Monthly Missive

January 2019

S.P. Nagrath & Co. LLP
CHARTERED ACCOUNTANTS

DIRECT TAX

Circular No. 7/2018 dated 20.12.2018

Representations have been received by the Board/ field authorities stating that the Form No. 9A and Form No.10 could not be filed in the specified time for AY 2016-17, which was the first year of e-filing of these forms. It has been requested that the delay in filing of Form No. 9A and Form No. 10 for AY 2016-17 may be condoned under section 119(2) (b) of the Income Tax Act, 1961 (herein after referred to as "the Act").

Accordingly, in supersession of earlier Circular/Instruction issued in this regard, with a view to expedite the disposal of applications filed by trusts for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes hereby authorizes the Commissioners of Income-tax, to admit belated applications in Form No. 9A and Form No.10 in respect of AY 2016-17 where such Form No. 9A and Form No.10 are filed after the expiry of the time allowed under the relevant provisions of the Act.

Case Laws

Rajan Bhatia v. Central Board of Direct Taxes/[2019] 101 taxmann.com 328 (Delhi)

Issues Involved:

1. Section 115BBDA is ambiguous and vague, as the provision lacks certainty and does not specify whether tax at the rate of 10% would be applicable on entire dividend income, if its exceeds Rs. 10 Lacs or would be applicable only to the dividend over and above Rs. 10 Lacs i.e. in excess of Rs. 10 Lacs?

2. Section 115BBDA makes hostile discrimination between a resident assessee and a non-resident assessee and it excludes domestic company also.

Hon'ble High Court held that

In respect of First Issue:

It was held that clause (a) of sub section 1 of Section 115BBDA of the Act is very clear. There is no doubt that legislation, as framed stipulates the tax at the rate of 10% would only be payable in case the specified assessee earned dividend in excess of Rs. 10 Lacs. In other words, dividend income upto Rs. 10 Lacs is not to charged to tax @10% under Section 115BBDA of the Act. Dividend income upto Rs. 10 Lacs continues to be exempt under Section 10(34) of the Act.

In respect of Second Issue:

High Court has argued that in taxation legislation, the Government has the right to identify the person who has to be taxed. Taxation statue are not normally not struck down on the ground of under classification.

It was also held that-

- *The Companies have to pay dividend tax whenever they pay dividend to the shareholders. 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.*

- *Non-resident who invest in India who contribute and help in growth of the economy. They have the option to invest in different countries. Therefore, Government has to decide the policy how the non-resident should be taxed.*

- *Non-resident are the resident of foreign states and not resident of India*

so they are liable to tax in the country of their residence.

Pravesh Kejriwal Vs. Income-tax Officer, Ward-35(1), Kolkata [2019] 101 taxmann.com 170 (Kolkata - Trib.)

Issue Involved

Whether the Assessing Officer was unjustified in treating expenses towards purchase of machinery as bogus and making additions under section 69C of the Act.

Facts of the Case

The Assessee was an individual, engaged in the business of manufacturing and trading of tea machinery items.

For the Assessment Year 2014-15, the Assessee claimed expenses toward purchase of machinery.

During the course of assessment proceedings, relevant details of the parties, copies of bills etc. were furnished by the Assessee substantiating the machinery expenses.

Copies of the ledger accounts highlighting that the payments were made by account payee cheques after deducting tax at source were also submitted before Assessing Officer ("AO").

The AO issued notice under section 133(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") to selected 5 parties and also requiring their personal appearance for examination.

Four out of five parties were presented for verification. The presented four parties although confirmed the transactions under consideration, two of them, according to the AO, could not establish their identity.

Failure to present the fifth party and failure to establish the identity of the parties presented, the AO framed the order under section 143(3) of the Act, treating the machinery expenses as bogus and made the addition to the extent of unexplained expenditure under section 69C of the Act.

The Assessee filed an appeal before the Commissioner of Income Tax (Appeals) (hereinafter referred to as the "Ld. CIT(A)"), wherein the Assessee filed copies of PAN of the parties involved before the Ld. CIT(A).

The Ld. CIT(A) upheld the order of AO and gave partial relief to the Assesse by disallowing the addition to the extent of element of profit embedded in the impugned addition.

Aggrieved by the order of the Ld. CIT(A), the Assessee carried the matter in appeal before Income Tax Appellate Tribunal (hereinafter referred to as the "Hon'ble ITAT")

Decision of Hon'ble ITAT

The AO was not justified in doubting the identity of the concerned parties when the relevant details of the parties along with the necessary supporting in form of relevant bills, payments by cheque, tax deduction at source were duly furnished by the Assessee. Consequently, the addition made was also unjust. The Ld. CIT(A) also, ought to have deleted the addition made by the AO considering the factual matrix of the case when the claim of the Assessee with regard machinery expenses was duly supported by relevant and cogent evidence.

