

FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

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Dear Reader,

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

We would like to draw your attention to various important updates, including the special procedure laid out by CBIC for persons engaged in the manufacturing of Pan Masala & Tobacco products, CBDT guidelines for Deduction of Tax Under Section 194-O, RBI guidelines on the appointment of Statutory Auditor of State & Central Co-operative banks, SEBI's Framework for Short Selling, and the extension of due dates for various compliances by various authorities.

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

Regards

For Raju and Prasad

Chartered Accountants

Your Knowledge Partners

M Siva Ram Prasad

Contact us:

Email✉: hyderabad@rajuandprasad.com

Website : www.rajuandprasad.com

<Hyderabad>>Mumbai>>Bangalore>>Chennai>>Thane>>Tirupati>

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**"We obtain our education at home, at school, and, most important, from life itself. The learning process must go on as long as we live."
- Eleanor Roosevelt**

Policy Watch

Indirect Taxes

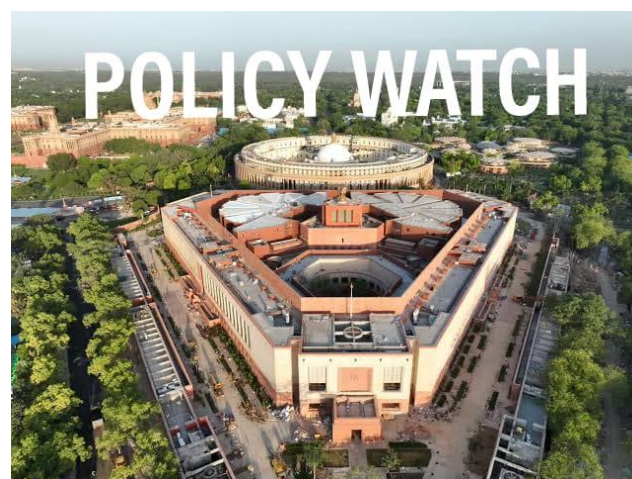


CBIC Extends Time Limit for Passing Order u/s 73 for FY 2018-19 and 2019-20

CBIC Vide Notification No. 56/2023, dated 28th December 2023 had extended the time limit for passing order under Section 73 for FY 2018-19 and FY 2019-20 till 30-04-2024 and 31-08-2024 respectively. Earlier, the said time limits were extended till 31-03-2024 and 30-06-2024 respectively vide Notification No. 09/2023-Central Tax, dated 31-03-2023. Notably, the said time limit has not been extended for FY 2017-18 and it will remain 31-12-2023 only.

It should further be noted that the above time limit is applicable for the issuance of order in case of tax not paid, short paid, or ITC wrongly availed or utilized and is not applicable in the cases of erroneous refunds.

<https://taxinformation.cbic.gov.in/view-pdf/1009964/ENG/Notifications>



CBIC notified special procedure for persons engaged in manufacturing of Pan Masala & Tobacco products from 01.04.2024

CBIC Vide Notification No. 04/2024, dated 05th January 2024 had notified special procedure which shall be followed by registered persons engaged in manufacturing of Pan Masala & Tobacco products from 01.04.2024.

The registered persons engaged in the manufacturing of tobacco, pan masala and other similar items were required to follow a specific procedure such as furnishing the details of packing machines, maintaining additional records, and submission of special monthly statements with effect from 01-01-2024.

However, the Government has deferred the implementation of special procedures till 01-04-2024.

Further, some modifications have been made in the procedural aspects of registration of machines and special monthly returns. The previous notification prescribed for maintaining a daily record of inputs and production/clearance in each place of business in the specified format specified of Form SRM-IIIA and Form SRM-IIIB respectively.

<https://taxinformation.cbic.gov.in/view-pdf/1009983/ENG/Notifications>

Direct Tax



CBDT Releases Guidelines for Deduction of Tax for E-commerce transaction under Section 194-O.

As per section 194-O, TDS has to be deducted by the E Commerce Operator, (Like Amazon) when the E commerce operator makes the payment to E Commerce Participant (Seller listed on E commerce website like Amazon).

