

FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

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Dear Reader,

The Policy updates and Verdicts of Various High Courts are enclosed in this newsletter.

We would like to draw your attention to various important updates, including the clarifications issued by CBIC on applicability of GST on Job Work for Processing of Barley, RBI regulation on Payment Aggregator - Cross Border payment transactions, MCA mandates declaration of beneficial interest & keeping of register for partners of LLP and Extension of due dates for Various compliances by various authorities.

Hope this issue will find you and your near & dear in good health. Be safe, and healthy

Regards

For Raju and Prasad

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**"Great minds discuss ideas; average minds discuss events;
small minds discuss people"
- Eleanor Roosevelt.**

Policy Watch

Indirect Taxes

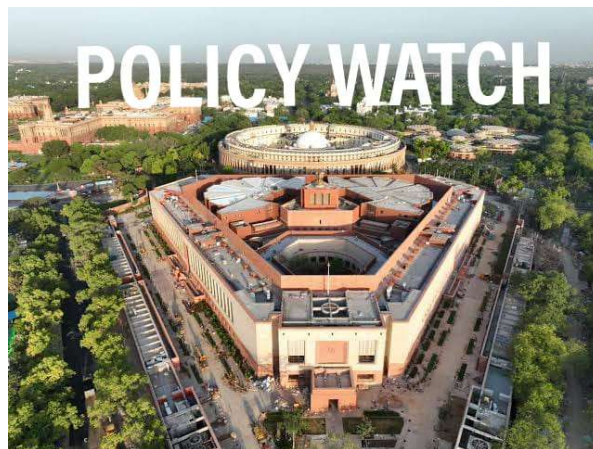


5% GST to Be Levied on Job Work for Processing of “Barley” into “Malted Barley” and also other clarifications

CBIC Vide Circular No. 206/18/2023, dated 31st October 2023 had issued a circular to provide clarifications regarding applicability of GST on certain services. In this circular, it is clarified that services by way of job work for conversion of barley into malt would attract 5% GST.

Also, it is clarified that whenever electricity is supplied along with renting of immovable property and/or maintenance of premises, it would form a part of composite supply and the principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply.

Even if electricity is billed separately, the supplies will constitute a



composite supply. However, if electricity is supplied as a pure agent on actual basis, then it will not be treated as part of value of supply.

<https://taxinformation.cbic.gov.in/view-pdf/1003189/ENG/Circulars>

CBIC notifies the amnesty scheme for filing of appeals under GST

CBIC Vide Notification No. 53/2023, dated 02nd November 2023 had issued a notification to notify the amnesty scheme for filing of appeal against order passed on or before 31st March, 2023. Now, the assessee can file appeal against such order on or before 31st January, 2024

However, a sum equal to 12.5% of amount of tax subject to a maximum of 25 crore rupees must be paid, out of which at least 20% should have

been paid by debiting from the Electronic Cash Ledger. Moreover, no such appeal shall be admissible in respect of a demand not involving tax.

<https://taxinformation.cbic.gov.in/view-pdf/1009932/ENG/Notifications>

Direct Tax



CBDT extends due date for filing of Form 56F (SEZ units) for AY 2023-24 to December 31, 2023

CBDT vide circular No. 18/2023 dated 20th October 2023 introduced a new Rule 16D into the Income-tax Rules of 1962. This rule stipulates that the report from an accountant, required to be submitted by the taxpayer under section 10AA(8) in conjunction with section 10A(5), should be filed using Form No. 56F.

This form is required to be filed before the specified date prescribed under section 44AB. To avoid genuine hardship regarding filing the newly notified form on time for the Assessment Year 2023-24, the Board has decided to extend the due date

for filing the form to December 31, 2023.

<https://incometaxindia.gov.in/communications/circular/circular%2018-2023.pdf>

CBDT Exempts IFSC Units from Form 15CA for Non-taxable Remittances and Introduces Form 15CD for Quarterly Reporting

Income tax vide Notification No. 89/2023, dated 16th October 2023 has introduced the Income-tax Amendment (Twenty-fifth Amendment), Rules, 2023 and amended Rule 37BB.

This rule has been amended to exempt International Financial Services Centre (IFSC) Units from furnishing Part D of Form No. 15CA in respect of remittances not chargeable to tax in India.

