

FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

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Dear Reader,

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

Attention of readers is invited to Establishment of Digital Banking Units (DBUs), Revision of UPI limits in Public Issue of Equity Shares and convertibles, and Extension of due dates for Various compliances by various authorities.

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

Regards

For Raju and Prasad

Chartered Accountants

Your Knowledge Partners

M Siva Ram Prasad

Contact us:

Email: hyderabad@rajuandprasad.com

Website: www.rajuandprasad.com

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Policy Watch

Indirect Taxes



GST Revenue Collected for March 2022

GST vide Press Release dated 1st April, 2022 has declared that the gross GST revenue collected in the month of March 2022 is Rs. 1,42,095 crore of which CGST is Rs. 25,830 crore, SGST is Rs. 32,378 crores, IGST is Rs. 74,470 crores and cess is Rs. 9,417 crore.

The gross GST collection in March 2022 is all time high breaching earlier record of Rs. 1,40,986 crore collected in the Month of January 2022.

<https://www.taxmann.com/preview-document?categoryName=gst-new&fileId=10401000000098443&subCategory=cirnot>



RBI Updates

Master Direction - Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2021 - Amendment



RBI vide notification No. RBI/2021-22/191 dated 31st March, 2022 has issued amendment to Master Direction-Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2021.

The master circular can be referred through the following link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?id=12264&Mode=0>

Establishment of Digital Banking Units (DBUs)

RBI vide notification No. RBI/2022-23/19 dated 7th April, 2022, has issued a notification on establishment of Digital Banking Units (DBUs)

1. In pursuance of announcements made in the Union Budget 2022-23, guidelines have been prepared for setting up of Digital Banking Units

- (DBUs) by commercial banks on the basis of recommendations of a Working Group formed by RBI which included representatives of banks and Indian Banks' Association (IBA).
2. These guidelines are applicable to all Domestic Scheduled Commercial Banks (excluding Regional Rural Banks, Payments Banks and Local Area Banks).
 3. Each DBU is expected to offer certain minimum digital banking products and services. The DBUs are expected to migrate to more structured and custom-made products, from standard offerings by use of its hybrid and high-quality interactive capabilities.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12285&Mode=0>

Framework for Geo-tagging of Payment System Touch Points

RBI vide notification no. RBI/2021-22/187 dated 25th March, 2022 has introduced the framework for Geo-tagging of Payment System Touch Points.

1. Geo-tagging refers to capturing the geographical coordinates (latitude and longitude) of

payment touch points deployed by merchants to receive payments from their customers.

2. All banks / Non-bank PSOs shall maintain a registry with accurate location of all payment touch points across the country, including the Merchant details and payment touch point details.
3. All banks / Non-bank PSOs shall report information on payment touch points to the Reserve Bank through the Centralised Information Management System (CIMS) of RBI

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12260&Mode=0>



Direct Tax

Condonation of delay in filing of Form 10-IC for AY 2020-21

Income taxes vide Circular No. 6/2022 dated 17th March, 2022 has allowed for condonation of delay in filing of Form 10-IC for AY 2020-21

1. Section 115BAA enables the assessee company to pay tax at a lower percentage of

twenty- two percent subject to the fulfillment of the conditions under sub-section (2)

2. As per section 115 BAA(5) of the Act, the assessee company is required to submit Form 10- IC electronically on or before the due date of filing of return of income u/s 139(1) of the Act and such option once exercised shall apply to subsequent assessment years
3. Representations have been received by the Board stating that Form 10-IC could not be filed along with the return of income for A Y 2020-21, which was the first year of filing of this form.
4. The delay in filing of Form 10-IC as per Rule 21AE of the Rules for the previous year relevant to A. Y 2020-21 is condoned in cases where the following conditions are satisfied:
 - i) The return of income for AY 2020-21 has been filed on or before the due date specified under section 139(1) of the Act;
 - ii) The assessee company has opted for taxation u/s 115BAA of the Act in (e) of "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6 and

- iii) Form 10-IC is filed electronically on or before 30.06.2022 or 3-months from the end of the month in which this Circular is issued, whichever is later

<https://incometaxindia.gov.in/communications/circular/circular-no-6-2022.pdf>

Clarification with respect to relaxation of provisions relating to linking PAN with Aadhar

Income tax vide Circular No. 7/2022 dated 30th March, 2022 has clarified about linking PAN with Aadhar.

Section 139AA(2) of the Act makes it mandatory for every person who has been allotted a PAN as on 1st July, 2017 to intimate his Aadhaar Number so that the Aadhaar and PAN can be linked.

Accordingly, in case of failure to intimate the Aadhaar Number by the last extended notified date i.e. 31.03.2022, the PAN allotted to the person shall be made inoperative till the payment of Late fee.

As per Section 234H of the Act, person shall be liable to pay a fee not exceeding a sum of one thousand rupees in case the PAN becomes inoperative i.e, if PAN and Aadhar

are not linked on or before 31st March, 2022. However, the option to pay late fee is not available from 1st April, 2023 and PAN becomes inoperative thereafter.

