FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

February 2019 Volume 5, Issue 12

Dear Reader,

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

Attention of readers is invited to the Article on recent Amendments in GST & Significance of Advance rulings in GST by Mr. Harsh Vora(Manager, Indirect Taxation – Mumbai branch), Relaxation of requirement to furnish a copy of PAN for transfer of equity shares of listed entities executed by non-resident, Monetary limits for filing of wealth tax appeals and the Decision of Honorable High Court Of Bombay in Principal Commissioner Of Income Tax-3, Mumbai v. Vembu Vaidyanathan.

Regards
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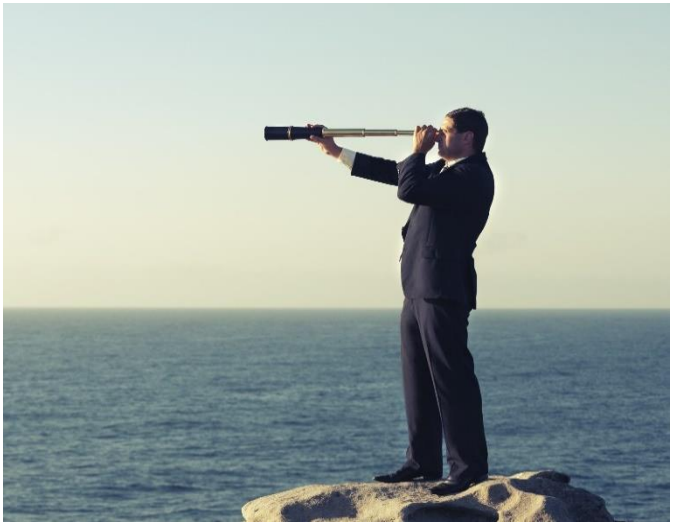
Policy Watch

Indirect Taxes

Amendments to take effect under GST from 1st Feb 2019

- Mr. Harsh Vora (Manager, Indirect Taxation - Mumbai Branch)

1. Upper limit of turnover for opting of composition scheme shall be raised from Rs. 1 Cr to Rs. 1.5 Cr.
2. A Composite dealer (in goods) shall be allowed to supply services (other than restaurant services), for a value not exceeding - Higher of 10% of turnover in the preceding financial year, or Rs. 5 lakh.
3. The threshold limit of Turnover for exemption from registration in the States of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand shall be increased to Rs. 20,00,000 from Rs. 10,00,000.
4. Taxpayers may opt for multiple registrations within a State/Union Territory in respect of multiple places of business located within the same State/U.T on the same PAN.



5. Mandatory registration is required for only those e-commerce operators who are required to collect tax at source.
6. Registration shall remain temporarily suspended while cancellation of registration is under process, so that the taxpayer could get relief of further continued compliance under the law.
7. The following transactions shall not treated as supply under Schedule III:-
   - Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
   - Supply of warehoused goods to any person before clearance for home consumption; and

- Supply of goods in case of high sea sales.

8. Input tax credit would now be available in respect of the following :-
   - Motor vehicles for transportation of persons having seating capacity of more than thirteen (including driver), vessels and aircraft;
   - Services of general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available; and
   - Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.
9. Registered persons may issue consolidated credit/debit notes to a party in respect of multiple invoices issued in a Financial Year to that party.
10. Commissioner may extend the time limit for return of inputs and capital sent on job work, upto a period of 1 year and 2 years, respectively.
11. Place of supply shall be outside India, where job work or any treatment or process has been done on goods temporarily imported into India and then exported out of India without putting them to any other use in India except the uses which were necessary for the purpose of such job work or treatment or rocess.
12. Recovery of taxes, interest, fine, penalty etc. can be made from distinct persons, even if such distinct persons are present in different State/Union territories.
13. Reverse Charge Mechanism is applicable without any exemption limit w.e.f 01-02-2019 for a class of registered persons in respect of supply of specified categories of goods or services or both received from an unregistered supplier as per Notification No.01/2019 – Central Tax (Rate) and amended section 9(4) of CGST Act. However, till date, class of registered persons or specified categories of goods to which it is applicable has not been prescribed by the Government.