In addition, the IFSC Units are to submit quarterly statements in Form No. 15CD detailing all remittances made to non-residents or foreign companies. This form must be furnished to the PDGIT/DGIT within 15 days from the end of the quarter to

which such statement relates. The form seeks the following information:

- a) Details of Remitter (Name, PAN/TAN, Residential Status and complete address)
- b) Details of the Remittee (Name, PAN/Aadhar, complete address, country of residence)
- c) Details of Remittance (Date, Amount and Nature of Remittance)

Further, it is to be noted that the provisions of this notification will be applicable from January 01, 2024.

<https://incometaxindia.gov.in/communications/notification/notification89-2023.pdf>

RBI Updates



RBI permits Non-resident investment in Government-issued Sovereign Green Bonds (SGBs) via 'fully accessible route' for F.Y. 2023-24

Earlier, the RBI vide. Circular Dated 30.03.2020 notified Fully Accessible Route (FAR), through which certain specified categories of Central



Government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well.

The RBI has now vide Circular No. RBI/2023-24/81-FMRDFMID.No. 04/14.01.006/2023-24, dated 8th Nov, 2023 has decided to also designate all Sovereign Green Bonds (SGBs) issued by the Government in the fiscal year 2023-24 as 'specified securities' under the FAR.

Earlier, vide circular dated 30.03.2020, the RBI has notified that all new issuances of Government securities of 5-year, 10-year and 30-year tenors from the financial year 2020-21 to be

eligible for investment under the FAR as 'specified securities'.

Later, through circular dated 07.07.2022 and circular dated 23.01.2023, Government securities of 7-year & 14-year tenors and Sovereign Green Bonds were included as 'specified securities' under the FAR.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12563&Mode=0>

RBI decides to directly regulate entities facilitating cross-border payment transactions

RBI vide circular No. RBI/2023-24/80 CO.DPSS.POLC.No.S-786/02-14-08/2023-24, dated 31st October 2023 has issued regulations of Payment Aggregator – Cross Border (PA - Cross Border).

RBI has issued regulations aimed at governing entities that facilitate payment and settlement for online cross-border. These regulations include Payment Aggregators (PAs), which are entities that support the processing of domestic transactions

in online mode. Now, the RBI aims to bring all entities involved in facilitating cross-border payment transactions for the import and export of goods and services under direct regulation.

For complete regulation click on the below link

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12561&Mode=0>

MCA



MCA amends LLP norms; mandates declaration of beneficial interest & keeping of register for partners of LLP.

The MCA vide Notification No. G.S.R. 803(E), dated 27th October 2023 has notified that a person whose name is entered in register of partners of LLP but doesn't hold any beneficial interest in contribution must file a declaration to that effect in Form 4B within 30 days from the date on which his name is entered in the register specifying the name and other particulars of the person who actually

holds any beneficial interest in such contributions.

However, if any change occurs in the beneficial interest in such contribution, the registered partner must make a declaration of such change to the LLP in Form 4B within a period of 30 days.

Every person who holds or acquires a beneficial interest in the contribution of an LLP but his name is not registered in the register of partners must file with LLP a declaration disclosing interest in Form 4C within a period of 30 days after acquiring such beneficial interest.

Further, every LLP must maintain a register of its partners in Form 4A from the date of its incorporation. The entries in the register must be made within 7 days pursuant to any change made in the contribution amount or in the name & details of the partners in the LLP agreement, or in cases of cessation of partnership interest.

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Mzc2OTA4ODA4&docCategory=Notifications&type=open>

SEBI



SEBI Introduces a Procedural Framework for Dealing with Unclaimed Amounts Lying with Infrastructure Investment Trusts (InvITs), Real Estate Investment Trusts (REITs) & Specified Entities

SEBI with an objective to uniform the process of claiming unclaimed funds by investors has specified a procedural framework for dealing with unclaimed amounts lying with Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InvITs) and entities having listed non-convertible securities vide Circular No. SEBI/HO/DDHS/DDHS-RAC 1/P/CIR/2023/178, dated 08th November 2023. Further, the norms w.r.t the manner of claiming such unclaimed amounts by investors has also been prescribed. The circular shall be effective from 01st March, 2024.