<https://incometaxindia.gov.in/communications/circular/circular-no-7-2022.pdf>

SEBI



Change in control of Sponsor and/or Manager of Alternative Investment Fund involving scheme of arrangement under Companies Act, 2013

SEBI vide press release no. SEBI/HO/IMD-1/ DF9/CIR/2022/032 dated 23th March, 2022 has issued a circular for the procedure to be followed when there is a change in control of Sponsor and/or Manager of Alternative Investment Fund involving scheme of arrangement under Companies Act, 2013

To streamline the process of providing approval to the proposed change in control of the Sponsor and/or Manager of the AIF involving scheme of arrangement which needs sanction of National Company

Law Tribunal ("NCLT") in terms of the provisions of the Companies Act, 2013, following has been decided:

- i) The application seeking approval for the proposed change in control of the Sponsor and/or Manager of the AIF under Regulation 20(13) of AIF Regulations shall be filed with SEBI prior to filing the application with the NCLT.
- ii) Upon being satisfied with compliance of the applicable regulatory requirements, in-principle approval will be granted by SEBI
- iii) The validity of such in-principle approval shall be three months from the date of issuance, within which the relevant application shall be made to NCLT
- iv) Within 15 days from the date of order of NCLT, the applicant shall submit the documents to SEBI for final approval

The provisions of this Circular shall be applicable to all the applications for change in control of Sponsor and/or Manager of the AIF for which the scheme(s) of arrangement is filed with NCLT on or after April 01, 2022

https://www.sebi.gov.in/legal/circulars/mar-2022/change-in-control-of-sponsor-and-or-manager-of-alternative-investment-fund-involving-scheme-of-arrangement-under-companies-act-2013_57064.html

Revision of UPI limits in Public Issue of Equity Shares and convertibles

SEBI vide press release no. SEBI/HO/CFD/DIL2/CIR/P/2022/45

dated 5th April, 2022 has notified about the revision of UPI limits in Public Issue of Equity Shares and convertibles

NPCI has reviewed the systemic readiness required at various intermediaries to facilitate the processing of applications with increased UPI limit and confirmed that as on March 30, 2022, more than 80% of SCSBs/Sponsor Banks/UIP Apps have conducted the system changes and have complied with the NPCI provisions.

Accordingly, it has been decided that all Individual Investors applying in Public Issues where the application amount is upto 5 Lakhs shall use UPI and shall also provide their UPI ID in the bid-cum-application form submitted.

This circular shall come into force for Public Issues opening on or after May 01, 2022.

https://www.sebi.gov.in/legal/circulars/apr-2022/revision-of-upi-limits-in-public-issue-of-equity-shares-and-convertibles_57589.html

MCA



Inspection of registers, returns etc. - Information not available for inspection

MCA wide Notification dated 6th April, 2022 specified the information not available for inspection.

The following particulars of the register or index or return in respect of the members of a company shall not be made available for any inspection or for taking extracts or copies:

- i. address or registered address (in case of a body corporate);

- ii. e-mail ID;
- iii. Unique Identification Number;
- iv. PAN Number.

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDY4MzE1MjA=&docCategory=Notifications&type=open>

Verdicts

Direct
Tax

Direct Tax

- Act: The Income Tax Act, 1961

Assessee is not entitled to any interest on refund u/s 244A for the time taken by him to cure defects in return filed by him

- Vide Decision of High Court of Kerala in State Bank of India Vs. Chief Commissioner of Income-tax

Facts of the case:

1. The appellant, for the Assessment Years 1992-93, 1993-94, 1995-96 and 2001-02 claimed interest on refund of surplus TDS effected in the respective years.
2. The Revenue did not accept the appellant's interest claim while



refunding the excess amount received for the return period.

3. Hence, the writ petition was filed to set aside the orders rejecting the assessee's claim for interest during the delayed period.
4. The learned counsel for the assessee contends that the assessee's claim is for a refund of excess tax collected or deducted as advance tax, self assessment tax paid, tax paid on regular assessment etc.
5. The assessee has the right to claim interest along with a refund. In the case on hand, the delay in finalisation of return is on account of commission or omission caused in the issue of TDS certificates by the deductor/assessee-Bank.
6. Learned counsel for the respondent argues that the plain or textual interpretation of Section 244A(1) on

