

Transfer Pricing

*LD/69/06, [ITAT Kolkata: ITA 2298/Kol/2016],
PricewaterhouseCoopers Private Limited Vs.
Dy. Commissioner of Income Tax,
29/05/2020*

AO passed an order under section 144C titled “Draft Assessment Order” and issued a notice of demand under section 156 and a notice under section 274 r.w.s. 271. Assessee contended that this amounted to passing final order under section 143(3) without passing draft order. ITAT rejected assessee’s contention and stated that attachment of notice of demand under section. 156 cannot be a deciding factor to conclude that the order in question was final assessment order. ITAT also noted that none of the columns in the penalty notice were struck off, and so the same was illegal and bad in law and non-est. Observes that both demand and penalty notices are illegal notices and void-ab-initio. If assessee’s contention is accepted, then the appeal is not maintainable before ITAT since no objection is maintainable before the DRP on a final assessment order, and the appeal lies with CIT(A).



GST

*LD/69/07, [2020-TIOL—690-HC-AHM-GST],
M/s Kanal Enterprise Vs.
State of Gujarat,
11/03/2020*

In the absence of any power, under section 83 of the CGST Act, the order of provisional attachment under Section 83 of the Act cannot be passed during the pendency of the proceedings under section 71(1) of the CGST Act. Hon’ble High Court held that the plain reading of Section 83 of the Act would indicate that the powers can be invoked during the pendency of proceedings under Sections 62, 63, 64, 67, 73, and 74 of the Act. There is no power vested in the authorities to invoke the provisions of Section 83 during the pendency of the proceedings instituted under section 71(1) of the Act. The High Court accordingly quashed the order of attachment under section 83 of the Act.

Customs

*LD/69/08, Punjab & Haryana High Court:
Misc. CWP No. 25129 of 2019,
Shri Vishnu Processors Vs. Union of India & Ors,
20/03/2020*

Assessee filed Writ challenging jurisdiction of DRI officials to conduct search while rejecting assessee’s contention that DRI officers could not conduct search as assessee is not an exporter. Section 105 regarding on power to search premises does not restrict the search only with regard to importer or exporter; the other premises can also be searched. Search was in connection with investigation going on for availing ineligible drawback and IGST by way of accumulating ITC by procuring fake purchase bills. High Court held that challenge to the jurisdiction of search, by the assessee, is not well founded.

Excise

*LD/69/09, [Karnataka High Court:
CEA No. 31/2017],
Suretex Prophylactics India Private Limited Vs.
The Commissioner of Central Excise Customs & Service
Tax, 05/05/2020*

Refund claim of unutilised/accumulated credit under Rule 5 of CENVAT Credit Rules held to be subject to limitation prescribed under Section 11B of the Central Excise Act. Adjudicating Authority rejected claim filed beyond one year from export of final products on the ground of time-bar. Rule 5 clearly provides for refund subject to such safeguards, conditions and limitations as may be specified, by the Central Government. Provisions of Central Excise Act would cover the refund claims made under CCR relating to ‘service providers’ under the Finance Act, 1994 in as much as Section 11B also finds a place in Section 83 of Finance Act, 1994.

*LD/69/10, [Gujarat High Court: Misc. Civil Application
No. 1of 2019 In R/Tax Appeal No. 535 Of 2019],
The Commissioner, CGST and Central Excise Vs.
Ratnamani Metals and Tubes Ltd, 25/03/2020*

Revenue filed a review application against dismissal of appeal on the ground of maintainability of appeal as the question involved had a direct bearing on the rate of duty and value of goods for

the purposes of assessment. Issue was whether the goods manufactured by the job worker would be entitled to exemption which was a question directly related to the rate of duty, thus making the order of the CESTAT appealable before the SC and not before this Court, as per Gujarat High Court. High Court held that its original order did not suffer from any error apparent on the face of the record, warranting interference, and so dismissed the review application filed by Revenue.

***LD/69/11, [Madhya Pradesh High Court:
Misc. CEA No. 73/2018],
Commissioner, CGST & Central Excise Vs.
Shri Manish Singhal,
18/02/2020***

CESTAT ruled that there was 'no value addition' in repacking the medicinal goods received from manufacturers and then delivering to the consumers/shops/distributors. Goods received from manufacturer were already in a pre-packed form including MRP as prescribed under the statutory provisions and were already subjected to Excise Duty, and moreover the goods are sold at same MRP to the consumer. There is no 'process of manufacture' done by taxpayer. Revenues appeal against such order of CESTAT, not admitted by High Court.