Extension of due date for filing Form GSTR 7 for the month of January 2019

GSTR 7 is required to be furnished by a registered person who deducts tax at source under the provisions of section 51 of the CGST Act, 2017. The Central Board of Indirect Taxes and Customs Vide Notification No 08/2019 – Central Tax dated 8th January 2019 has extended the due date for filing GSTR 7 for the periods October 2018 to January 2019 till 28th February 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-08-central-tax-english-2019.pdf;jsessionid=233302F5B964CFD46C5D00A5DBF19A2E

Advance Rulings – GST

- Mr. Harsh Vora (Manager, Indirect Taxation - Mumbai Branch)

Introduction:

"Advance ruling" means a decision provided by the Authority or, as the case may be, the Appellate Authority to an applicant on matters or on questions specified in section 97(2) or section 100(1), as the case may be, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant – section 95(a) of CGST Act.

Application for advance ruling can be made in respect of supply 'being undertaken'. Thus, a person can apply for advance ruling even in respect of an activity he is already doing, though really that is not the idea of 'Advance Ruling'.

Questions for which advance ruling can be sought:

The question on which the advance ruling is sought shall be in respect of any of following:

(a) Classification of any goods or services or both under the Act.

(b) Applicability of a notification issued under provisions of the Act.

(c) Determination of time and value of the goods or services or both.

(d) Admissibility of input tax credit of tax paid or deemed to have been paid.

(e) Determination of the liability to pay tax on any goods or services or both.

(f) Whether applicant is required to be registered.

(g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to supply of goods or services or both, within the meaning of that term.

Authority for advance ruling in each state:

- Authority for Advance Ruling (AAR) has been constituted in each State. The AAR normally consists of two officers. The Central Government and the State Government shall appoint an officer not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.
- Appellate Authority for Advance Ruling (AAAR) has also been constituted in many States.
- The Authority for Advance Ruling will give a decision on question raised before it. Such ruling will be binding on the applicant and the department. The decision is not similar to decision of Tribunal. The decision of Tribunal is binding on others who were not party to the case. However, ruling of AAR and AAAR is binding only on appellant.
- So far, over 150 decisions of AAR have been reported wherein there are even some conflicting rulings.
- The union cabinet has approved setting up of a centralized appellate Authority for Advance ruling (AAAR) under GST that would decide on cases where there are divergent orders at the state level.
- The setting up of a centralized AAAR would require amendments to the GST acts.
- Though ruling of Authority for Advance Ruling does not have value as precedence, it surely has persuasive value. Since many controversial issues are coming before AAR, it would be educative to study them, as these decisions may be challenged before Tribunal, High Court and Supreme Court in due course.

Some rulings of Authority for Advance Ruling are summarised in this article, some of which are surely debatable and arguable.

AAR cannot take issue relating to place of supply

- In Utility Powertech Ltd. (AAR – Chhatisgarh), it has been held that AAR cannot take question relating to place of supply.
- Same view was accepted in Esprit India P Ltd (AAR – Haryana).
- AAR cannot decide whether supply is inter-state supply or intra state supply – Fichtner Consulting Engineers (I) P Ltd.
- This decision seems doubtful as liability to pay tax (whether IGST or

CGST plus SGST/UTGST is payable) depends on determination of place of supply.

AAR connot determine issue of transitional input tax credit

Transitional Input Tax Credit is in respect of duties paid under other Acts. Hence, it is beyond jurisdiction of AAR – Sino Resources (AAR-Andhra Pradesh).

AAR connot determine issue relating to foreign trade policy

AAR cannot determine issue relating to Foreign Trade Policy or procedure under Advance Authorisation – Spentex Industries Ltd (AAR – Andhra Pradesh).

