates, and broadening of tax base on both direct and indirect taxes from the industry and trade associations. Suggestions may be sent to the ministry by 15-11-2021 by way of email.

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.

# **RECENT JUDICIAL PRONOUNCEMENTS**

1. **The notification seeks to amend the following in the [Notification No. 17/2021 (Rate)]**

The Notification amend the previously issued Notification No. 17/2017 dated 28th June, 2017. In the notification,-

* 1. in clause (i), for the words “and motor cycle;”, the words “, motor cycle, omnibus or any other motor vehicle;” shall be substituted;
  2. after clause (iii), the following clause shall be inserted, namely:-

“(iv) Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.”

In the said notification, in Explanation, -

* 1. in item (b), for the words, brackets, numbers and figures “and “motor cycle” shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988).”, the words, brackets, numbers and figures ,“, motor cycle, motor vehicle and omnibus shall have the same meanings as assigned to them respectively in clauses (22), (25), (27), (28) and (29) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988).” shall be substituted;
  2. after item (b), the following shall be inserted namely, -

“(c) Specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.”

This notification shall come into force with effect from the 1st day of January, 2022.

**CIRCULARS**

1. **Clarification in respect of Master Circular No. 1053/02/2017-CX, dated 10-3-2017 [CIRCULAR NO. 1079/03/2021-CX [F.NO.116/13/2020-CX-3], dated 11-11-2021]**

Central Excise and Service Tax clarified that "Pre-show cause notice consultation with the Principal Commissioner and Commissioner is being made mandatory prior to issue of show cause notice (SCN) in the case of demand of duty above Rs. 50 Lakhs (except for preventive/offence related SCNs)".

The pre-show cause notice consultation shall not be mandatory for those cases booked under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 for recovery of duties or taxes not levied or paid or short levied or short paid or erroneously refunded by reason of:—

* + 1. fraud: or
    2. collusion: or
    3. wilful mis-statement: or
    4. suppression of facts: or
    5. Contravention of any of the provision of the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 or the rules made there under with the intent to evade payment of duties or taxes.

Trade, industry and field formations may be suitably informed.

# **nOTIFICATIONS/ CIRCULARS/ PRESS RELEASE**

1. **Circular- SEBI requires Stock Exchanges/Depositories/Clearing Corporations to disclose complaints against them on websites[CIRCULAR NO.SEBI/HO/DDHS/P/CIR/2021/0669 [26/11/2021]**

In order to bring transparency in the Investor Grievance Redressal Mechanism, the market regulator SEBI has mandated all the Stock Exchanges /Depositories/Clearing Corporations excluding Commodity Derivatives Exchanges to disclose on their websites, the data on complaints received against them and redressal thereof, latest by 7th of succeeding month. The provisions of this circular shall come into effect from January 01, 2022.

1. **Circular- SEBI specifies additional disclosure obligations for listed entities in relation to Related Party Transactions [CIRCULAR NO. SEBI/HO/CFD/CMD1/CIR/P/2021/662 [22/11/2021]**

The market regulator, SEBI has prescribed the information that is required to be placed before the audit committee and the shareholders to reinforce and monitor Related Party Transactions for better governance practices. Listed entities shall make RPT disclosures every six months in the format prescribed by SEBI. This Circular shall come into force with effect from April 1, 2022.

**PRESS RELEASE**

1. **Removal of inverted tax structure on MMF Textiles value chain and uniformity of rates brings relief to textiles sector - uniform rate of 12% for entire value chain of MMF Textiles sector will reduce compliance burden of industry players - MMF Textiles sector will be benefiting and save lot of working capital - it will provide clarity to industry and settle, once and for all, issues caused by inverted tax structure**.

The Government has notified uniform goods and services tax rate at 12 % on MMF, MMF yarn, MMF fabrics and apparel that has addressed the inverted tax structure in the MMF textile value chain. The changed rates will come into effect from 1st January, 2022. This will help the MMF segment grow and emerge as a big job provider in the country.

1. **Pre-budget consultation meeting for Budget 2022-23 was held in virtual mode from 15th to 22nd December, 2021. [Press Release, Dated 22-12-2021]**

More than 120 invitees participated in 8 meetings scheduled during this period. The stakeholders group includes representatives and experts from different sectors. Secretaries of other Ministers/Departments concerned were also present at the meeting through online mode. The stakeholders groups made several suggestions on issues which included increased R & D, spending, infrastructure status for digital services, incentives to hydrogen storage and fuel cell development, rationalisation of income tax slabs, investments in online safety measures etc., among others.

# **Tax calander**

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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 |

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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 |

# **Tax calander**

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

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