

Direct & Indirect Taxes Updates- November 19

A. DIRECT TAXES UPDATES

i) Income Tax circulars/ notifications/ rules/ clarifications/News- November- 2019

♠ **CBDT notifies Form 16D (certificate of deduction of tax at source) and 26QD (challan-cum-statement) in relation to section 194 M (deduction of tax at source for contractual or professional payment by Individual or HUF) (Notification No. 98/2019 dated 18th November 2019)**

♠ **Aadhar allowed to be used instead of PAN in income tax forms (Notification No. 95/2019-Income Tax [G.S.R .825(E)] dated 06th November 2019)**

♠ **The provisions of clause (x) of sub-section (2) of section 56 shall not apply to any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi (Notification no. Notification No. 96/2019 [G.S.R. 836(E)] dated 11th November 2019)**

♠ **CBDT notifies Special Court for trial of offences under section section 280A of Income-tax Act, 1961 (Notification No. 87/2019 dated 5th November, 2019)**

♠ **CBDT Chairman inaugurates Web Portal for exchange of information on Income Tax Website. The Web Portal consolidates all the relevant Automatic Exchange of Information (AEOI) related information at one place for convenient access by financial institutions, Departmental officers as well as public at large (Release ID: 1593094 dated 22nd November 2019)**

♠ **Mis International Centre for Research in Agroforestry, NASC Complex, Delhi (ICRAF) (PAN:- AAATI4803K) has been approved by the Central Government for the purpose of section 35(l)(ii) of the Income-tax Act 1961 from AY 2019-2020 onwards in the category of 'Scientific Research Association' (Notification no. 99/2019 dated 27th November 2019)**

♠ **Cabinet approves Taxation laws (Amendment) bill, 2019**

ii) **Income Tax Compliance calendar – December 2019**

| Date | Things to remember |
|---------------------------|---|
| 7 th December | Due date for deposit of Tax deducted/collected for the month of November, 2019. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan |
| 15 th December | -Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of November, 2019 has been paid without the production of a challan -Third instalment of advance tax for the assessment year 2020-21 -Due date for issue of TDS Certificate for tax deducted under section 194-IA & |

| | |
|---------------------------------|---|
| | 194IB in the month of October, 2019 -Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of November, 2019 |
| 30th December | -Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & 194IB in the month of November, 2019 -Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of November, 2019 -Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2018 to December 31, 2018) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report u/s 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc. |

iii) Important Income Tax cases decided

- **Condonation of delay is acceptable if respondent not refuted the same- condation delay of 1754 days accepted ([Senior Bhosale Estate \(HUF\) Vs ACIT \(Supreme Court of India\)- 07/11/19](#))**
- **Section 54 deduction (Capital gains) cannot be denied for mere non – deposit in Capital gain account. ([Venkata Dilip Kumar, Kartha-HUF Vs CIT \(Madras High Court\)- 05/11/19](#))**

B. GST UPDATES

i) GST Compliance Calendar – Returns for the M/O November 2019 to be filed in December 2019

| Return | | Last Date |
|--------------|--|--------------------|
| GSTR-1 | Outward supply for the month of November 2019 | 11th December 2019 |
| GSTR-5 | Non-resident foreign taxpayers return for the month of November 2019 | 20th December 2019 |
| GSTR-6 | Input service distributor for the month of November 2019 | 13th December 2019 |
| GSTR-7 | Tax Deducted at Source for November 2019 | 10th December 2019 |
| GSTR-8 | Tax Collected at Source by e-commerce operator for November 2019 | 10th December 2019 |
| GSTR-3B | Summary return tax payment for the month of November 2019 | 20th December 2019 |
| GSTR- 9 & 9C | Annual return for F.Y. 17-18 | 31st December 2019 |

ii) GST Notifications and Circulars issued in November 2019

ITC restrictions when details of invoices not uploaded, clarified : CBIC has clarified in respect of recently inserted provision relating to restrictions for taking ITC when details of invoices or debit notes are not uploaded by the suppliers. As per Circular, the

availment of restricted credit in terms of sub-rule (4) of Rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers, and the restriction, applicable only on the invoices / debit notes on which credit is availed after 09-10-2019, will be applicable only in respect of those invoices / debit notes, details of which are required to be uploaded by the suppliers under Section 37(1). (**Circular No. 123/42/2019-GST, dated 11-11-2019**)