Service Tax

***LD/69/12, [2020-TIOL-859-CESTAT-DEL],
M/s Modi Mundipharma Beauty Products Pvt. Ltd. Vs.
Commissioner of Service Tax,
08/06/2020***

For the period prior to 01/07/2012, a license to use 'know-how' cannot be said to be covered under the provisions of intellectual property services under section 65(105)(zr) of the Act. When the SCN misinterprets the agreement and raises demand under the intellectual property services on the ground that the assessee has made payments for the right to use trademarks and does not give any reference in the SCN regarding the use of patents etc, it's not open for the Adjudicating Authority to confirm the demand on the ground that the know-how is a patent covered under the provisions of The

Patents Act. A show-cause notice is a foundation based on which any demand can be confirmed and it is trite to state that no demand can be confirmed based on an allegation not made in the show cause notice.

***LD/69/13, Shree Dipesh Anil Kumar Naik
(AAR – Gujarat),
19/03/2020***

In the plot development activity, common amenities, roads, a water tank, and other infrastructure is an intrinsic part of the plot allotted to the buyer, and hence such activity is not equivalent to the sale of land but constitutes rendering of the construction services in clause 5(b) of the Schedule-II of the CGST Act, 2017 and is taxable under 'construction services'.

***LD/69/14, [2020 – TIOL – 887-HC-AHM-ST],
Commissioner of Central Excise and
Service Tax, Rajkot Vs.
Reliance Industries Ltd.,
12/12/2019***

The refund claim in respect of CENVAT credit of common input services distributed to SEZ unit through ISD mechanism (falling under Table-II of Form A-4) of the Notification No.12/2013-ST dtd.01-7-2013, would be required to be made within one year from the end of the month in which actual payment of service tax was made by the input service distributor to the service provider and not one year from the end of the month in which the ISD invoices were issued if it is held that Clause (e) of paragraph 3(III) applies to such services. The order passed by the adjudicating authority extending the time limit mentioned in the said clause (e) has to reflect the application of mind to the question of delay and the order should also reflect the reasons as to why the adjudicating authority has thought it fit to extend the time limit for filing the refund claim. If the adjudicating authority has not exercised the discretion to condone the delay, the Tribunal can exercise such discretion.

Disciplinary Case



Accepting the tax audit without communicating with previous auditor and without verifying whether professional charges to previous auditor are fully paid or not -- Subsequent auditor is guilty of Professional misconduct falling within the meaning of Clause (8) of Part I of First Schedule and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

Held:

The Committee noted the underlying objective of Clause (8) is that the member may have an opportunity to know the reasons for the charge in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing auditor. Clause (8) is not intended to prevent or obstruct the change.

The incoming auditor need to communicate with the previous auditor in his own interest and to find out whether there are any professional or other reasons why he should not accept the appointment.

Further, the amount shown in the Balance Sheet is undisputed audit fee payable to the Complainant and the denial of the auditee through an affidavit about the same cannot be considered as "not payable" to the Complainant as contended by the Respondent. The Respondent's duty in this regard was to communicate with the previous auditor in respect of accepting the audit and also he should have referred the audited balance sheet of the auditee signed by both the auditee and the Complainant to verify whether any undisputed audit fee was payable to the previous auditor or not before accepting the assignment as a tax auditor. However, the Respondent has failed to do the same and his contentions are not acceptable.

In light of the above, the Committee held that the Respondent is guilty of professional misconduct falling within the meaning of Clause (8) of Part I of First Schedule and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949 (as amended).

CA. Jatinder Kumar Jain. Vs. CA. Sandeep Kumar.
PR/65/11/DD62/11/DC/328/2014

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The Institute of Chartered Accountants of India

Circulars/Notifications

Given below is summary of important Circulars and Notifications issued by the CBDT, CBIC-GST, FEMA and MCA since the publication of the last issue of the journal, for information of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. Feedback and suggestions on this column can be submitted at eboard@icai.in



I. NOTIFICATIONS

1. Amendment of the Income-tax Rules, 1962 to provide for applicability of Safe Harbour Rules for A.Y.2020-21 – Notification No. 25/2020, dated 20-05-2020

Vide this Notification, sub-rule (3B) has now been inserted to provide that the provisions of sub-rules (1) and (2A) of Rule 10TD shall apply for the AY 2020-21.