Recipient of goods or services cannot apply for advance rulings

Recipient of goods or services cannot apply for advance ruling where tax is payable by supplier and there is no reverse charge – Visvesvaraya National Institute of Technology, Nagpur(AAR – Tamilnadu)

No advance ruling if matter already pending or decided in any proceedings

Application for advance ruling will not be admitted if matter is already pending or decided in any proceedings in the case of applicant – proviso to section 98(2) of CGST Act – followed in Veeram Natural Products (AAR-Tamilnadu).

Liquidated damges recovered for delay in supply of goods are subject to GST

GST is payable on liquidated damages recovered for delay in supply of goods, as it is tolerating an act for delay - Maharashtra State Power Generation Company Ltd (AAR - Maharashtra).

<u>Significant AAR rulings by various states:</u>

GST would be applicable on cheque bouncing charges

[Bajaj Finance Ltd. (AAR – Maharashtra)] The applicant, a NBFC is engaged in providing various types of loans to the customers, such as auto-loans, loans against the property, personal loans, consumer durable goods loans, etc. It has entered into agreements with borrowers/customers for providing loans to them. The loan agreements provide for repayment of the outstanding dues/EMI through cheque/ECS/NACH or any other electronic or clearing mandate. In case of dishonouring of payment instrument or instruction, the applicant collects penal or bouncing charges. The applicant filed an application for Advance Ruling whether the bouncing charges should be treated as supply. It contended that bouncing charges collected from the customers

are in the nature of penalty or liquidated damages. Therefore, same are not considerations for supply of services and, hence, not subject to GST.

The Authority for Advance Ruling held that receipt of cheque bouncing charges on dishonouring of cheques would be receipt of amounts for tolerating the act of their customers. Therefore, it would be treated as supply under GST as per S. No. 5(e) of Schedule II of the CGST Act, 2017 and, hence, taxable under the GST.

Supply of food items to Employees for a consideration in canteen run by a company Is Taxable Under GST

[Caltech Polymers (P.) Ltd (AAR-Kerala)]

The applicant-company was engaged in manufacturing and sale of footwear. It was providing canteen services exclusively for its employees. It incurred the canteen running expenses for a month and recovered the same from its employees without any profit margin. The applicant submitted that the service provided to the employees was not being carried out as a business activity and it was rendered by virtue of provisions of Factories Act, 1948. Therefore, the applicant was of the view that such activity would not come under the scope of Supply as per GST.

The Appellate Authority for Advance Ruling observed that the applicant recovers the amount from employees. Therefore, the supply of food items to employees for a consideration in a canteen run by the appellant would come under the definition of 'supply' as per the GST.

GST is applicable on compensation received by tenant for delayed possession of new premises

[Zaver Shankarlal Bhanushali (AAR - Maharashtra)]

The assessee is a tenant in building premises. The owner of said building premises entered into an agreement with a developer for redevelopment of said premises. Consequent to the said agreement, the assessee is to vacate the premises to facilitate the redevelopment of the building. The assessee filed an application for Advance Ruling for applicability of GST on the compensation received by it for facilitating an alternative accommodation and for the delay in delivery of possession of the new premises.

The Authority for Advance Ruling held that as assessee agrees to do an act, i.e., vacating the premises to facilitate the supply of service by the developer to the

owner. Therefore, compensation received from the developer for vacating the said premises shall be subject to GST. Further, the amount received for delayed possession of new premises would be a receipt for tolerating the construction-cum-redevelopment work and for tolerating an act of not completing the re-development work within the prescribed time. The same would be covered under the definition of 'supply'. Hence, GST would be leviable on the said amount.

SEBI

Relaxation from requirement to furnish a copy of PAN for transfer of equity shares of listed entities executed by non-resident

As per SEBI Regulations, 2015, transferee as well as transferor shall furnish a copy of their PAN card to the listed entity for registration of transfer of securities. In order to address the difficulties faced by non-resident investors who donot have PAN, SEBI vide Circular No. SEBI / HO / MIRSD / DOS3 / CIR / P / 2019 / 30 dated 11th February 2019 has decided to grant relaxation to non-residents from the requirement to furnish PAN and permit them to transfer equity shares held by them in listed entities to their immediate relatives subject to the following conditions:

a) The relaxation shall only be available for transfers executed after January 01, 2016.