GST annual returns for 2017-18 to be filed by 31-12-2019: Registered person, other than an Input Service Distributor, a person paying tax under Section 51/52, a casual taxable person and a non-resident taxable person, can now furnish GST annual return / reconciliation statement in **FORM GSTR-9/FORM GSTR-9C, for the period from the 1st July, 2017 to the 31st March, 2018, by 31st of December 2019.**, the said returns for the period from the 1st April, 2018 to the 31st March, 2019 shall be furnished by 31st of March, 2020. (**Order, 2019, dated 14-11-2019**)

Optional filing of GST annual return clarified: Clarifying through about optional filing of annual return by the assesseees whose aggregate turnover in a financial year does not exceed INR 2 crores, CBIC has stated that the tax payers, may, at their own option file Form GSTR-9A for 2017-18 and 2018-19 before the due date. It states that the common portal will not permit furnishing of the return after the due date. The Circular also clarifies that if any registered taxpayer, during course of reconciliation of his accounts, notices any short payment of tax or ineligible availment of input tax credit, he may pay the same through Form GST DRC-03. (**Circular No. 124/43/2019-GST dated 18-11-2019**)

Job work – Rate of tax clarified: Relying on definition of 'job work' provided in Section 2(68) of the CGST Act, CBIC has clarified that Entry at item (id) under Heading 9988 of **Notification No. 11/2017-Central Tax (Rate)** covers only job work services as defined in said provision, that is, services by way of treatment or processing undertaken by a person on goods belonging to another registered person. Circular also states that Entry at item (iv) covers only such services which are carried out on physical inputs which are owned by persons other than those registered under the CGST Act. (**Circular No. 126/45/2019-GST, dated 22-11-2019**)

CBIC implements digital DIN for correspondence with taxpayers: CBIC has implemented a system of digital generation of Document Identification Number (DIN) for all communication sent by its offices to taxpayers. This will create a digital directory for maintaining an audit trail of such communication., no authorization, summons, arrest memos, inspection notices and letters in the course of an inquiry shall be issued on or after 8-11-2019 (**Circular No. 37/2019-Cus. and Circular No. 122/41/2019-GST, both dated 5-11-2019**)

iii) Case Laws on Goods & Services Tax (GST)

GST transitional credit – Non-filing of TRAN-1 by 27-12-2017 not fatal: Observing that there was no intention to deny carry forward of unutilized credit of duty/tax already paid, on the ground of time limit, Punjab & Haryana High Court has directed the Revenue department to allow petitioners to file or revise incorrect TRAN-1 either electronically or manually before 30-11-2019. Credit was held as vested right which

cannot be taken away on procedural or technical grounds. Reiterating the findings in the Gujarat High Court and Delhi High Court decisions, the Court observed that department was at liberty to verify genuineness of claim of petitioner, but nobody shall be denied to carry-forward legitimate claim of Cenvat credit / ITC on the ground of non-filing of TRAN-I by 27-12-2017. It noted that most people in India are not well conversant with the electronic mechanism. **[Adfert Technologies v. Uol – Judgement dated 4-11-2019 in CWP No.30949 of 2018(O&M), Punjab & Haryana High Court]**

GST transitional credit permissible of accumulated credit of Education Cesses and Krishi Kalyan Cess: Madras High Court has allowed GST transitional credit in respect of accumulated credit of Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess. It rejected the contention that the accumulated credit of cesses is dead and gone. The High Court noted that there is no notification/circular/instruction that expressly provides that credit of such cesses would lapse. It also noted that the credit was carried forward and reflected in the returns and that the department having permitted the assessee to carry forward the credit, cannot now take a stand that such credit is unavailable for use. **[Sutherland Global Services P. Ltd. v. Assistant Commissioner – Order dated 5-9-2019 in Writ Petition No. 4773 of 2018, Madras High Court]**

Good seized due to expiry of e-way bill cannot be released on indemnity bond:

Uttarakhand High Court has declined to accede to petitioner's request for release of vehicle and goods seized on merely furnishing an indemnity bond. It observed that it would be inappropriate to issue a direction contrary to provisions of Section 129 of the CGST Act, 2017 which stipulates that goods can only be released on furnishing a bank guarantee. The goods were seized due to expiry of e-way bill while the goods were still in transit. The delay, as per assessee, was not deliberate and had occurred because of traffic diversions on account of Dussehra festival **[Livguard Energy Technologies (P) Ltd v. State of Uttarakhand – 2019 VIL 554 UTR]**