This procedural framework would be applicable to entities having listed non-convertible securities with

interest/dividend/redemption amount which has not been claimed within 30 days from the due date.

Further, it is also applicable to the REITs and INVITs having amounts unclaimed or unpaid out of the distributions declared by it.

As per the procedural framework, it is the obligation of the listed entity to transfer the unclaimed amounts to an Escrow Account to be opened by it in any scheduled bank, within seven days from the date of expiry of the said period of thirty days.

Further, for REITs and INVITs, where a distribution has been made by the Manager, but the payment to any unitholders has remained unpaid or unclaimed, up to fifteen days from the date of declaration, the Manager shall, within seven working days from the date of expiry of such period of fifteen days, transfer such unclaimed amounts to an Escrow Account to be opened by it on behalf of the REIT & INVIT in any scheduled bank.

Also, the entities are required to designate as 'Nodal Officer', a

person who may either be a Director, Chief Financial Officer, Company Secretary or Compliance Officer of the listed entity or investment manager. Such officer shall be the point of contact for investors entitled to claim their unclaimed amounts, SEBI, Stock Exchange(s) and Depositories.

https://www.sebi.gov.in/legal/circulars/no-v-2023/procedural-framework-for-dealing-with-unclaimed-amounts-lying-with-infrastructure-investment-trusts-invits-and-manner-of-claiming-such-amounts-by-unitholders_78990.html

Verdicts

Direct Tax



Act: The Income Tax Act, 1961

1. No Denial of Sec. 35(2AB) Deduction Merely Because Competent Authority Failed to Issue Form 3CL During Assessment

Vide Decision of HIGH COURT OF GUJARAT in Principal commissioner of Income-tax-1 v. Schaeffler India Ltd.

Facts of the case:

1. Assessee filed its return of income for the relevant assessment year and claimed deduction under section 35(2AB). Subsequent to the scrutiny proceedings, the Principal Commissioner of Income Tax (PCIT) noticed that the assessee had not submitted necessary documentary evidence, i.e., Form 3CL, which must be filed on or before the due date of filing of return of income.
2. Accordingly, PCIT invoked jurisdiction under section 263, contending it to be prejudicial to the interest of Revenue and disallowed the deduction claimed.
3. The matter reached the Gujarat High Court.

Judgement:

1. The High Court held that the assessee, at the time of the original assessment, had filed a copy of recognition of the in-house R&D facility dated 25.08.2014. The assessee also filed the approval of the in-house R&D facility dated 07.10.2015 in Form 3CM with regard

to the computation of deduction under section 35(2AB).

2. The assessee also filed the auditor's certificate certifying the expenditure during assessment proceedings. Regarding Form 3CL, the same was issued by the prescribed authority on 20.07.2021 after passing the assessment order under section 143(3).
3. Taxpayer submitted documentation validating its R&D facility as approved by the designated authority in the correct format,
4. The absence of intimation from the authority during the assessment proceedings should not serve as grounds for disallowing the deduction claim under section 35(2AB).

2. TDS benefit to be granted even on non-production of Form 16A if assessee established deduction of tax at source.

Vide decision of HIGH COURT OF DELHI in Incredible Unique Buildcon (P.) Ltd v. Income Tax Officer, Ward (12)(1)

Facts of the case:

1. The assessee provided services to a company. Such company deducted tax at source from the payments made to the assessee but failed to deposit the tax with the Government. During the assessment, Assessing Officer (AO) raised demand against the assessee, contending that the assessee had not furnished Form 16A with respect to the deduction of tax at source.
2. The matter reached before the Delhi High Court

Judgement:

1. The Delhi High Court held that there was no dispute that it was the mandatory duty of the deductor to deduct tax at source qua the payments made to the assessee. Further, as per section 205, where the tax is deductible at source, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from his income.
2. No doubt, Form 16A is a piece of evidence that can establish the deduction of tax at source. However, Form 16A is not the only piece of evidence in that regard. If the assessee can show reliable material other than Form 16A and prima facie establish the deduction of tax at source, then the assessee cannot be denied the benefit of the provisions of section 205. The assessee cannot be left at the mercy of the tax deductor, who may not issue Form No. 16A or deposit the deducted tax for multiple reasons.
3. In the present case, the assessee admittedly declared in his return of income the tax deducted at source by the deductor and supported the same with his ledger account. It is not obvious that the ledger account is not conclusive evidence. But at the same time, there was no reason found for failure on the part of the AO to carry out any inquiry if they were not satisfied with the truthfulness of the claim of the assessee qua the tax deducted at source.