[2019] 101 taxmann.com 436 (Bombay) High Court of Bombay
Principal Commissioner of Income-tax v. Vembu Vaidyanathan

Issue Involved

Whether date of allotment for residential unit, vide an allotment letter, be the relevant date for calculating period of acquisition for the purpose of capital gain tax.

Decision of High Court

Hon'ble High Court held "*It can thus be seen that the entire issue was clarified by the CBDT in its above mentioned two circulars dated 15th October, 1986 and 16th December, 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. There is nothing on record to suggest that the allotment in construction scheme promised by the builder in the present case was materially different from the terms of allotment and construction by D.D.A. In that view of the matter, CIT appeals of the Tribunal correctly held that the assessee had acquired the property in question on 31st December, 2004 on which the allotment letter was issued.*"

[2019] 101 taxmann.com 190 (Delhi - Trib.)
Vinod Soni v. Income-tax Officer, TDS-Ward, Faridabad

Issue Involved

Whether provisions of section 194-IA(2) are applicable only with reference to amount related to each transfer and not with reference to amount as per sale deed.

Facts of the Case

The assessee along with three other members of family purchased an immovable property for Rs. 1.50 crores. Share of every co-owner came to Rs. 37,50,000/- which was under the threshold limit as provided by section 194-IA and, thus, assessee didn't deduct tax at source.

Assessing Officer (AO) opined that consideration for the transfer of an immovable property was more than Rs. 50 lakhs and the same was executed through a single sale deed. Hence, provisions of section 194-IA were very much applicable in this case. Commissioner (Appeals) confirmed the order passed by AO.

Decision of The Tribunal

Section 194-IA provides deduction of tax at source @1% on transfer of immovable property (other than agricultural land) if consideration for transfer of such property is Rs. 50 lakhs or more

The section 194-IA was introduced by the Finance Act, 2013 effective from 1-6-2013. It was noted from the Memorandum explaining that the provision was brought in order to reduce the compliance burden on the small taxpayers

In the instant case, there were 4 separate transferees, the sale consideration with respect to each transferee was less than Rs. 50,00,000 each and each transferee was a separate income-tax entity. Therefore, the law had to be applied with reference to each transferee as an individual transferee/person.

The law couldn't be interpreted and applied differently for the same transaction if it was carried out in different ways. It couldn't be said that section 194-IA was not applicable in case where there were four separate purchase deeds for four persons separately and section 194-IA would be applicable in case of a single purchase deed for four persons.

Therefore, impugned order passed by AO was liable to be set aside.

State Bank of India v. Assistant Commissioner of Income-tax (TDS), Jaipur, [2019] 101 taxmann.com 61 (Jaipur-Tribunal)

Issue Involved

Where Assessee bank (herein after referred to as "the Assessee") was under bona fide belief that there was no bar on travel to a foreign destination during the course of travel to a place in India while claiming leave fare concession, constitute reasonable cause for non-imposition of penalty under section 271C read with section 273B of the Act?

Facts of the Case

The Assistant Commissioner (TDS) (herein after referred to as "the AO") passed an order under sections 201 and 201(1A) of the Act, dated 29-3-2014 raising demand of Rs. 7.70 lakhs under section 201(1) of the Act on account of non-deduction of tax under section 192 of the Act on reimbursement of Leave Fare Concession (LFC) claim, to the extent of foreign travel of 12 employees of the Assessee, during the financial year 2011-12.

The Assessing Officer referred the matter to the Joint Commissioner (TDS), Jaipur for initiation of penalty proceedings under section 271C of the Act.

Thereafter, a show cause was issued to the Assessee and the submissions of the Assessee were considered, however, the same were not found acceptable and the Joint Commissioner (TDS) held that the Assessee has not deducted the tax intentionally, fully knowing that the LFC is applicable for travel in India only and no foreign travel is allowable, still the Assessee allowed the claims of the employees and made reimbursement to them without making TDS under section 192 of the Act. Accordingly, penalty under section 271C of the Act was imposed on the Assessee.

The Assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)], who confirmed the levy of penalty.

The Assessee then filed an appeal to the Tribunal.