TDS is not required to be deducted when:

- a) The Seller i.e. E-Commerce Participant is an Individual or HUF & the amount received or likely to be received from such sale during the FY does not exceed 5 Lakh Rupees, (or)
- b) The Seller is Non Resident of India

CBDT vide circular No. 20/2023 dated 28th December 2023 had issued a circular outlining the tax deduction process in certain transactions, especially where multiple e-commerce operators are involved, such as through Open Network for Digital Commerce (ONDC). E-commerce operators (ECOs) are required to deduct income tax at a rate of one percent on the gross amount of sales facilitated through their digital platforms under Section 194-O.

a) Tax deduction where multiple e-commerce operators are involved in a transaction

There may be an e-commerce platform or network (such as ONDC) on which multiple e-commerce operators (ECO) are involved in a single transaction of sale of goods or provisions of services. For example, a buyer-side ECO provides an interface to the buyer, and a seller-side ECO provides an interface to the seller.

In this case, the seller-side ECO who finally makes the payment or the deemed payment to the seller for goods sold or services provided shall be liable to deduct tax. However, if the seller-side ECO is itself the seller, then the ECO who finally makes payment to it shall be liable to deduct tax.

b) Inclusion of convenience fees, delivery fees and commission in the gross amount

Further, the buyer-side ECO and seller-side ECO may charge the seller a commission/convenience fee to enable the online transaction. The seller may choose to recoup all or part of that amount from the buyer. The CBDT has clarified that these

charges shall be a part of the gross amount on which tax is required to be deducted.

Further, payments made to the platform or network provider (such as ONDC) for facilitating the transaction would form part of the “gross amount” if they are included in the payment for the transaction. However, if these payments are being paid on a lump-sum basis and are not linked to a specific transaction, then these need not be included in the “gross amount”.

c) Treatment of discounts offered by the seller

Where the seller gives the discount, the seller would reduce the price of the products sold or services provided. For instance, if the price of a product is Rs 100 and the seller offers a discount of Rs 10. Rs 90 will be receivable from the buyer. In this case, the seller will invoice the buyer for Rs 90. Hence, tax shall be deducted on the amount of Rs 90.

d) Treatment of discounts offered by e-commerce operators

Where the buyer ECO or seller ECO gives a discount, usually the seller receives full consideration for the product. The seller receives part of the amount from the buyer, and the balance is discharged to the seller by the buyer ECO or seller ECO, as the case may be.

For example, if the price quoted by the seller is Rs 100, and the buyer ECO gives a discount of Rs 10, Rs 90 (i.e. 100 -10) will be collected from the buyer and remitted to the seller. The buyer ECO will pay the remaining Rs 10 to the seller via the seller ECO. The invoice for the buyer will be raised for Rs 100, and the seller-side ECO will, therefore, deduct tax on Rs 100, which is the gross amount of sales.

e) Treatment of GST or various state levies and taxes

When the tax is deducted at the time of credit of the amount in the account of the seller and the component of GST or various state levies and taxes is indicated separately in the invoice, tax shall be deducted on the amount credited

without including such GST or tax component. However, if the tax is to be deducted on a payment basis because the payment is made earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify that payment with GST or tax component of the amount to be invoiced in future.

f) Adjustment in relation to Purchase Return

It is noted that the tax is required to be deducted under section 194-O at the time of payment or credit, whichever is earlier. Thus, before purchase-return happens, the tax must have already been deducted from that purchase.

The CBDT has clarified that where the seller has refunded the money against the purchase return, the tax deducted may be adjusted against the next purchase against the same seller in the same financial year. However, where purchase return is replaced by the goods, no adjustment is required.

<https://incometaxindia.gov.in/communications/circular/circular-20-2023.pdf>

RBI Updates



RBI Issues Revised Instructions for Inoperative Accounts/Unclaimed Deposits in Banks

RBI vide circular No. RBI/2023-24/105 DOR.SOG (LEG).REC/64/09.08.024/2023-24, dated 1st January 2024 has issued comprehensive guidelines on the measures to be put in place by the banks covering various aspects of classifying accounts and deposits as inoperative accounts and unclaimed deposits.

The central banks called for steps to trace the customers of inoperative accounts or unclaimed deposits including their nominees or legal heirs for re-activation of accounts, settlement of claims or closure.

