N. D. KAPUR & CO.
CHARTERED ACCOUNTANTS

Monthly Updates

JANUARY 2025

(I) INDIRECT TAXATION

INTEGRATED GOODS AND SERVICE TAX ("IGST") CLARIFIES SCOPE OF TAX APPLICATION

The Notification No. 07/2025-CentralTax (Rate), issued on January 16, 2025, modifies Notification No. 13/2017-Central Tax (Rate) under the Central Goods and Services Tax (CGST) Act. The amendment changes the language in the table of the notification under serial number 5. It inserts the phrase "other than a body corporate" after "Any person" in column (3), thus clarifying that the provisions apply to individuals and entities other than body corporates.

This change is made to specify the type of entities that fall under the purview of the CGST provisions. The amendment aims to provide greater clarity regarding the scope of the tax application. Supply of the sponsorship services provided by the body corporates will now fall under Forward Charge Mechanism.

Similar amendments are made in Integrated Goods and Services Act & Union Territory Goods and Services Act.

THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS ("CBIC") EXCLUDES COMPOSITION TAXPAYERS FROM REVERSE CHARGE

CBIC issued Notification No. 07/2025-Central Tax (Rate), dated January 16, 2025, which amends the provisions of Notification No. 09/2024-CTR dated October 8, 2024. The amendment excludes taxpayers registered under the composition levy scheme from the reverse charge mechanism applicable to the renting of commercial or immovable property (other than residential dwellings) by unregistered persons to registered persons.

This change addresses the concerns of businesses registered under the composition scheme, exempting them from the reverse charge obligations. The notification also clarifies that this exclusion applies retroactively, from October 10, 2024, the effective date of the original notification, until the issuance of the new notification, thus regularizing the period on an "as is where is" basis. Supply of the sponsorship services provided by the body corporates will now fall under Forward Charge Mechanism.

GOODS AND SERVICE TAX ("GST") RATE CHANGES FOR HOTELS AND RESTAURANT SERVICES

The Ministry of Finance, through Notification No. 05/2025-Central Tax (Rate), dated January 16, 2025 introduces significant amendments regarding the GST rates for hotel accommodation and restaurant services. Effective from April 1, 2025, the notification omits the definition of "declared tariff" and revises the definition of "specified premises." The revised definition links the GST rate for restaurant services in hotels to the value of hotel accommodation supplied in the previous financial year. If the accommodation exceeds Rs 7,500 per unit per day, the GST rate for restaurant services will be 18% with Input Tax Credit **("ITC")**, and 5% without ITC otherwise. It also allows hotels to opt for 18% GST with ITC for restaurant services, provided they file a declaration before the start of the financial year or upon registration.

Furthermore, new declarations for "specified premises" must be filed by registered persons or new applicants. Annexures VII, VIII, and IX introduce formats for "opt-in" and "opt-out" declarations, to be submitted by January 31 of the preceding financial year, with a 15-day window for new taxpayers.

The amendments aim to streamline the tax structure and provide clarity on applicable GST rates for the hospitality sector.

IGST RATE RAISED TO 18% ON SALE OF OLD AND USED VEHICLES

The Ministry of Finance, through Notification No. 04/2025-Central Tax (Rate) issued on January 16, 2025, has amended the Central Goods and Services Tax **("CGST")** rate on the sale of old and used vehicles, including electric vehicles **("EVs")**. The notification raises the IGST rate from 12% to 18% on these transactions, with the exception of vehicles already specified at the 18% GST rate. This change is intended to align with broader fiscal policies and is implemented immediately. The revised tax rate is part of an amendment to the earlier notification No. 8/2018-Central Tax **("Rate")** dated January 25, 2018. The new tax rate will now apply to all sales of used vehicles and EVs, ensuring uniform taxation on these goods across the market.

The notification, issued under Section 11(1) of the Central Goods and Services Tax Act, 2017, reflects the government's adjustment of tax rates to align with current market conditions and public interest.

Similar amendments are made in Integrated Goods and Services Act & Union Territory Goods and Services Act.**MADRAS HIGH COURT CALLS FOR RECONSIDERING OF ITC DISALLOWANCE FOR DELAYED CLAIM**

In the matter of ***Saritha Impex & Marketing Private Limited Vs Superintendent of CGST & Central Excise*** **(W.P. No. 39848 of 2024),** the Hon'ble Madras High Court held that disallowance of input tax credit for Assessment Year 2019-2020 since claims has been lodged beyond the period prescribed under Section 16(4) of the GST Acts needs re-do by taking into account newly inserted provisions of section 16(5).