2. Remuneration to be paid to an eligible Fund Manager under section 9A of the Income-tax Act, 1961 - Notification No. 29/2020, dated 27-05-2020

Vide this Notification, the manner for calculation of the remuneration to be paid to the eligible fund manager is prescribed by new sub-rule (12) of Rule 10V.

3. Insertion of new Rule 114-I pertaining to Annual Information Statement - Notification No. 30/2020, dated 28-05-2020

Vide this notification, Form No. 26AS has been substituted.

4. Income tax return Forms for AY 2020-21 notified – Notification No. 31/2020, dated 29-05-2020

The CBDT has notified Income-tax Return Forms (ITR Forms) for the Assessment Year 2020-21 vide this notification.

5. Cost Inflation Index for Financial Year 2020-21 notified - Notification No. 32/2020, dated 12-06-2020

The CBDT, has vide this notification, notified Cost inflation index for Financial Year 2020-21 as 301.

II. CIRCULARS

1. Clarifications in respect of prescribed electronic modes under section 269SU of the Income-tax Act, 1961 - Circular No. 12/2020, dated 20-05-2020

Vide this circular, the CBDT has clarified that the provisions of section 269SU shall not be applicable to a specified person having only B2B transactions (i.e. no transaction with retail customer/consumer) if at least 95% of aggregate of all amounts received during the previous year, including amount received for sales, turnover or gross receipts, are by other than cash.

III. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM/ORDER

1. FM launches facility of Instant PAN through Aadhaar based e-KYC – Press Release, dated 28-05-2020

In line with the announcement made in the Union Budget, Hon'ble Union Finance Minister Smt. Nirmala Sitharaman formally launched the facility for instant allotment of PAN (on near to real time basis) on 28.05.2020.



1. GST

Facility for registration of IRP/RPs made available on the GST Portal

Pursuant to Notification No. 11/2020-CT, dated 21st March, 2020 read Notification No. 39/2020 – Central Tax dated 5th May, 2020, Insolvency Resolution Professionals/Resolution Professionals (IRPs/RPs) are liable to take a new registration on GST Portal, on behalf of the Corporate Debtors, in each of the States or Union Territories, on the PAN and CIN of the Corporate Debtor, where the corporate debtor was registered earlier, within 30 days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later. Therefore, GST portal has released a news update dated 27th May, 2020 enabling the facility for registration of IRP/RPs.

[<https://www.gst.gov.in/newsandupdates/read/377>]

¹ Matter on Direct Taxes, Indirect Taxes, MCA Updates is contributed by Direct Taxes Committee, GST & Indirect Taxes Committee and Corporate Laws & Corporate Governance Committee of ICAI respectively. FEMA updates by CA. Manoj Shah, CA Hinesh Doshi and CA. Sudha G. Bhushan)

Recommendations of GST council related to Law & Procedure

The 40th GST Council in its meeting held on 12th June, 2020, has made the following recommendations on Law & Procedures changes.

• Measures for Trade facilitation:

(a) Reduction in Late Fee for past Returns:

Late fee for non-furnishing **FORM GSTR-3B** for the tax period from July, 2017 to January, 2020 is 'NIL' if there is no tax liability and upper capped to ₹ 500/- per return if there is any tax liability, provided all **GSTR-3B** returns are furnished between 01.07.2020 to 30.09.2020

(b) Relief for taxpayers having aggregate turnover upto ₹ 5 crore ("Small Taxpayers") for tax periods

- **February, March & April 2020:** Rate of interest reduced from 18% to 9%, till 30.09.2020, if the return (GSTR-3B) for February, March and April, 2020 are filed beyond the specified dates (staggered upto 6.07.2020) for Small Taxpayers.

- **May, June & July 2020:** Late fees and interest will be waived if returns (GSTR-3B) for May, June and July 2020 is furnished upto 30.09.2020 (staggered dates to be notified) by Small Taxpayers

(c) Extension in period for seeking revocation of cancellation of registration: Where GST registration has been cancelled upto 12.06.2020, a one-time option to apply for revocation of cancellation of registration has been provided upto **30.09.2020**.

- Certain clauses of the Finance Act, 2020 amending CGST Act 2017 and IGST Act, 2017 to be brought into force from **30.06.2020**.