b) The relaxation shall only be available to non - commercial transactions, i.e. transfer by way of gift among immediate relatives.

c) The non-resident shall provide copy of an alternate valid document to ascertain identity as well as the non-resident status.

https://www.sebi.gov.in/legal/circulars/feb-2019/relaxation-from-requirement-to-furnish-a-copy-of-pan-for-transfer-of-equity-shares-of-listed-entities-executed-by-non-residents_42043.html

Direct Tax

Monetary limits for filing/ withdrawal of Wealth Tax appeals by the Department before ITAT, HCs and SLPs/appeals before SC

Circular No. 3 of 2018 dated 11-07-2018 specifiies the monetary limits for filing of

income tax appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court. Para 11 of the Circular states that such monetary limits shall not apply to writ matters and Direct tax matters other than Income tax and filing of appeals in such cases shall continue to be governed by relevant provisions of statute and rules. As there is no charge under Wealth Tax Act, 1957 w.e.f 1 st April, 2016, Central Board of Direct Taxes vide Circular No. 5/2019 has decided that monetary limits for filing of appeals in Income tax cases as prescribed in the Circular dated 11-07-2018 shall also apply to Wealth Tax appeals.

https://www.incometaxindia.gov.in/communications/circular/circular_5_2019.pdf

RBI Updates

Credit Flow to Agriculture- Collateral free agricultural loans

Keeping in view the overall inflation and rise in agriculture input cost over the years since 2010, RBI vide Circular No RBI/2018-19/118 dated 07th February 2019 has decided to raise the limit for collateral free agricultural loans from the existing level of ₹1 lakh to ₹1.6 lakh. Accordingly, banks may waive margin requirements for agricultural loans upto ₹1.6 lakh

https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11469&Mode=0

Harmonisation of different categories of NBFCs

Over a period of time, evolution of the NBFC sector has resulted in several categories of NBFCs intended to focus on specific sector. On a review, it has been decided by RBI vide Notification No. RBI/2018-19/130 dated 22nd February 2019 that for greater operational flexibility, harmonisation of different categories of NBFCs shall be carried out based on the principle of regulation by activity rather than regulation by entity. Accordingly, the three categories of NBFCs viz. Asset Finance Companies (AFC), Loan Companies (LCs) and Investment Companies (ICs) into a new category called NBFC - Investment and Credit Company(NBFC-ICC).

https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11483&Mode=0

Verdicts

Direct Tax

For computing capital gain tax, date of allotment of flat by DDA would be date on which purchaser of flat can be stated to have acquired property

- Decision of High Court Of Bombay in Principal Commissioner Of Income Tax-3, Mumbai v. Vembu Vaidyanathan

Facts of the case:

1. The assessee filed its return of income for the AY 2009-10 and claimed long-term capital gain arising out of capital asset in the nature of a residential unit.
2. During the course of assessment, the Assessing Officer came to the conclusion that the gain was a short-term capital gain.
3. The assessee argued that the residential unit was acquired on the date on which the allotment letter was issued by the builder which was on 31-12-2004.
4. The Assessing Officer however contended that the transfer of the asset in favour of the assessee would be complete only on the date of agreement which was executed on 17-5-2008.
5. On appeal, the Commissioner (Appeals) as well as the Tribunal held in favour of the assessee.
6. On further appeal to the High Court, it held the following:

Judgement:

1. The CBDT in its Circular No.471, dated 15-10- 1986, had clarified that when an assessee purchases a flat to be constructed by Delhi Development Authority (D.D.A.) for which allotment letter is issued, the such date would be considered as the date of acquisition. This aspect was further clarified by CBDT in its later Circular No. 672, dated 16-12-1993 clarified that if the terms of the schemes of allotment and construction of

flats/houses by the cooperative societies or other institutions are similar to those mentioned in para 2 of Board's Circular No.471, dated 15-10-1986, such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Income-tax Act. It can thus be seen that the entire issue was clarified by the CBDT in its above mentioned two Circulars, dated 15-10-1986 and 16-12-1993. In terms of such clarifications, the date of allotment would be the date on which the purchaser of a residential unit can be stated to have acquired the property. In that view of the matter, Commissioner (Appeals) and the Tribunal correctly held that the assessee had acquired the property in question on 31-12-2004 on which the allotment letter was issued.