The present writ petition was filed challenging the impugned order passed by the respondent relating to the assessment year 2019-20 on the premise that the Input Tax Credit has been disallowed only on the ground that the claims have been lodged beyond the period prescribed under Section 16(4) of the GST Act.

It was held that the respondent would re-do the assessment by taking into account the amendment introduced under GST by insertion of section 16(5) vide Section 118 of the Finance (No. 2) Act, 2024

CONSTRUCTION OF CANALS/PIPELINES FOR GOVERNMENT USE NOT EXIGIBLE TO SERVICE TAX

In the matter of ***Commissioner of Service Tax Kolkata Vs Electrosteel Castings Limited*** **(Appeal No. CEXA/56/2024),** the Hon'ble Kolkata High Court held that construction of canals/ pipelines/ conduits to support irrigation, water supply or for sewerage disposal, when provided to the Government, could not be eligible to service tax.

In this case, the Assessee had entered into an agreement with the Kerala Water Authority for construction of a distribution system for water supply for Thiruvananthapuram City. Assessee was informed that no service tax was payable on the service. Accordingly, it sought refund under Section 11B of the Central Excise Act of the amount which was paid by it on a mistaken impression that the activity undertaken by them would attract service tax. However, the Adjudicating Authority rejected the assessee's application on the ground that no supporting documents for exemption of service tax were produced.

The Court held that once tax was not payable in law, there was no authority for the department to retain such an amount.

GST ON CO- INSURANCE & RE- INSUARANCE PREMIUMS

CBIC provides clarification on the treatment of GST in co-insurance and re-insurance transactions. It states that when a lead insurer apportions the co-insurance premium to co-insurers, no GST is levied on the apportionment, as long as the lead insurer pays GST on the full premium paid by the insured.

Regarding ceding/re-insurance commission, it clarifies that the insurer must pay GST on the entire reinsurance premium, including any commission, with the reinsurer responsible for the GST on the gross premium.

Additionally, any GST issues from July 2017 to October 2024 will be resolved without penalties under the "as is where is" principle. These provisions are effective from 1st November 2024, as per the Finance (No. 2) Act, 2024.

GST APPLICABILITY FOR SPECIFIC SERVICES

- **Penal Charges by Regulated Entities (REs):** GST does not apply to penal charges levied by banks and NBFCs for non-compliance with loan terms, as these charges are considered deterrents for breach of contract, similar to liquidated damages.
- **GST Exemption for Payment Aggregators**: Payment Aggregators (PAs) are eligible for GST exemption on transactions up to ₹2,000 made via credit/debit cards, but this exemption does not apply to Payment Gateway (PG) services.
- **GST on Research and Development Services**: GST on R&D services provided by Government Entities for grants is exempt from 10.10.2024, with no penalties for the period from 01.07.2017 to 09.10.2024.
- **GST on Skilling Services**: The GST exemption for skilling services by NSDC-approved training partners was reinstated in January 2025, and GST payments for the period 10.10.2024 to 15.01.2025 will be regularized on an "as is where is" basis.
- **GST on Facility Management to MCD:** GST applies to facility management services provided to MCD Headquarters as these are not related to municipal functions.
- **Delhi Development Authority (DDA):** DDA does not qualify as a "local authority," so services provided by DDA to businesses are not subject to RCM.

- **GST on Renting of Commercial Property (RCM):** Renting of commercial property by an unregistered person to a registered person is exempt for taxpayers under composition levy. the payment of GST on RCM for the period from 10.10.2024 to 15.01.2025 is regularized on an "as is where is" basis for composition levy taxpayers.
- **GST on Electricity Support Services:** GST on incidental services provided by electricity transmission/distribution utilities between 10.10.2024 and 15.01.2025 is regularized on an "as is where is" basis.
- **Goethe Institute/Max Mueller Bhawans:** GST payment on services provided by Goethe Institutes/Max Mueller Bhawans for the period from 01.07.2017 to 31.03.2023, period will now be regularized on an "as is where is" basis.
  These institutes, offering linguistic and cultural training, had not collected or paid GST, assuming their services were exempt.