4. Moreover, the assessee even filed a complaint dated 25.01.2017 with the revenue authorities, alleging that the deductor had deducted but not deposited the tax deducted at the source.
5. From the language of section 205, it is clear that the bar operates as soon as it is established that tax has been deducted at source. It is wholly irrelevant whether tax deducted at source is deposited or not and whether Form No. 16A has been issued or not.



Facts of case:

1. In the present case, the petitioner filed writ petition and challenged the decision of Authority for Advance Ruling, Chhattisgarh wherein it was held that GST would be leviable on the value of diesel provided by the service recipient to GTA free of cost.
2. It was contended that it filed appeal but the Appellate Authority for Advance Ruling denied giving ruling due to difference of opinion

Judgement:

1. The Honorable High Court noted that transportation is inter-dependent on supply of fuel and fuel would be a crucial component to run the business of GTA. Moreover, Section 15(2)(b) provides

Indirect Tax

Act: Central Goods and Services Act, 2017

1. Diesel Supplied Free of Cost by Service Recipient to Goods Transport Agency (GTA) to Be Added to Value of Supply of Service.

Vide decision of HIGH COURT OF CHHATTISGARH in Shree Jeet Transport v. Union of India of Income-tax Appeals.

that value of supply shall include any amount that supplier is liable to pay in relation to such supply.

2. Since, the expenses to fill diesel in vehicle in furtherance of supply of service in normal condition is to be incurred by GTA and therefore, fuel being an integral part cannot be bifurcated to overcome a tax liability. Moreover, the said provision cannot be by-passed by agreement wherein diesel is agreed to be supplied free of cost by service recipient to GTA.
3. Thus, the Court dismissed the petition with an observation that where diesel would be provided free of cost by service recipient, it would nevertheless be added to value for purpose of GST.

2. Demand Issued on Ground of Non-payment of Tax by Supplier Can't Sustain Since Recipient Was Composition Dealer

Vide Authority of HIGH COURT OF ALLAHABAD in Rama Brick Field v. Additional Commissioner, Grade-2.

Facts of case:

In the present case, the petitioner who had opted for composition scheme for the period of 1-10-2017 to 31-3-2019 received a notice from the GST department. It was alleged that one of its supplier was found non-existent at the time of survey and demand of tax along with interest and penalty was raised. It filed writ petition against the demand and contended that no input tax credit was availed since it had opted for composition scheme.

Judgement:

1. The Honorable High Court noted that the disputed purchases pertained to period May, 2018 to June, 2018, which fell under the period of composition and question of taking credit would not arise.
2. Moreover, the petitioner adduced evidence such as tax invoice, e-way bill, G.R., payment receipts etc. to show that purchases were made from registered dealer whose registration was cancelled in October, 2019.

3. Also, it was noted that at the time of transaction in question, seller was a registered firm under GST Act and at subsequent time, the seller was found non-existence.
4. Thus, the Court held that the impugned order raising demand for entire amount of tax could not be sustained in eyes of law and matter was remanded back

<https://www.taxmann.com/research/gst/caselaws>

Statutory and Tax Compliance Calendar of December 2023

STATUTORY

10-Nov	Professional Tax (PT)
15-Nov	Provident Fund (PF), ESI Payment for Nov

GOODS & SERVICE TAX

10-Dec	GSTR 8 for Nov
11-Dec	GSTR 1 for Nov
13-Dec	GSTR 5 for Nov (NRTP)
20-Dec	GSTR 3B for Nov
20-Dec	GSTR 5A for Nov (OIDAR)
31-Dec	GSTR-9 & 9C for F.Y 2022-23

INCOME TAX

07-Dec	TCS Payment for Nov
07-Dec	TDS Payment for Nov
15-Dec	Q3 Advance tax
31-Dec	Filing of belated/revised return of income for the assessment year 2023-24 for all assessee.

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