

THE BUZZ

MARCH 2023

ACUPRO CONSULTING

NEWSLETTER CONTRIBUTORS

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UPDATES



Introduction of new functionality of 'Restoration of Cancelled Registration' based on Appellate order.

A functionality in the name of ‘Restoration of Cancelled Registration’ has been developed and deployed w.e.f. 23.03.2022, to enable jurisdictional Range officers to restore registrations in compliance with judicial/appellate orders."

This functionality would cover both types of cancellations, namely (1) those ordered suo motu by Range officers, against which appeal orders were received, without applying for revocation through form REG-21, and (2) those cancelled upon request from the taxpayers."

Proposed amendments to the GST have been included in the Finance Bill, 2023 which has been passed by the Lok Sabha on 24th March 2023.

- **Period to furnish form GSTR-3B or form GSTR-10 (Final Return) increased from 30 days to 60 days under best judgment Assessment:**

It has been proposed to amend Section 62(2) of the CGST Act, which deals with the assessment of unregistered persons, to extend the time period for furnishing return Form GSTR 3B or Form GSTR 10 (Final Return) from 30 days to 60 days in cases where the proper officer has assessed the tax liability on a best judgment assessment basis.“

In addition, if a registered person fails to furnish a valid return within 60 days of the assessment order, he may furnish the same within a further period of 60 days on payment of an additional late fee of INR 100/- for each day of delay beyond 60 days of the service of the assessment order.

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- **Place of supply of services of transportation of goods, other than by way of mail or courier to be the location of the recipient of services:**

It has been proposed to omit Section 13(9) of the IGST Act, 2017 i.e. 'the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods'. Thus, now the place of supply of services in case of transportation of goods, other than by way of mail or courier would be covered under default provision of Section 13(2) of IGST Act and would be the location of the recipient of services.

- **Maximum rate at which GST Compensation Cess may be collected:**

It has been proposed to amend the Schedule of the GST (Compensation to States) Act, 2017 pertaining to the maximum rate at which GST Compensation Cess may be collected for items such as Pan Masala (from 135% ad valorem to 51% of the retail sale price/ unit), Tobacco and manufactured tobacco substitutes, including tobacco products (INR 4170/1000 sticks

or 290% ad valorem or a combination thereof but not exceeding INR 4170/ 1000 sticks + 290% ad valorem or 100% of retail sale price/ unit). In addition, new Explanation has been proposed to be inserted, defining the scope of 'retail sale price'.

- **Constitution of GST Appellate Tribunal (GSTAT) and Benches thereof:**

Constitution of GST Appellate Tribunal (GSTAT) and Benches ,aims to replace "National Bench or Regional Bench" with "Principal Bench and State Benches," which will be set up in each state, and a Principal Bench in New Delhi. The jurisdiction, powers, and authority of the GST Appellate Tribunal (GSTAT) will be exercised by the Principal Bench and the State Benches.

The proposed GST Appellate Tribunal (GSTAT) will have a Principal Bench comprising the President, a Judicial Member, a Technical Member (Centre), and a Technical Member (State). State Benches will have two Judicial Members, a Technical Member (Centre), and a Technical Member (State). The Principal Bench will deal with issues related to the place of supply. Appeals related to tax, input tax credit, fine, fee, or penalty, not exceeding INR 50 lakh and without a question of law, will be heard by a single member. All other cases will be heard by one Judicial Member and one Technical Member together.

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NEWS

GST on Hotels/ Restaurants may be increased to 12% from 5% with ITC benefit

The GST on the hotel and restaurant industry could be increased to 12% from 5% with input tax credit benefit.

50th GST Council likely to meet in June,2023 to decide on online gaming tax.

The GST Council is likely to hold its next meeting in June where the long pending issue of taxation of online gaming, horse racing and casinos will be taken up.

Taxpayers can transfer the amount in cash ledger from one GSTIN to another GSTIN registered on the same PAN through form GST PMT-09.

The GST portal has released a new functionality enabling taxpayers to transfer the amount available in the cash ledger from one GSTIN to another GSTIN registered on the same PAN by filing form GST PMT-09.