Analysis by Hon'ble Tribunal

On reference made to **Hon'ble Supreme Court decisions in case of CIT v. I.T.I. Ltd. [2009] 183 Taxman 219(SC) and CIT v. Larsen & Toubro Ltd. [2009] 181 Taxman 71/313 ITR 1 (SC)** the Hon'ble Supreme Court has held that an Assessee employer is under no statutory obligation under the Income-tax Act, 1961, and/or the Rules to collect evidence to show that its employees had actually utilized the amount paid towards leave travel concession.

Even though the same is not required as per decision referred supra, in the instant case, the Assessee has been diligent, and has collected and brought on record evidence to show that its employees had actually utilized the amount paid towards leave travel concession. Further, the Assessee has undertaken reasonable steps in terms of verifying the Assessee's claim towards their LFC claims and is aware of employees travelling to foreign countries as part of their travel itinerary but at the same time, there is an error of judgment on part of the Assessee in understanding and applying the provisions of section 10(5) of the Act.

Therefore, Tribunal is unable to accept the Revenue's contention that the Assessee has not deducted the tax intentionally, fully knowing that the LFC is applicable for travel in India only and no foreign travel is allowable as it is a case of error of judgment and no malafide can

be assumed on part of the Assessee. As fairly submitted by the Assessee, while calculating the estimated tax liability of its employees, it always consider LFC claim as exempt under section 10(5) and the same position, being followed and accepted consistently in the past years, was followed in the current financial year as well. However, for the first time, after the survey by the tax department, this issue arose for consideration and after the judgment of the Tribunal (for Quantum), the matter got clarified and the Assessee has duly complied and deposited the outstanding demand along with the interest and has taken corrective steps in subsequent years as well.

Hon'ble Tribunal Held that

In light of above discussions and in the entirety of the facts and circumstances of the case, Hon'ble ITAT is of the view that there was reasonable cause in terms of section 273B of the Act for not deducting tax by the Assessee. In the result, the penalty so levied under section 271C is hereby directed to be deleted.

Deputy Commissioner of Income-tax, Cir-2(1)(2), Ahmedabad v. Mc Fills Enterprise (P.) Ltd. [2019] 101 taxmann.com 212 (Ahmedabad-Tribunal)

1. **Issue Involved**

   Whether commission paid to non-resident foreign agents who were carrying out activities outside India and did not have any permanent establishment in India is to be treated as Fees for Technical Services (FTS), and therefore chargeable to tax in India?

Facts of the Case

The Assessee, an Indian Company, was engaged in manufacture and sale of reactive dyes. During the year under consideration, the Assessee had received orders from parties located abroad through Foreign Agents. Upon receiving such order, the materials were shipped and commission became payable to the agents.

The Assessee did not withhold tax from the commission paid, amounting to INR 43.58 lakhs, to the non-resident foreign agents, on the ground that no operations of the non-resident agent had been carried out in India, and accordingly, no income accrued or arose or was deemed to accrue or arise in India under section 9(1)(i) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Further that there is no permanent establish in India of such foreign agents. Since no portion of the payment was income taxable in India, there could not be any requirement to withhold taxes.

However, the Assessing Officer disallowed the entire amount of INR 43.58 lakhs under section 40(a)(ia) of the Act on the pretext that the Assessee was in obligation to deduct tax at source as envisage under section 195 of the Act from the payment made to non-resident agents towards services rendered by them.

On Appeal preferred before the Commissioner (Appeals), such addition made by the Assessing Officer was deleted. The Revenue appealed before the Tribunal.

Analysis by Hon'ble Tribunal

The Assessee has paid commission to the non-resident foreign agents, received by them outside India, who are carrying out activities outside India, the commission income, therefore, does not accrue or arise in India. Further, that there is no permanent establishment in India of such foreign agents and it is clear from the reading of the explanation 1 to Section 9(1)(i) of the Act that the income of the business to accrue or arise in such scenario is only such part that can reasonably be attributed to operations carried

out in India. Since, the non-resident agents do not have any permanent establishment in India no part of the commission income of those agents can be said to have been accrued or arise in India.

Further, the commission payments to non-resident agents also cannot be as regarded fees for technical services as defined in explanation 2 of Section 9(vii) as the commission payment is not for rendering any managerial, technical or consultancy services.

It is well settled principle of law flowing from the judgment passed by the Hon'ble Supreme Court in the case of CIT v. Toshoku Ltd. [1980] 125 ITR 525 that the non-resident since rendering services outside India, the commission earned by such non-resident for acting as an agent for Indian exporter would not accrue in India. In the case in hand the foreign agents are not residents of India and thus squarely covered by the said judgment passed by the Hon'ble Apex Court. Further, that similar commission paid in earlier years by the assessee to the foreign agents in the similar set of facts and circumstances no disallowance made by the authorities below and, therefore, disallowance made by the Assessing Officer is not justified.