[Press Release ID: 1631127 dated 12th June, 2020]

Section 128 of Finance Act, 2020 made effective

The Central Government vide *Notification No. 43/2020- Central Tax dated 16th May, 2020* notified 18th May, 2020 as the date from which Section 128 of Finance Act, 2020 shall come into force which deals with the amendment in Sub-sections (1), (2),

(3), (5), (6), (7), (8), (9) of Section 140 of CGST Act, 2017, to prescribe the manner and time limit for taking transitional credit.

[Notification No. 43/2020- Central Tax dated 16th May, 2020]

Furnishing of a nil return in FORM GSTR-3B by SMS made effective

The Central Government vide *Notification No. 44/2020- Central Tax dated 8th June, 2020* appointed 8th June, 2020, as the date from which **Rule 67A** (Manner of furnishing of return by short messaging service facility) shall come into force to allow the registered person to furnish a **Nil return** in **FORM GSTR-3B** for a tax period, through a short messaging service (SMS) using the registered mobile number and verifying the same based on One Time Password facility .

[Notification No. 44/2020- Central Tax dated 8th June, 2020]

Extension of transition date under GST on account of merger of erstwhile Union Territories of Daman and Diu & Dadar and Nagar Haveli.

The Central Government vide *Notification No. 45/2020- Central Tax dated 9th June, 2020* has extended the transition date for compliance of special procedures under GST as notified vide *Notification No. 10/2020 – Central Tax dated 21st March, 2020* on account of merger of erstwhile Union Territories of Daman and Diu & Dadar and Nagar Havel from 31st May, 2020 to 31st July, 2020.

[Notification No. 45/2020- Central Tax dated 9th June, 2020]

Extension of period to pass order under Section 54(7) of the CGST Act.

The Central Government vide *Notification No. 46/2020- Central Tax dated 9th June, 2020* has notified w.e.f. 20th March, 2020, that in cases where a notice has been issued for rejection of refund claim, in full or in part and time limit for issuance of order i.e. 60 days from receipt of complete application, falls during the period from 20th March, 2020 to 29th June, 2020, then in such cases refund order can be issued with 75 days (15 days extended) of the receipt of reply to notice or 30th June, 2020, whichever is later.

[Notification No. 46/2020- Central Tax dated 9th June, 2020]

Extension of validity of e-way bill generated on or before 24.03.2020

The Central Government vide [Notification No. 47/2020-Central Tax dated 9th June, 2020](#), extended the validity period of e-way bill generated on or before the 24th March, 2020 and whose validity has expired on or after the 20th March, 2020, till 30th June, 2020.

[Notification No. 47/2020-Central Tax dated 9th June, 2020]

Clarification on refund related issues

The Central Board of Indirect Taxes and Customs CBIC vide [Circular No. 139/09/2020-GST dated 10th June, 2020](#) clarified that treatment of refund of ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020- GST dated 31-03-2020.

[Circular No. 139/09/2020-GST dated 10th June, 2020]

Clarification in respect of levy of GST on Director's Remuneration

The Central Board of Indirect Taxes and Customs vide [Circular No. 140/10/2020-GST dated 10th June, 2020](#) clarified the following in respect of levability of GST on Director's Remuneration:

- remuneration paid to independent directors, or those directors, by whatever name called, who are not employees of the Company, is taxable in hands of the company, on reverse charge basis
- remuneration declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the Income Tax (IT) Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.
- remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services, being outside the scope of Schedule III of the CGST Act, are taxable under reverse charge basis

[Circular No. 140/10/2020-GST dated 10th June, 2020]

2. Custom

Empowerment Customs officers as 'proper officers' to conduct faceless or remote assessment of Bills of Entry filed under Section 46 of the Customs Act, 1962 for import in another Customs station.

The Central Board of Indirect Taxes and Customs vide [Notification No. 50/2020-Customs \(N.T.\) dated 5th June, 2020](#) has appointed Superintendent of Customs, GST and Central Excise or Appraiser and Deputy Commissioner or Assistant Commissioner of Customs posted at any customs station in India, as proper officers for functions under section 17 (2)(a), 17(3), and (4) & section 17(5) and 18 of the Customs Act, 1962 respectively, in relation to a bill of entry presented electronically under section 46 or 68 of the said Act, anywhere in India, where, such bill of entry is assigned to them in the Customs Automated System.