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CASE LAWS



ITC refund cannot be rejected without providing an opportunity of being heard to the assessee.

Facts:

M/s. Chandni Crafts ("the Petitioner") had claimed a refund of accumulated ITC for the months of July 2017 and August 2017 according to section 54(3) of the CGST Act 2017 on account of export of goods under the letter of undertaking. The revenue department ("the Respondent") partially sanctioned the refund. Against which, the Petitioner preferred an appeal before the Appellate Authority. However, it was rejected vide the Order-in-Appeal ("the OIA").

Issues:

Being aggrieved the Petitioner has filed an appeal in High Court The Petitioner contended that the respondent violated the provisions of Section 54(3) of the CGST Act and Rule 92 (3) of the CGST Rules. As per rule 92(3), the respondent shall issue the Form GST RFD-08 requiring the applicant to furnish a reply in Form GST RFD-09 and after considering the reply, the order can be made in Form GST RFD-06. However, the refund was rejected by the respondent without providing an opportunity of being heard.

Decision:

The Hon'ble Rajasthan High Court held that refund cannot be rejected without providing an opportunity of being heard to the applicant. The Hon'ble Court remanded the matter back to the respondent for fresh consideration as per Rule 92(3) of the CGST Rules and passed an order in accordance with the law.

ITC not allowed to purchasing dealer without proof of genuine transactions and physical movement.

Facts:

M/s. Ecom Gill Coffee Trading Pvt Ltd. ("the Taxpayer") is dealing in purchasing of green coffee beans from vendors and reselling the same in foreign market and in the domestic market. The Revenue Department ("the Appellant") issued a notice to the taxpayer under Section 39 of the KVAT Act due to irregularities in Input Tax Rebate claimed for Assessment Year 2010-2011. Upon reassessment it was found that the taxpayer has claimed ITC from various dealers but some of them are de-registered/not filed taxes and hence, ITC was disallowed. The taxpayer appealed to the second Appellate Authority

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and the appeal was allowed on the grounds that the taxpayer had purchased the coffee from the registered dealer under genuine tax invoices and allowed the ITC. Further the Karnataka High Court has also dismissed the revision application of the appellant.

Issue:

Being aggrieved the Appellant has filed an appeal in Supreme Court contending that the High Court erred in dismissing the revision application, as the burden of proof for claiming ITC is on the purchasing dealers to prove authenticity of transactions and actual movement of goods. As the Appellant cannot recover from sellers who are not registered or have filed 'NIL' returns, by denying the sale.

Decision:

The Hon'ble Supreme Court has set aside the order passed by the High Court, ruling that until the purchasing dealer proves the genuineness of the transaction/purchase and sale by producing relevant materials, they are not entitled to Input Tax Credit.

Non-Submission of reply to SCN not valid for cancellation of GST Registration.

Facts:

M/s. Agarwal Construction Company ("the Petitioner") is a sole proprietary firm having business of civil construction work. A SCN was issued by the Revenue Department ("Respondent") on the grounds that the GST Returns were not filed and directing the Petitioner to submit a reply. Subsequently, the OIO was passed for cancelling the GST registration of the petitioner.

Issue:

The Petitioner contended that, they have not received the issued SCN and hence, could not submit a reply within the stipulated time. Further the Appellate Authority also rejected the appeal on the grounds of delay. The Petitioner also contended that he was not been given the opportunity of hearing and the OIO is self-contradictory as it states that, the Petitioner has submitted its reply to the SCN, but the following line states that the Petitioner has not submitted its reply. Being aggrieved the Petitioner has filed an appeal in High Court.

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Cancellation of GST registration without determining the amount payable in invalid and unsustainable.

Facts:

M/s Devi Products (“the Petitioner”) is a sole proprietor engaged in the business of trading of brass articles. The Petitioner has filed GST returns till June 2020, thereafter due to Covid-19 pandemic the Petitioner has not filed any returns after June 2020 as the petitioner had no business, and the petitioner was of the view that there is no requirement to file GST returns. The Revenue Department issued a SCN dated March 15, 2021 to the Petitioner, informing them that their GST Registration was liable to be cancelled for non filing of returns for a continuous period of six months.