Presence of lawyers cannot be allowed during examination by GST officers: Delhi High Court has held that presence of lawyer cannot be allowed at the time of questioning or examination of a person by the officers under the GST provisions. The Court observed that officers under GST law are not police officers and have been conferred power to summon any person whose attendance they consider necessary to give evidence or to produce a document. Regarding the apprehensions of petitioner being physically assaulted or manhandled, the Court was of the opinion that it is well settled law that no investigation officer has a right to use any method which is not approved by law to extract information from a witness/suspect during examination. Supreme Court's decision in Pool Pandi v. Superintendent, Central Excise, was relied upon. **[Sudhir Kumar Aggarwal Vs Directorate General of GST Intelligence (Delhi High Court)]**

Mere providing place to consume food not prepared there is not restaurant services :- Kerala AAR has held that where a bakery sells ready to eat items and provides a place to consume them, but the food is not prepared in the premises, the service will not amount to restaurant services for purposes of GST. The AAR held that a restaurant is a place of business where food is prepared within the premises and served based on the

orders received from the customer. The Authority also held that products sold in the ready to eat form are liable to be taxed at the respective rates specified according to their HSN. [[Square One Homemade Treats – 2019 VIL 413 AAR](#)]

GST on expenses incurred by employees on behalf of employees and on remuneration to Directors: An advance ruling was sought on (a) whether the expenses incurred by the employees on behalf of the company exceeding Rs.5000/- a day and then reimbursed periodically are liable to tax; and (b) whether GST under reverse charge (RCM) is applicable on remuneration paid to the Directors. AAR Karnataka, relied on Clause 1 of Schedule III of the CGST Act, 2017 and the definition of 'consideration', and held that the amount paid by the employees to the supplier of services was covered under the term consideration" as if it was paid by the applicant-company for the services received by them on behalf of the company. Accordingly, it was held that the amount reimbursed by the applicant to the employees will neither be a supply of goods nor supply of services. With respect to applicability of GST under RCM on remuneration paid to the directors, it was held that since the directors are not the employees of the company, the services provided by them will be liable to GST. The AAR was of the view that the applicant will be liable to pay GST under RCM on such services as per Serial No. 6 of [Notification No. 13/2017-Central Tax \(Rate\)](#). [[Alcon Consulting Engineers \(India\) Pvt. Ltd. – 2019 VIL 363 AAR](#)]

C. Customs Updates

i. Custom Notifications

Deemed export drawback can be claimed on All Industry Rate: Drawback on the inputs used in manufacture and supply as per para 7.03(b) of the Foreign Trade Policy (deemed exports) can now also be claimed on 'All Industry Rate' of Duty Drawback Schedule notified by Department of Revenue, provided Cenvat credit has not been availed by the supplier of goods on excisable inputs. DGFT has amended, with effect from 5- 12-2017, para 7.06 of FTP relating to conditions for refund of deemed export drawback. Consequential amendments have also been made for this purpose in paras 7.02 and 7.06 of Handbook of Procedures Vol.1. ([Notification No. 28/2015-20](#) and [Public Notice No. 40/2015-20](#))

Export policy for onions revised: Earlier, the Central Government had imposed prohibition on export of onions vide [Notification No. 21/2015-20, dated 29-9-2019](#). Now, the export policy condition has been amended to provide for export of Bangalore Rose Onions covered under item description of Serial Number 52 of Chapter 7 of Schedule 2 of ITC (HS), upto a quantity of 9000 MT, for the period up to 30th November, 2019. The aforesaid exports will be allowed subject to obtaining a certificate from the Horticulture Commissioner, Government of Karnataka certifying the item and the quantity of Bangalore Rose Onions to be exported. ([Notification No. 27/2015-20, dated 28-10-2019](#))

ii. Custom Case Laws

Valuation – Evidentiary value of export declarations, public ledger, commodity trade statistics data: CESTAT Chennai has held that the transaction value adopted by the importer cannot be rejected merely based on export declarations received from Turkish