[Notification No. 50/2020-Customs (N.T.) dated 5th June, 2020]

1st Phase of All India roll-out of Faceless Assessment

CBIC vide [Circular No.28/2020-Customs dated 05th June, 2020](#) has clarified the procedure for implementation of the most critical reform viz, Faceless Assessment of the next generation reforms in the Customs clearance process under the umbrella of Turant Customs. The main objective of Faceless Assessment is speedy and uniform assessment practices.

Further, an Board's [Instruction No.09/2020 Customs dated 05th June, 2020](#) may also be referred.

[Circular No.28/2020-Customs dated 05th June, 2020, Instruction No.09/2020 Customs dated 05th June, 2020]

Electronic sealing- Deposit in and removal of goods from Customs Bomded Warehouses- reg

CBIC [Circular No. 25/2020- Customs dated 18th May, 2020](#) clarifies that Circular-19/2018 dated 18.06.2018 and Circular 10/2020-Customs dated 07.02.2020 provided for RFID sealing of goods to be deposited in or removed from Customs Bonded Warehouses. Since, a comprehensive circular is under consideration, therefore theses circulars which are yet to be operationalized stand rescinded.

[Circular No. 25/2020- Customs dated 18th May, 2020]

MCA

Extension of time for creation of Deposit repayment reserve of 20% and to invest or deposit 15% of the amount of debentures from 30th June 2020 to 30th September 2020.

MCA has issued Clarification wherein timelimit with regard to creation of deposit repayment reserve of 20% u/s. 73 (2) (c) of the companies Act 2013 and to invest or deposit 15% of amount of debentures u/r.18 of Companies (Share capital and Debentures) Rules 2014 - COVID-19 has been extended **from 30th June 2020 to 30th September 2020.**

Details are available at http://www.mca.gov.in/Ministry/pdf/Circular24_20062020.pdf

Amendment of item no.(viii) in the Schedule VII of the Companies Act,2013

MCA has issued a notification wherein it has amended Schedule VII item (viii) where after the words “Prime Minister’s National Relief Fund”, the words “or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)” shall be inserted.

Details are available at http://www.mca.gov.in/Ministry/pdf/Notice_27052020.pdf

Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM)

MCA has allowed companies to hold annual general meeting (AGM) in a manner similar to the one provided for holding EGM which deal with conduct of extraordinary general meeting (EGM) and have allowed the holding of annual general meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM).

Details are available at <https://resource.cdn.icai.org/59541clcgc48464.pdf>

Clarification on dispatch of notice under section 62(2) of Companies Act, 2013 by listed companies for rights issue opening upto 31st July, 2020

MCA has clarified that inability of any Listed Company to dispatch the notice referred in section 62 of the Act to shareholders through registered post or speed post or courier for the rights issue opening upto 31st July, 2020, would not be viewed as violation of section 62(2) of the Act if the SEBI

Circular No SEBI/ HO/CFD/DIL2/ CIR/P/2020/78 dated 6th May, 2020 is complied with (https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing_46652.html). Details are available at <https://resource.cdn.icai.org/59543clcgc48466.pdf>

Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013

Ministry of Corporate Affairs has come out with a new scheme called “Scheme for **relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013**”. The Purpose of the scheme is to condone the delay in filing certain forms related to creation/ modification of charges.

In this regard, FAQs by ICAI on the Scheme have been hosted on ICAI website <https://resource.cdn.icai.org/59986clcgc48878.pdf>



Voluntary Retention Route (VRR) for Foreign Portfolio Investors (FPIs) investment in debt-relaxations

A.P. (DIR Series) Circular No. 32 dated May 22, 2020

As per para 6(a) of directions, Foreign Portfolio Investors (FPIs) shall invest at least 75% of their Committed Portfolio Size (CPS) within 3 months from date of allotment. In view of COVID 19 disruptions it has been decided to allow FPIs that have been allotted investment limits, between January 24, 2020 (the date of reopening of allotment of investment limits) and April 30, 2020, an additional time of three months to invest 75% of their CPS.

Import of Goods and Services – Extension of time limits for settlement of import payments

A.P. (DIR Series) Circular No. 33 dated May 22, 2020

In view of the disruptions due to outbreak of COVID- 19 pandemic, it has been decided to extend the time period for completion of remittances against such normal imports (except in cases where amounts are withheld towards guarantee of performance etc.) from six months to twelve months from the date of shipment for such imports made on or before July 31, 2020.