Issue:

The GST Registration of the Petitioner was suspended under Rule 21A of the CGST Rules without recording any particulars or the reasons or the grounds for cancellation and without determining the tax demand. Being aggrieved the Petitioner has filed an appeal in High Court contending that the Respondent has cancelled the GST Registration without recording the grounds and without determining the tax demand which is not sustainable.

Decision:

The Hon’ble Gujarat High Court has set aside the Show Cause Notice issued to the assessee and the consequential order for cancellation of GST Registration on the grounds that it was passed without recording any reasons and without determining the tax demand.

Decision:

The Hon’ble Allahabad High Court has set aside the cancellation order of the GST Registration on the grounds that the non-submission of reply to the Show Cause Notice ("SCN") cannot be a ground for cancellation. The court has permitted the assessee to submit the reply to the SCN and directed the Revenue Department to pass fresh orders in accordance with the law.

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INCOME TAX

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NOTIFICATIONS

CBDT notifies 'Karnataka State Building & Other Construction Workers Welfare Board' for exemption under Section 10(46) of the Act in respect of specified income arising to that Board

Specified income includes-

1. Cess collected on construction cost levied u/s 3(1) of the Building and Other Construction Workers' Cess Act, 1996,
2. Registration fee & annual subscriptions received from the establishments; and
3. Interest earned on above.

The above exemption subject to the following conditions that Board-

- shall not engage in any commercial activity,
- activities and the nature of the specified income shall remain unchanged throughout the financial years
- shall file return of income in accordance with Section 139(4C)(g).

The above notification shall be deemed to have been applied for the FY 2020-2021 to FY 2024-2025.

(Source: Source: Notification dated March 6, 2023)

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LITIGATIONS

Karnataka HC admitted Wipro's appeal on deductibility of foreign taxes as business expenditure (Wipro Limited)

- Karnataka HC admitted Wipro's appeal over allowability of taxes paid in countries as expenditure under Section 37(1) where credit against such taxes is not allowed under Sections 90 and 91 of the Act.
- Assessee relied on Bombay HC ruling in Reliance Infrastructure where the denial of foreign tax credit was upheld but the taxes were allowed as expenditure under Section 37(1) by applying the 'real income theory.

Absence of 'DIN' on assessment order not curable defect; Delhi HC dismissed Revenue's appeal.

- Delhi HC upheld ITAT order quashing the assessment for non-mentioning of Document Identification Number (DIN) on the assessment order.
- HC categorically rejected Revenue's argument of holding the defect as curable under Section 292B while accepting Assessee's plea that the assessment order was jurisdictionally defective and cannot be cured.
- HC held that the Circular 19/2019 is binding on the Revenue which gives clear conclusion that communication without DIN shall be treated as never have been issued.
- Therefore, dismissed Revenue's appeal by holding that no substantial question of law arose for HC's consideration.

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AUDITING AND ASSURANCE

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UPDATES

ICAI has issued education material on Ind AS 21, The Effects of Changes in Foreign Exchange Rates

Ind AS 21 prescribes procedure for including foreign currency transactions and foreign operations in the financial statements of an entity. On 21 February 2023, the Institute of Chartered Accountants of India (ICAI) has issued an educational material on Ind AS 21 which aims to address all relevant aspects of the standard by way of a brief summary of the standard. It also includes Frequently Asked Questions (FAQs) to address certain practical issues. The FAQs provide guidance on issues such as accounting for transactions and balances in foreign currencies, translating the results and balance sheet of foreign operations that are included in the financial statements of the entity by consolidation or equity method and translating an entity's results and balance sheet into a presentation currency. It also provides guidance on which exchange rate(s) are to be used and how to report the effects of changes in exchange rates in the financial statements.