Also, the RBI stressed a periodic review of such accounts and deposits, measures to prevent fraud in such accounts or deposits, and grievance redressal mechanisms for expeditious resolution of complaints.

As per the extant instructions, the credit balance in any deposit account maintained with banks, which have not been operated upon for ten years or more, or any amount remaining unclaimed for ten years or more, as mentioned in paragraph 3(iii) of the "Depositor Education and Awareness" (DEA) Fund Scheme, 2014, are required to be transferred by banks to DEA Fund maintained by the Reserve Bank of India.

RBI has directed banks to contact the holder(s) of the inoperative account/unclaimed deposit through letters, email or SMS (if the email and mobile number are registered with the bank). The email/ SMS shall be sent every quarter.

As per Central Banks Circular, the banks shall have to undertake special drives periodically to find out the whereabouts of the customers, their nominees or legal heirs in respect of inoperative accounts/unclaimed deposits.

RBI directed the banks to ensure that amounts lying in inoperative

accounts/unclaimed deposits and reactivated inoperative accounts/unclaimed deposits, are subjected to concurrent audit.

The RBI has further instructed banks that no charges must be levied for the re-activation of inoperative accounts. Concerning the interest on savings accounts, the RBI has clearly instructed that Interest on savings accounts shall be credited regularly irrespective of the fact that the account is in operation or not. The revised instructions shall come into effect from April 1, 2024.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12589&Mode=0>

RBI Unveils Layout for Appointment/Re-appointment of Statutory Auditors for State & Central Co-operative Banks

RBI vide. Circular No. RBI/2023-24/113 Ref.No.DOS.ARG/SEC.8/08.91.001/20 23-24, Dated 15th January 2024), has issued guidelines for the appointment or re-appointment of Statutory Auditors (SAs) of State and Central Co-operative Banks. The guidelines

shall be applicable from April 1, 2024, and the banks shall seek prior approval for the appointment of SAs before July 31st of the reference financial year. The guidelines focus on:

- a) eligibility criteria.
- b) Review performance of SAs.
- c) Independence of Auditors.
- d) Tenure and Rotation of SAs.

Refer the below link for complete circular:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12599&Mode=0>

SEBI



SEBI Strengthens Short-selling Norms, Tightening Norms Particularly for Institutional Investors

Earlier, the SEBI vide Master Circular No. SEBI/HO/MRD2/PoD-2/CIR/P/2023 /171 dated October 16th, 2023 has issued the master circular on 'Short Selling and Securities Lending and Borrowing Scheme'. Now the SEBI has issued a circular (no. SEBI/HO/MRD/MRD-PoD-3/P/CIR/24/

1) to provide a framework for short selling.

“Short selling” means selling a stock that the seller does not own at the time of trade. Further, Naked short selling shall not be permitted in the Indian securities market. Accordingly, all investors would be required to mandatorily honor their obligation to deliver the securities at the time of settlement, the institutional investor shall not be allowed to do day trading, i.e., square off their transactions intraday. All transactions would be grossed for institutional investors at the custodians' level, and the institutions would be required to fulfill their obligations on a gross basis.

Now, it is mandatory for institutional investors to disclose upfront at the time of placement of order whether the transaction is a short sale. However, retail investors would be permitted to make a similar disclosure by the end of the trading hours on the transaction day. Further, the stockbrokers shall be mandated to collect the details of scrip-wise short-sell positions, collate the data, and

upload it to the stock exchanges before the commencement of trading on the following trading day. The stock exchanges shall then consolidate such information and disseminate the same on their websites for the information of the public on a weekly basis. Further, the SEBI also said that all stocks that trade in the futures and options (F&O) segment are eligible for short selling.

https://www.sebi.gov.in/legal/circulars/jan-2024/framework-for-short-selling_80448.html

SEBI Extends the Timeline for Nomination in Demat Accounts and Mutual Funds to 30th June, 2024

Earlier, the SEBI had extended the deadline for submitting the 'choice of nomination' for demat accounts and mutual fund folios to December 31, 2023. However, in response to representations from market participants and in an effort to enhance compliance ease and investor convenience, the deadline for submitting the 'choice of nomination' for demat accounts and mutual fund folios has been further

extended to June 30, 2024 vide circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/193, dated 27th December 2023.