Hon'ble Tribunal Held that

In light of above discussions and in the entirety of facts and circumstances of the case, this ground of appeal made by revenue is dismissed.

2. **Issue Involved**

Where appellant had not claimed any exempt income, whether disallowance of expenditure was required to be made under section 14A of the Act?

Facts of the Case

During the year under consideration, the Assessee had invested in the capital of a partnership firm in the following manner:-

1. INR 8 crores, directly, out of the sale consideration on sale of immovable property;

2. Additional deposit from the Directors;

3. Cash accruals from the operations of the company amounting to INR 12.54 crores.

In the return of income filed by the Assessee, no income was claimed as exempt income, which does not form part of total income and no disallowance was made, considering the view that, in the absence of any tax-free income or any income earned by the Assessee which did not form part of the total income, the provision of section 14A would not be applicable.

However, disallowance of an amount to the tune of INR 26.65 lakhs was made by the Assessing Officer under section 14A of the Act.

Analysis by Hon'ble Tribunal

It appears from the record that the investment in the capital of partnership firm was made out of the own funds and no part of interest bearing funds have been utilized for this purpose and therefore the amount of interest is eligible under Rule 8D(ii) is NIL.

It seems that no direct or indirect expenditure has been incurred by the firm in respect of the investment in capital with partnership firm. In the absence of any expenditure incurred and debited to profit and loss account of the Assessee in relation to investment in capital in partnership firm application of Rule 8D(iii) is not permissible and therefore no disallowance of expenditure is required to be made.

The judgment relied upon by the Learned AR in this respect passed by the Jurisdictional **High Court in the case of Corrtech Energy (P.) Ltd.** which has held that in a case where there is no income which is not chargeable to tax, provision of Section 14A of the Act will not be applied, the same is rightly applied to the instant case. Since the appellant has not claimed any exempt income the case is squarely covered by the said decision, without any ambiguity.

Hon'ble Tribunal Held that

Respectfully applying the judgment passed by the Jurisdictional High Court as discussed above. The impugned order is without any infirmity and the same is thus confirmed and this ground of appeal made by revenue is also dismissed.

TRANSFER PRICING

Circular No. 9/2018 (F No 370142/17/2018-TPL)

Dated December 26, 2018

Extending the due date for furnishing of report (CbCR) under section 286 (4) of the Income-tax Act, 1961 by constituent entities in certain cases

As per Section 286(4), *a constituent entity of an international group, resident in India, other than the entity referred to in subsection (2), shall furnish the report referred to in the said sub-section, in respect of the international group for a reporting accounting year within the period as may be prescribed, if the parent entity is resident of a country or territory,—*

(a) where the parent entity is not obligated to file the report of the nature referred to in sub-section (2);

(aa) with which India does not have an agreement providing for exchange of the report of the nature referred to in sub-section (2); or

(b) there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity;

In respect to the aforesaid cases, the Central Board of Direct Taxes (CBDT) has now prescribed the due date for filing of CbCR by a constituent entity to which section 286(4) of the Act applies.

Rule 10DB(4) of the Income-tax Rules, 1962 (the Rules) has been amended to prescribe the due date in such cases as below:

- The period for furnishing of the report under sub-section (4) of section 286 by the constituent entity referred to in that sub-section shall be **twelve months from the end of the reporting accounting year**.

- In case the parent entity of the constituent entity is resident of a country or territory, where, there has been a **systemic failure** of the country or territory and the said failure has been intimated to such constituent entity, the period for submission of the report shall be **six months from the end of the month in which said systemic failure has been intimated**.

Further, based on representations received by CBDT from stakeholders, the due date for filing CbCR by the constituent entities referred to under section 286(4)(a) and section 286(4)(aa) of the Income-tax Act, 1961 has been extended to 31 March, 2019 for reporting accounting years ending upto 28 February, 2018.

Constituent entities referred to under section 286(4)(a) and section 286(4)(aa) of the Income-tax Act, 1961

a) Where the parent entity is not obliged to file the report of the nature referred in sub-section (2);

b) with which India does not have an agreement providing for exchange of the report of the nature referred to in sub-section (2).

AUDIT

MSME Disclosure

The Central Government vide notification number S.O. 5622(E), dated the 2nd November, 2018 has directed that all companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) (hereafter referred to as "Specified Companies"), shall submit a half yearly return to the Ministry of Corporate Affairs stating the following:
(a) the amount of payment due; and
(b) the reasons of the delay;

This Order may be called the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019. It shall come into force from the date of its publication in the Official Gazette.