Customs, public ledger and Commodity Trade Statistics Data (Comtrade). It noted that the Tribunal, while disposing of a batch of cases in regard to similar imports of the very same goods and where similar evidence was adduced by Department, had held that the transaction value cannot be rejected on the basis of such evidence. (**Shri. Haji Sumar Vs Commissioner of Customs (CESTAT Chennai)**)

Interest on delayed refund – Wrong/excessive collection of duty is not ‘deposit’: Madras High Court has held that an amount determined as ‘duty’ by processing the bill of entry and collected by the revenue department can never be termed as a ‘deposit’. It observed that ‘deposit’ is either offered by importer on their own or in compliance pending disposal of proceedings as an interim measure whereas ‘duty’ is a statutory liability collected as revenue. The Court hence allowed interest on delayed refund of the amount so collected earlier by the department. The Court observed that wrong or excessive collection of duty cannot make such collection as ‘deposit’ in the hands of the revenue department so as to escape the clutches of Section 27A of Customs Act, 1962. Further, taking note of the fact that there was no factual dispute between the parties except on the nomenclature of the amount paid by the petitioner, the High Court held the writ petition filed against adjudication order was maintainable. [**Global United Shipping India (P) Ltd. Vs Assistant Commissioner of Customs (Refund) (Madras High Court)**]

Mis-declaration by SEZ – Permission based on project report to be relied: Relying on the permission which was granted in terms of project report made before the Development Commissioner, which stated that the SEZ unit was permitted to import garments that were almost new but could be out of fashion in terms of time as far as the country of production is concerned, CESTAT Ahmedabad has set aside the confiscation of goods under Section 111(m) of the Customs Act, 1962. The Tribunal though noted that new clothes imported could not be called rags and hence there was mis-declaration, it observed that the letter of permission was specifically issued referring to the project report and also permits the assessee to manufacture reconditioned clothing. Further, confiscation under Section 111(d) was also set aside observing that no testing was done by the department. (**Texool Wastesavers Vs C.C (CESTAT Ahmedabad)**)

D. Central Excise, Service Tax & VAT

i. Case Laws on Central Excise, Service Tax & VAT

Cenvat credit on outdoor catering activity and rent-a-cab services: Observing that definition of input service was very wide and that the only condition precedent was that it should be the activity relating to business, CESTAT Mumbai has allowed Cenvat credit on outdoor catering services and rent-a-cab services for the period 2007-2010. It noted that outdoor catering services was availed for the clients who visited the office for business meeting during business hours and not as personal or welfare measure for its employees. The expense was not recovered from employees and was debited in profit and loss account. In respect of rent-a-cab services, the Tribunal noted that the said service, for attending business meetings, was availed before 2011 and was an expenditure in relation to business. [**M/s. Mediacom Media India Pvt. Ltd. Vs C.C.G.S.T. (CESTAT Mumbai)**]

Bees wax – Washing, melting and packing not amount to ‘manufacture’: CESTAT Mumbai has held that merely because certain processes are carried out on the raw bees wax to make the product in a presentable and better marketable form, without significant change in the character and use between the raw bees wax and the cleaned/purified bees wax, the processes undertaken cannot result in manufacture. Relying on the decision of the Supreme Court in the case Shyam Oil Cake Ltd., the Tribunal observed that merely because the product bees wax was mentioned under chapter sub-heading 1507, it cannot be considered that the processes carried out on the raw bees wax resulted in ‘manufacture’ within the definition of Section 2(f) of Central Excise Act, 1944. **[M/s. Shree Laxmi Textile Processors Pvt. Ltd Vs Commissioner of Central Excise (CESTAT Mumbai)]**

Cenvat credit on motor vehicles – No need for exclusive use in listed services: CESTAT Hyderabad has held that as long as the assessee used motor vehicles for rendering Cargo Handling Services on which they had paid service tax, they were entitled to Cenvat credit on such motor vehicles as capital goods. The Tribunal was of the view that the motor vehicles need not be used exclusively for providing cargo handling or other listed services, and that mere fact that the assessee had also used such motor vehicles for some other purposes did not deprive them of their Cenvat Credit. Observing that show cause notice had not brought forth any evidence that the vehicles in question were not used for cargo handling services, the Tribunal rejected the department’s view that the vehicles were used for Port services which was the main service of the assessee. **[Srinivasa Transports Vs Commissioner (CESTAT Hyderabad)]**

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