https://www.sebi.gov.in/legal/circulars/de-c-2023/extension-of-timelines-for-providing-choice-of-nomination-in-eligible-demat-accounts-and-mutual-fund-folios_80221.html

Verdicts

Direct Tax

Direct
Tax

Act: The Income Tax Act, 1961

1. No TCS on sale of empty liquor bottles as uncorking liquor bottles didn't amount to generation of 'scrap'

Vide Decision of HIGH COURT OF MADRAS in Tamil Nadu State Marketing Corporation Ltd. v. Deputy Commissioner of Income-tax, TDS Circle – 3(1).

Facts of the case:

1. Assessee-Company, owned by Tamil Nadu Government, had an exclusive monopoly for retail and wholesale of Indian Made Foreign

Spirits (IMFS) in the entire state of Tamil Nadu.

2. Assessee floated tenders to select third-party bar contractors (licensees) to sell eatables and collect empty bottles left by consumers at bars adjacent to/within the assessee's liquor retail shop. Assessee acting as an agent merely collected tender/license amount from successful tenderer and remitted 99 per cent of same to Government retaining 1 per cent commission.
3. Assessing Officer (AO) treated assessee as the assessee-in-default for failure to collect tax at source under section 206C(1) on the amount tendered by the successful bar licensee from the sale of empty bottles by treating sale of bottles as scrap.
4. The matter reached before the Madras High Court.

Judgement:

1. The Madras High Court held that to attract the liability under Section 206C, it is incumbent on the part of AO to establish that the bottles left by

buyers of liquor who consume liquor in the bars attached to the assessee's retail shops qualify as 'Scrap' as defined in Section 206C.

2. 'Scrap' is defined as waste and discarded material resulting from the 'manufacturing' or 'mechanical working of materials' rendered unusable due to breakage, cutting up, wear, or other reasons.
3. The expression "mechanical working of material" has not been defined in the Income-tax Act 1961. Thus, the interpretation of "mechanical working of materials" is derived by applying the principle of noscitur a sociis, referencing the definition of "manufacture" in Section 2(29BA).
4. The definition of "manufacture" in Section 2(29BA) of the Income Tax Act, 1961, aligns with the definition in Section 2(f) of the Central Excise Act, 1944. Consequently, for waste or scrap to incur excise duty under Section 3 of the Central Excise Act, 1944, it must also be specified in the 1st Schedule to the Central Excise Tariff Act, 1985.
5. Certain activities may amount to "manufacture" yet not liable to

Central Excise Duty. An activity may resemble a "manufacturing activity", yet may not amount to "manufacture". Thus, only those activities which resemble "manufacturing activity", but are not a "manufacturing activity" can come within the purview of the expression of "mechanical working of material".

6. Thus, the expression "mechanical working of material" would apply only to such activities which are akin to "manufacturing activity" but not "manufacturing activity". Only such "scrap" generated from such activity can be construed to be in contemplation of Section 206C.
7. Mere opening, breaking or uncorking of a liquor bottle by twisting the seal in a liquor bottle will not amount to the generation of "scrap" from "mechanical working of material" for explanation to Section 206C.

2. Expression 'used for purposes of business' in sec. 32(1) had to be construed liberally to include even passive use

Vide decision of HIGH COURT OF DELHI in Principal Commissioner of Income-tax vs Indus Towers Ltd.

Facts of the case:

1. The assessee-company was engaged in the business of sharing telecom infrastructure amongst various telecom service providers. During the year, the assessee took a loan for the construction of the tower. It claimed depreciation on the tower. It also claimed interest paid on the loan and upfront processing charges on the loan.
2. The Assessing Officer (AO) disallowed interest paid on the loan and depreciation primarily on the grounds that not all the towers might have been put to use as the tower-wise details had not been furnished.
3. On appeal, the CIT(A) and Tribunal ruled in favour of assessee. The matter reached the Delhi High Court.

Judgement:

1. The Court held that the expression 'used for the purposes of business or profession' in the provision under section 32 had to be construed

widely. This includes not only those cases where the buildings, machinery, plant, etc., are actively employed but also those cases where there is what may be described as a passive user of the same in the business because of various reasons, including that machinery, may well depreciate even where it is not used in the business and even due to non-user and being kept idle.