Every specified company shall file in MSME Form I details of all outstanding dues to Micro or small enterprises suppliers existing on the date of notification of this order within thirty days from the date of publication of this notification.

Every specified company shall file a return as per MSME Form I annexed to this Order, by 31st October for the period from April to September and by 30th April for the period from October to March.

Companies (Acceptance of Deposits) Amendment Rules, 2019

Every company other than Government company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1of rule 2 from the 1st April, 2014 to the date of publication of this notification in the Official Gazette, as specified in Form DPT-3 within ninety days from the date of said publication of this notification along with fee as provided in the **Companies (Registration Offices and Fees) Rules, 2014.**

Annual filing by companies incorporated under the Companies Act, 2013 for financial year 2017-18:

As per Section 137(1) of the Companies Act, 2013, every company is required to file the financial statements including consolidated financial statement if any, duly adopted at the annual general meeting of the company within thirty days with the Registrar. Under section 137(3) of the Act, if a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the Managing Director and the Chief Financial Officer of the company, if any, and, in the absence of the Managing Director and the Chief Financial Officer, any other Director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such Director, all the Directors of the company, shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

Further, u/s 92 (4) of the Act, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or

where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.

Under section 92(5) of the Act, if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.

The defaulting Company, who have not filed their returns till 31st December, 2018 which was the extended date for filing, should file the returns immediately lest prosecution proceedings along with the penalty may be initiated against the Company and its officers in default.

INDIRECT TAX

Central Tax Notifications- GST

Notification No. 01/2019 – Central Tax dated 15th January 2019

The Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification no. 48/2017-Central Tax dated the 18th October, 2017

In the said notification,

(i) In the Table, the column number (2) against S. No.1, after the entry, the following proviso shall be inserted,

"Provided that goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorized by him within 6 months of such supply,

Provided further that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods."

(ii) In the Explanation against serial number 1 the words "on pre-import basis" shall be omitted.

Notification No. 02/2019 – Central Tax dated 29th January 2019

The Central Government hereby appoints the 1st day of February, 2019, as the date on which the provisions of the Central Goods and Services Tax (Amendment) Act, 2018 (31 of 2018), except clause (b) of section 8, section 17, section 18, clause (a) of section 20, sub-clause (i) of clause (b) and sub-clause (i) of clause (c) of section 28, shall come into force.

Notification No. 03/2019 – Central Tax dated 29th January 2019

The Central Board of Indirect taxes & Customs("CBIC") *vide* its Notification No. 03/2019 – Central Tax dated January 29, 2019 makes amendments in CGST Rules 2017, which have been summarised below,

S.No	Rule	Amendment	Summary
1	Rule 11	**Separate registration for multiple places of business within a State or a Union territory.** Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business shall be granted separate registration	Earlier separate registration within a state is allowed only for business verticals but now a person having same business at different location within a state can apply for separate registration with condition mention in rule.
2	Rule 21A	Where a registered person has applied for cancellation of registration, the	Same rule has been newly inserted for ease of persons who have applied for cancellation of registration.

		registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration. A registered person, whose registration has been suspended, shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.	Now a registered person is not required to furnish any return (under section 39) from the date he has applied for cancellation.
3	Rule 41A	**Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory.-** A registered person who has obtained separate registration for multiple places of business in	This rule has been newly inserted in reference to amendment in Rule 11. Where a person who has applied for separate registration (having multiple place of business within same state) can transfer unutilised tax credit to newly registered place of business within a period of 30 days
		accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration	with restriction to conditions as mention in rule
4	**Rule 53**	**Revised tax invoice and**	Now sub-rule (1) pertains to Revise

		credit or debit notes In sub-rule (1), after the words and figures "section 31", the words and figures "and credit or debit notes referred to in section 34" shall be omitted;	invoice with omission of clause (c) and clause (i)
5	Rule 53 (1A)	After clause 1 of Rule 53 new clause 1A is inserted as "(1A) A credit or debit note referred to in section 34 shall contain the following particulars, namely:- (a) name, address and Goods and Services Tax Identification Number of the supplier; (b) nature of the document; (c) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year; (d) date of issue of the document; (e) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient; (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered; (g) serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply; (h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to	New sub-rule has been inserted for Debit and Credit note