(Source: ICAI announcement dated February 21, 2023)

ICAI has issued implementation guide on Standard on Auditing (SA) 580, Written Representations

Written representations are an important means of obtaining audit evidence as they supplement other audit evidence' obtained by auditors during the course of audit. SA 580 lays down the basic principles of written representations. These principles should be followed by auditors while complying with the requirements of the standards on auditing. On 7 March 2023, ICAI issued an implementation guide on SA 580 to help auditors to effectively comply with the requirements of the standard. The guide provides an overview of SA 580, guidance on various aspects of the standard in a Question-Answer format, illustrative checklist and appendices on the illustrative format for a written representation letter.

(Source: ICAI announcement dated March 7, 2023)

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ICAI issues implementation guide on auditor's reporting requirement on audit trail

Section 143(3) of the Companies Act, 2013 (2013 Act) provides various matters on which auditors are required to report in their auditor's report. Further, Rule 11 of the Companies (Audit and Auditors) Rules, 2014 (Audit Rules) specifies such other matters that are to be reported by the auditor.

On March 24, 2023, the Ministry of Corporate Affairs (MCA) amended the Companies (Audit and Auditors) Rules, 2014 to introduce Rule 11(g) which prescribes a new reporting requirement for auditors. Auditors need to evaluate the accounting software of an organizations to assess whether the audit trail feature was operated throughout the year and has not tampered with and report accordingly in his/her report. Additionally, auditors are required to evaluate whether such audit trail has been preserved by the company as per statutory requirements for record retention.

In this regard, on 28 March 2023, the Auditing and Assurance Standards Board (AASB) of ICAI has issued an implementation guide on the new reporting requirement. The implementation guide aims to provide detailed guidance on various aspects to enable auditors to discharge their duties more efficiently and effectively. It prescribes management's and auditor's responsibility, applicability of the rule and audit approach to be applied, illustrative wordings for the auditor's report and management representation letter

((Source: ICAI announcement dated February 21, 2023)

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IASB has concluded its project to improve its approach to develop disclosure requirements in IFRS Accounting Standards

On March 8, 2023, IASB concluded its project on improving its approach to developing and drafting disclosure requirements. The improved approach is designed to help the IASB develop Accounting Standards that would enable companies to make better judgements about which information is material and should be disclosed, thereby providing more useful information to investors.

The improved approach involves:

- *Engaging early with investors to understand their information needs.*
- *Developing disclosure requirements alongside recognition and measurement requirements; considering the digital reporting implications of new disclosure requirements*
- *Using general and specific objectives that describe and explain investors' information needs; and*
- *Supporting specific objectives by requiring companies to disclose items of information that would satisfy the objectives in most cases.*

The IASB intends to use the above approach when developing disclosure requirement.

(Source: IFRS project summary news dated March 8, 2023)



APENDIX

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ACRONYMS

Used	Meaning
GST	Goods and Services Tax
CGST	Central Goods & Services
CBIC	Central Board of Indirect Taxes & Customs
GTA	Goods Transport Agency
IAS	International Accounting Standards
CBDT	Central Board of Direct Taxes
AY	Assessment Year
AAR	Authority of Advance Rulings
HC	High Court
SC	Supreme Court
PCIT	Principal Commissioner of Income Tax
CCIT	Chief Commissioner of Income Tax
FCRA	Foreign Contribution Regulations Act
CARO	Companies Auditor's Report Order
GOM	Group of Ministers
ITAT	Income Tax Appellate Tribunal
DTAA	Double Taxation Avoidance Agreement
FEMA	Foreign Exchange Management Act
CARO	Companies Auditor's Report Order
NBFCs	Non-Banking Finance Companies
HFCs	Housing Finance Companies

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WHY ACUPRO?

FEATURES

Leading professional firm serving for 10+ years

Solution Oriented Team with vast experience

3 Dynamic partners

Team of Big 4 Alumnus

Team of 100+ Professionals

Served 500+ MNCs

Subject Matter Experts

Right Blend Of Professionals

Industry wise Expertise

SERVICES

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Indirect Taxation

Transaction Advisory

International Taxation

Assurance, Accounting & GAAP Advisory

Regulatory & Secretarial Consulting

Risk Advisory & Financial Transformation

Thank You!

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