2. Considering the clarifications provided already vide various circulars as stated above, the appeal is dismissed.

https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000186173&isxml=Y&search=&tophead=true&tophead=true

Sections 10(34) and 115BBDA are constitutionally valid

- Decision of High Court Of Delhi in Rajan Bhatia v. Central Board of Direct Taxes

Facts of the case: The assessee challenged the constitutional validity of proviso to section 10(34) along with provisions of section 115BBDA on grounds that section 115BBDA does not have any 'base', and that the provision makes discrimination between a resident assessee and a non-resident assessee, as the provision only applies to a resident assessee. It was also submitted that the provisions under challenge are arbitrary, ultra vires and violative of article 14.

Judgement:

1. There is no merit in the said contention as, clause (a) of sub-section (1) of section 115BBDA is clear and categoric. It stipulates that where a specified assessee, who is a resident of India, has income in aggregate exceeding Rs. 10 lakhs by way of dividends declared, distributed or paid by a domestic company or companies, then he/she would be liable to pay tax at the rate of 10 % on such dividend income, i.e., dividend income exceeding Rs.10 lakhs.

2. Plea of the assessee is without merit and is predicated on the wrong notion that in tax legislation, in order to tax one group the legislation must tax all. In a taxation legislation, the Legislature and Executive have the right to identify the persons who have to be taxed.
3. Contention of the petitioner that the companies have been left out would be an argument predicated on under-classification, i.e., certain classes which could have been included, have been excluded from taxation. This argument does not carry weight, since under-classification per se is not sufficient ground and justification to strike down a provision. Companies have to pay dividend tax whenever they pay dividend to the shareholders. This would explain and justify the reason why companies have been left out from the purview of section 115BBDA. If companies were liable to pay tax under this section, it would have led to cascading effect when dividend is finally paid to the shareholders, be it, an individual, HUF or a firm, i.e., the 'specified assessee' who are liable to pay tax under clause (a) to section 115BBDA of the Act.
4. Similarly, the argument that non-residents have been left-out is an argument of under-classification. Non-residents who invest in India contribute and help in growth of industrialization, job creation and economic progress. Non-residents can be treated differently for the reason that they are residents of foreign states and not residents of India. Taxation at source principle may not be applied to non-residents. Non-residents are liable to pay tax in the country of their residence. Taxation regime applicable to non-residents need not be identical to that applicable to residents.
5. In view of the above, as there is no merit in the petition; the petition is dismissed.

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Formation of opinion by another Assessing Officer on same set of documents and materials cannot give justifiable ground to Assessing Officer of present assessee to resort to reassessment

- Decision of High Court of Bombay in Integra Garments & Textiles Ltd. v. Income Tax officer, Ward 6(3)(2), Mumbai

Facts of the case:

1. Assessee in its income tax return had shown a receipt of on transfer of leasehold rights in a property in favour of one Morarji Textiles and after claiming indexed cost and other related deductions, offered to tax the capital gain arising out of such transfer.
2. During scrutiny, the Assessing Officer did not disturb petitioner's treatment to said receipt.
3. Later, Assessing Officer of Morarjee Textiles had held that leasehold rights belong to Morarjee Textiles itself and therefore, Morarjee was wrong in claiming that it had purchased such rights from assessee. On basis of same, Assessing Officer observed that assessee had filled inaccurate particulars and, thus, income had escaped assessment and issue reassessment notice.

Judgement: The High Court held that what the Assessing Officer is attempting to do is to review his own conclusions formed during original assessment after full examination, with aid of not new or additional materials but on basis of conclusions of another Assessing Officer; which are based on same materials available during original assessment before him and, that it is wholly impermissible and quashed impugned notice.

https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000186323&isxml=Y&search=&tophead=true&tophead=true

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