		the recipient; and (i) signature or digital signature of the supplier or his authorised representative."	
6	Rule 85	**Electronic Liability Register** In the said rules, in rule 85, in sub-rule (3), after the word and figures "section 49", the words, figures and letters "section 49A and section 49B," shall be inserted.	Now same shall be read with subject to provision of section 49 , section 49A and Section 49B **Section 49A and Section 49B are newly inserted section vide amendment of CGST Act 2018** Section 49A provides the manner of utilisation of credit, "*the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.*" And Section 49B provides an enabling power for the Government to prescribe any specific order of utilization of ITC for payment of taxes.
7	Rule 86	**Electronic Credit Registered** In the said rules, in rule 86, in sub-rule (2), after the word and figures "section 49", the words, figures and letters "or section 49A or section 49B," shall be inserted.	Now same shall be read with subject to provision of section 49 , section 49A and Section 49B **Section 49A and Section 49B are newly inserted section vide amendment of CGST Act 2018** Section 49A provides the manner of utilisation of credit, "*the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.*" And Section 49B provides an enabling power for the Government to

			prescribe any specific order of utilization of ITC for payment of taxes.
8	Rule 89	**Application of Refund of tax, interest, penalty, fees or any other amount** In said rule, in sub-rule (2), for clause (f), the following clause shall be substituted, namely:- A declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;	Clause (f) of sub-rule 2 has been replaced with new clause which requires a declaration to be given that No tax has been collected from SEZ or SEZ developer in case where refund is on account of supply of good or service or both made to SEZ or SEZ developer.

Notification No. 05/2019 – Central Tax dated 29th January 2019

The Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification no. 8/2017 - Central Tax, dated the 27th June, 2017.

In the said notification, for the portion beginning with the words "an amount calculated at the rate of" and ending with the words "half per cent. of the turnover of taxable supplies of goods in State in case of other suppliers", the words and figures, "an amount of tax calculated at the rate specified in rule 7 of the Central Goods and Services Tax Rules, 2017:" shall be substituted.

The same is effective from 1st February 2019.

Notification No. 06/2019 – Central Tax dated 29th January 2019

The Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification no. 65/2017-Central Tax, dated the 15th November, 2017.

In the said notification, in the proviso, for the words, brackets, letters and figures "sub-clause (g) of clause (4) of article 279A of the Constitution, other than the State of Jammu and Kashmir", words, brackets and figures "the first proviso to sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to the said section" shall be substituted.

The same is effective from 1st February 2019.

Central Tax (Rate) Notifications- GST

Notification No. 01/2019 – Central Tax dated 29th January 2019

The Central Government *vide* Notification No. 01/2019 has rescinded Notification No. 08/2017 Central tax (Rate) dated 28th June 2017 with effect from 1 February 2019.

Notification 08/2017 Central tax (rate) exempts intra-State supplies of goods or services received by a registered person from

any un-registered supplier from CGST leviable under Section9(4) of CGST Act 2017, provided that the said exemption shall not be applicable where the aggregate value of such supplies exceeds five thousand rupees in a day.

With effect from 1 February 2019 - Section 9(4) of CGST Act 2017 has been amended and provides that "*The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both*".

Please note that the Government is yet to notify class of registered person and categories of goods or services on which such reverse charge would be applicable under amended Section 9(4) of CGST law. Hence, reverse charge on inward supplies from un-registered dealer is not applicable till specified class of registered person and specified good or services are notified by the government.

Circulars/Orders- GST

Circular No. 87/06/2019-GST, dated 2nd January 2019

Clarification regarding section 140(1) of the CGST Act, 2017

Circular No-87/06/2019-GST has clarified that expression "eligible duties" U/S 140(1)- Transitional Arrangements for Input Tax Credit, would include CENVAT credit of Service Tax paid u/s 66B of the Finance Act,1994.

Circular No. 85/04/2019- GST, dated 1st January 2019

Clarification on GST rate applicable on supply of food and beverage services by educational institution- reg.

It has been clarified that supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Notification No. 12/2017-Central Tax (Rate).

Circular No. 86/05/2019- GST, dated 1st January 2019

GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company- reg.

The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

Circular No. 84/03/2019-GST, dated 1st January 2019

Department had clarified that that the service of "printing of pictures" is covered under service code 998386 - "Photographic and video graphic processing services" and not under 998912 - "Printing and reproduction services of recorded media, on a fee or contract basis" and hence a GST rate of 18% in place of 12% shall be applicable to such services

Circular No. 83/02/2019- GST, dated 1st January 2019

Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC)

It is clarified that the services provided by

IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act, 1966. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

Order No. 01/2019-GST

Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 in certain cases

The period for submitting the declaration in FORM GST TRAN-1 has been extended till 31st March, 2019, for the class of the registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council.