- the one hand, and Section 244A(2) on the other hand, is that the right to receive interest under the Act stems out from an assessment order made by the Assessing Officer. The assessee is expected to file the return fully compliant with the law requirements.
7. During the period where omissions are noted in the returns filed, the assessee takes time for curing or rectifying the omissions; levy of interest during this period on the Department is unavailable from the plain language of Section 244A(1) and Section 244A(2). Section 244A(1) specifically refers to, subject to the provisions of the Section, i.e., the period calculation, exclusion etc., is part of Section 244A(1) and Section 244A(2).
 8. The honorable court opined that the construction principles are well established and familiar enough that by applying the golden rule of construction, the section must receive a meaning, as spelt out in the enactment.
 9. Section 244A, when construed by the golden rule of interpretation, the court held that refund of any amount firstly becomes due to the assessee upon order of assessment made by the assessing officer.
 10. In addition to a refund of excess tax received or collected, the assessee is also entitled to interest on the excess refunded by order of assessment; however, the period of interest is governed by Section 244A (2).
 11. Section 244A (2) provides that the period taken by the assessee to cure the defects in finalising the assessment is excluded for interest calculation.
 12. Section 244A(2) merely refers to reasons attributable to the assessee. Therefore, omission or commission in the return filed by the assessee resulting in a delay in assessment is attributable to the assessee; hence, the time taken to cure those omissions and defects is excluded for interest calculation.
 13. Such an interpretation does not fit into the requirement of filing a return fully compliant with the order of assessment, levy of interest, refund etc.
 14. The period taken by the assessee for curing the defects cannot be excluded while calculating interest; then, for no fault of the Department,

the Department is called upon to compensate by way of interest.

Judgement:

The Honorable High Court of Kerala held the case as follows:

1. The assessee is not entitled to interest for the period taken by the assessee for curing the defects or omissions in the return or in the annexures filed along with the returns.
2. In other words, the period, i.e., the period taken by the assessee for rectifying the defects or curing the omissions, does not entail the receipt of interest.

<https://www.taxmann.com/preview-document?categoryName=direct-tax-laws&fileId=10101000000320663&subCategory=caselaws>

Verdicts

Indirect Tax

Where assessee filed writ petition against order of blocking of input tax credit by concerned authority under rule 86A; assessee was directed to approach authority

officer to submit objection against same

- vide decision of High Court of Allahabad in M.M.Traders v. State of UP

Facts of the case:

1. The petition has been filed by the assessee aggrieved with blocking of input tax credit by the concerned authority under Rule 86 A of the C.G.S.T. /U.P. G.S.T. Rules, 2017.
2. Rule 86A of the Uttar Pradesh Goods and Services Tax Rules, 2017 provides that in certain circumstances, Commissioner or an officer authorised by him, on the basis of reasonable belief that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible, may not allow debit of an amount equivalent to such credit in electronic credit ledger.
3. The honorable court opined that on perusal of the rule it is clear that the Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must have "reasons to believe" that credit of input tax available in the electronic credit ledger is either ineligible or has been

fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under rule 86A.

4. The reasons for such belief must be based only on one or more of the following grounds:

(a) The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.

(b) The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.

(c) The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.

(d) The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration.

(e) The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.

5. The Commissioner or an officer authorized by him must form an opinion for disallowing debit of an amount from electronic credit ledger in respect of a registered person only after proper application of mind considering all the facts of the case, including the nature of fraudulently availed or ineligible input tax credit .
6. It is reiterated that the power of disallowing debit of amount from electronic credit ledger must not be exercised in a mechanical manner and careful examination of all the facts of the case is important to determine cases fit for exercising power under rule 86A.
7. The reasons are to be on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or ineligible input tax credit availed as per the conditions/grounds under sub-rule (1) of rule 86A.
8. The officer should apply his mind as to whether there are reasons to believe that the input tax credit availed by the

registered person has either been fraudulently availed or is ineligible, as per conditions/ grounds mentioned in sub-rule (1) of rule 86A.

9. Also, whether disallowing such debit of electronic credit ledger of the said person is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.
10. Such "Reasons to believe" shall be duly recorded by the concerned officer in writing on file, before he proceeds to disallow debit of amount from electronic credit ledger of the said person.
11. The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible.
12. The action by the commissioner or the authorized officer, as the case may be, to disallow debit from electronic credit ledger of a registered person, is informed on the portal to the concerned registered person, along with the details of the officer who has disallowed such debit.
13. Upon expiration of one year from the date of disallowing credit, the

registered person would be able to debit input tax credit so disallowed, subject to any other action that may be taken against the registered person.

14. As the restriction on debit of electronic credit ledger is resorted to protect the interests of the revenue and the said action also has bearing on the working capital of the registered person, it should be endeavored that in all such cases' the investigation and adjudication are completed at the earliest, well within the period of restriction.

Judgement:

The Honorable High court of Allahabad held the case as follows:

1. The honorable court held that the petitioners should first approach the authorized Officer raising objections against the blocking of the input tax credit and the said authority would be under an obligation to decide the objection within a time bound period.

2. The honorable court ordered the petitioner to submit objections before the Commissioner or the authorized Officer, as the case may be, under Rule 86 A(2) of the C.G.S.T. /U.P.G.S.T. Rules, 2017, within two weeks from passing of order along with certified copy of the order.
3. In the event objections are submitted by the petitioners within the stipulated period, the same shall be decided by the concerned Authority Officer in accordance with law, by a speaking and reasoned order, within next three weeks, after affording reasonable opportunity of hearing to the petitioners.

<https://www.taxmann.com/preview-document?categoryName=gst-new&fileId=10101000000320689&subCategory=caselaws>

It always seems impossible until it's done

- Nelson Mandela

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