2. The towers which were constructed subsequent to the commencement of business of the assessee were so constructed admittedly during the year relevant to the subject assessment year. The expression 'used for the purposes of the business' in section 32(1) has to be construed liberally so as to include even passive users of the subject machinery (towers in the instant case). It was nobody's case that the profits earned by the assessee had no nexus with the towers in question.
3. Therefore, there was no infirmity in allowing the amount of depreciation concerning the said towers to be deducted.

Indirect Tax

Act: Central Goods and Services Act, 2017

1. Demanding bank guarantee from assessee to grant GST refund is contrary to law

Vide decision of HIGH COURT OF RAJASTHAN in Raj Kamal Cargo Movers vs Assistant Commissioner, Jaipur

Facts of case:

1. In the present case, the petitioner filed a writ petition to challenge the order passed by the Assistant Commissioner demanding bank guarantee from the petitioner before allowing refund.
2. It was submitted that the Assistant Commissioner passed original order and the same was set aside by the Appellate Authority and directed to provide solvent security. However, the Assistant Commissioner again demanded bank guarantee from the petitioner.

Judgement:

1. The Honorable High Court noted that the Assistant Commissioner, who had passed original order and ordered for refund, had been trying to somehow block the refund to be made to the petitioner. The Court further noted that once solvent security was provided by the petitioner, the Assistant Commissioner again, apparently not willing to refund the amount, had demanded bank guarantee from the petitioner.
2. The Court also noted that the indication made that the bank guarantee needs to be taken from the petitioner by way of solvent security by itself is contradictory inasmuch as the term 'solvent security' essentially means that the person who is providing the security should not have been declared bankrupt by the court and he has to produce documents to indicate that he owns some movable/immovable property, which is equivalent to the amount for which the said security is being provided.

3. However, the 'bank guarantee' is a guarantee given by the bank on behalf of the applicant to cover the payment obligation to a third party. Therefore, the Court held that the action of seeking bank guarantee from the petitioner was ex facie contrary to the directions of Appellate Authority and the same was liable to be set aside.

2. Services of loading, unloading, packing, storage or warehousing of imported wheat would be exempt.

Vide Authority of HIGH COURT OF MADRAS in Naga Ltd. v. Puducherry Authority for Advance Ruling.

Facts of case:

1. The petitioner was engaged in business of milling wheat into wheat products such as maida, atta, sooji, bran etc. It imported wheat through various seaports and engaged service providers for clearing the imported wheat from seaports. It filed an application for advance ruling to determine whether services of loading, unloading, packing,

storage or warehousing of imported wheat would be exempt under GST.

2. The Authority for Advance Ruling rejected application on ground of lack of jurisdiction as only a supplier on whom incidence of tax lies can seek an Advance Ruling. Thereafter, service provider filed an application for advance ruling and Authority ruled that services would not be exempt exemption applies only to services rendered till products are taken to primary market for disposal. The petitioner filed writ petition against the advance ruling and contended that the services provided by the service provider would be exempt from GST.

Judgement:

1. The Honorable High Court noted that the services of loading, unloading, packing, storage or warehousing of agricultural produce are exempt from GST. The Court also noted that the test for exemption would be whether services are rendered in relation to 'agricultural produce' or not. In the instant case, the services were

2. provided for imported wheat which would be agricultural produce. Therefore, the Court held that the services provided by the service provider would be exempt from GST.

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

Statutory and Tax Compliance Calendar of February 2024

STATUTORY

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

INCOME TAX

07-Feb	TCS Payment for Jan
07-Feb	TDS Payment for Jan
15-Feb	TDS Certificate for the Quarter ending 31 st December 2023

Please visit
<http://www.rajuandprasad.com/newsletter.php>
 for earlier issues

GOODS & SERVICE TAX

10-Feb	GSTR 8 for Jan
11-Feb	GSTR 1 for Jan
13-Feb	GSTR 5 for Jan (NRTP)
20-Feb	GSTR 3B for Jan
20-Feb	GSTR 5A for Jan (OIDAR)

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