Custom Law (tariff)

Notification No. 01/2019 - Custom dated 10th January 2019

The Central Government hereby makes the following further amendments in the Notifications mentioned below,

S. No.	Notification number and date	Amendments
(1)	(2)	(3)
1	18/2015-Customs, dated the 1st April, 2015	In the said notification:- (a)after condition (vi), the following conditions shall be inserted, namely:- "(vi)(a) that in respect of imports made after the discharge of export obligation in full and input tax credit on inputs used for manufacture and supply of goods exported has been availed, then the importer shall, at the time of clearance of the imported materials, furnish a bond to the DC/AC of Customs, to use the imported materials in for the manufacture and supply of taxable goods (other than nil rated or fully exempt supplies) and to submit a certificate from a CA within six months from the date of clearance of the said materials. **Provided** that if the importer pays IGST on the imported materials then

		such imported materials may be cleared without furnishing a bond specified in this condition; (vi)(b) that in respect of imports made after the discharge of export obligation in full, and input tax credit is not availed on inputs used in the manufacture and supply of goods exported and the importer furnishes proof to this effect to DC/AC of Customs, then the imported materials may be cleared without furnishing a bond specified in condition (vi)(a);" (b) in condition (viii), for the second proviso, the following proviso shall be substituted, namely:- "Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from IGST and compensation cess leviable has been availed, the export obligation shall be fulfilled by physical exports or by making domestic supplies mentioned at serial numbers 1, 2 and 3 of the Table contained in notification No.48/2017-Central Tax, dated the 18th October, 2017

		(c) condition (xii) shall be omitted.
2	20/2015-Customs, dated the 1st April, 2015	In the said notification, (a) after condition (v), the following conditions shall be inserted, namely:- "(v)(a) that in respect of imports made after the discharge of export obligation in full and input tax credit is availed on inputs used for manufacture and supply of goods exported has been availed, then the importer shall, at the time of clearance of the imported materials, furnish a bond to the DC/AC of Customs, to use the imported materials for the manufacture and supply of taxable goods (other than nil rated or fully exempt supplies) and to submit a certificate from a chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used; Provided that if the importer pays IGST and compensation cess leviable on the imported materials then such imported materials may be cleared without furnishing a bond specified in this

		condition; (v)(b) that in respect of imports made after the discharge of export obligation in full, and input tax credit has not been availed on inputs used in the manufacture and supply of goods exported and the importer furnishes proof to DC/AC of Customs, as the case may be, then imported materials may be cleared without furnishing a bond specified in condition (v)(a);" (b) in condition (viii), for the second proviso, the following proviso shall be substituted, namely:- "Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from IGST and compensation cess leviable thereon under sub-section (7) and sub-section (9) respectively of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports or by making domestic supplies mentioned at serial numbers 1, 2 and 3 of the Table contained in notification No.48/2017-Central Tax, dated the 18th October, 2017

		(c) condition (xiii) shall be omitted

Notification No. 02/2019 - Custom dated 29th January 2019

The Central Government hereby makes the following further amendments in the notification no. 57/2017- Customs, dated the 30th June, 2017

In the said notification, in the table

I. Against serial number 7, in column (3), the item (ii) shall be omitted

II. after serial number 7C and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:

(1)	(2)	(3)	(4)	(5)
7(D)	Any chapter	Inputs or raw material other than:- (i) Lithium ion cell (falling under tariff item 8507 60 00); and (ii) Printed Circuit Board Assembly (PCBA) (falling under tariff item 8507 90 90) for use in manufacture of Battery pack of Cellular mobile phones.	Nil	1
7(E)	Any chapter	Inputs, parts or sub-parts for use in the manufacturing of Printed Circuit Board Assembly (PCBA) (falling under tariff item 8507 90 90) of following goods, namely (i) Battery pack of cellular mobile phones; (ii) Power Bank of lithium ion.	Nil	1

III. Against serial number 16, for the entry in column (3), the following entry shall be substituted, namely: -

All goods other than following goods, namely: -
(i) battery pack of cellular mobile phones;

(ii) Power Bank";

IV. after serial number 17 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:

(1)	(2)	(3)	(4)	(5)
17A	8507 60 00	Lithium ion cell for use in the manufacture of battery pack of cellular mobile phone	5%	1
17B	8507 60 00	Lithium ion cell for use in the manufacture of power bank of Lithiumion	5%	1

V. for serial number 20 and the entries relating thereto, the following serial number and entry shall be substituted, namely: -

(1)	(2)	(3)	(4)	(5)
20	8517 62 90 or 8517 69 90	All goods other than the following goods, namely: - (a) Wrist wearable devices (commonly known as smart watches) (b) Optical transport equipment (c) Combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS) (d) Optical Transport Network (OTN) products (e) IP Radios (f) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers (g) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching Transport Profile (MPLS-TP) products (h) Multiple Input/Multiple Output (MIMO) and Long Term Evolution (LTE) products	10%	1

VI. serial number 21 and entries relating thereto shall be omitted.

Custom Law (Circulars/Instruction)

Circular No. 01/2019 dated 2nd January 2019

IGST Export Refunds-resolution of errors

1. Non-filing/Late filing of Online Local and Gateway EGM: -

The processing of IGST refund gets hampered either because the local EGM has not been filed online or has been filed late. Circular No. 42/2017-Cus., dated 7th November 2017, where it was explained that due to manual filing of EGM in respect of Shipping bills originating from ICDs, system is unable to match the gateway EGM and the local EGM. Therefore, it was instructed that all the custodians / carriers / shipping lines operating at ICDs/ Gateway ports should file EGM online.

Section 41 of Customs law authorizes the customs officer to take action against such non-filers Board expects its jurisdictional officers to take all necessary steps to ensure that all EGMs of cargo related to past cases are filed before 31st January 2019.

2. Mismatch in Local EGM and Gateway EGM:

Para 6 of Circular No. 06/2018-Customs, delineated the roles and responsibilities of the Customs officers at the inland ICDs/ CFSs and at the Gateway port or CFSs attached with the gateway ports respectively in so far as the task of integrating the local EGM and the gateway EGM was concerned.

The procedure related to consolidation of cargo at Gateway ports has already been prescribed in Circular No. 55/2000-Cus dated

30th June 2000 wherein it is provided *inter-alia* that the custodian of the gateway port or CFS near gateway port is required to maintain a tally sheet container-wise, giving details of the export consignments, the previous Container No., Shipping Bill No., AR-4 No. and the details of new container in which goods have been re-stuffed. It was also mandated that the concerned shipping line would issue the Bill of Lading, a copy of which would be handed over to the custodian.

Instead of the said transference copy, correlation with final bill of lading or written confirmation from the custodian of the gateway CFS was permitted for purposes of integration of the local and gateway EGM.

Stuffing Report by Preventive Officers at Gateway Ports:-

In some gateway ports, the Preventive officers are entering stuffing report in ICES application of Customs EDI System pertaining to the shipping bills filed only in gateway port, but not for the shipping bills which have been filed in ICDs.

In order to avoid the problem of mismatch in information in local and gateway EGMs, the preventive officers must play a proactive role.

Circular No. 02/2019-Customs dated 8th January 2019

Customs Post Clearance Audit

PCA was first introduced in 2005 (when the Risk Management System was operationalized). It replaced the conventional system of concurrent audit, which formed a part of the assessment process, by separating the audit function from assessment function, thereby facilitating expeditious clearance of goods.

Customs Audit Regulations, 2018' vide notification No.45/2018-Cus (NT) dated 24th May 2018 in supersession of the On-site Post Clearance Audit regulations and to operationalize customs audit. Board *vide* notification No.85/2017-Customs (N.T.), dated 7th September, 2017 has notified Audit Commission rates in Chennai, Delhi and Mumbai Zone-I with all India jurisdiction. These commission rates have become functional with effect from the 1st April, 2018 under the administrative control of the Chief Commissioner of Customs Chennai, Delhi and Mumbai Zone-I respectively.

The Chief Commissioners shall put in place a suitable monitoring arrangement to review the progress and performance of audit. Apart from overall supervision, Chief Commissioner shall examine on a selective basis, 5% of the Audit reports, selected randomly based on the quarterly reports submitted by Audit commission rates to ensure that audit has been conducted as per prescribed procedures.

Circular No. 3/2019-Customs dated 31st January 2019

Procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouses under section 65 of the Customs Act

Circular 38/2018-Customs dated 18th October 2018 issued on the above subject, stating that they were hitherto permitted to undertake certain operations to fulfil a statutory obligation such as Labelling/affixing RSP etc. under Section 65 of the Customs Act, 1962 in a public bonded warehouse, licensed under section 57 of the Act, the Circular has clarified that those operation under section 65in private bonded warehouses licensed under Section 58 of the Act thereby disallowing such operations in a Public Bonded warehouse. They have requested for relief in this regard to ease the difficulties being faced by the trade.

Board has decided to allow labelling/ fixing RSP etc. to fulfil statutory compliance requirements in all Customs Bonded Warehouse without the requirement of taking permission under Section 65 of the Customs Act.


Thank
you