AMENDMENTS TO GST RULES: TEMPORARY IDENTIFICATION NUMBER AND REGISTRATION CHANGES.

Notification 07/2025 amends the GST rules with key changes:

- Rule 16A introduces a temporary identification number for individuals or entities not required to register but still needing to make payments under GST.
- Rule 19(1) is modified to mandate that registered persons report any changes in registration details or unique identity within 15 days, using FORM GST REG-14.
- Rule 87(4) specifies that unregistered persons must make payments using a temporary identification number, as per Rule 16A.
- Additionally, a new format for FORM GST REG-12 has been introduced.

WAIVER OF LATE FEE FOR GSTR-9 AND GSTR-9C SUBMISSIONS FOR FY 2017-18 TO 2022-23

Notification No. 8/2025 waives the late fee under Section 47 of the CGST Act for the annual returns (FORM GSTR-9) for FY 2017-18 to 2022-23, applicable to registered persons who failed to submit the reconciliation statement (FORM GSTR-9C). The waiver applies to late fees exceeding the fee payable under Section 47, provided the reconciliation statement is submitted by March 31, 2025. However, no refund will be provided for late fees already paid for delayed submission of FORM GSTR-9C.

CBIC ISSUES GST AND CUSTOMS NOTIFICATIONS

- Fortified Rice Kernel: Notification 01/2025 (CTR) introduces a 5% GST rate effective from 16.01.2025.
- Gene Therapy: Notification 02/2025 (CTR) introduces Exemption from GST from 16.01.2025.
- Fortified Rice for ICDS: Notification 03/2025 (CTR) introduces no GST for supplies related to approved schemes.

AMENDMENTS TO GST NOTIFICATION 12/2017:

Through Notification 06/2025 (CTR), the services of insurance provided by the Motor Vehicle Accident Fund, constituted under section 164B of the Motor Vehicles Act, 1988, against contributions made by insurers from the premiums collected for third-party motor vehicle insurance, are exempt from both CGST and SGST, with a tax rate of nil.

COMPENSATION CESS UPDATE ON EXPORTED GOODS- EFFECTIVE FROM 16.01.2025

The Central government exempts the intra-state and inter-state supply of taxable goods by a registered supplier to a registered recipient for export, from so much of the compensation cess as is in excess of the amount calculated at the rate of 0.1%. Conditions for exemption include issuing a tax invoice, exporting within 90 days, mentioning GSTIN and invoice details in the shipping bill, and the recipient being registered with an Export Promotion Council. The goods must be moved to the export point or a registered warehouse, and proof of export must be provided. The exemption is void if goods are not exported within 90 days.

CUSTOMS DUTY EXEMPTION FOR IAEA INSPECTION EQUIPMENT AND SAMPLES

Notification No. 01/2025-Customs exempts equipment and consumable samples imported by the IAEA Inspection Team from customs duties and integrated tax. The conditions include a certificate from the Department of Atomic Energy confirming the items are for nuclear facility inspections and an undertaking that the equipment will be exported within six months.

DELHI HIGH COURT CALLS FOR QUASHING PARALLEL GST PROCEEDINGS BY DGGI AND STATE AUTHORITIES

In the matter of *Metalax Industries vs. GST Officer*, the High Court ruled that both State/UT GST officers and the Directorate General of GST Intelligence (DGGI) could not initiate parallel proceedings for the same period.

The DGGI had issued a show cause notice for the financial years 2017-18 and 2018-19, while State GST authorities also started their proceedings by issuing separate show cause notices. The petitioner argued that once the DGGI began its investigation, the State GST authorities could not continue examining the same period or pass any assessment orders.

The Court, referring to the DLF Home Developers Ltd. v. Sales Tax Officer Class II case, held that simultaneous proceedings by DGGI and State GST authorities were impermissible, and consequently, the show cause notices and the orders of assessment were quashed.

(II) DIRECT TAXATION

AUTHORITIES CANNOT RETAIN SEIZED CASH ONCE TIME PERIOD HAS LAPSED

In the matter of ***Gautam Thadani Vs Director Income Tax (Investigation) And Anr. [W.P.(C) 10960/2016]***, the Hon'ble Delhi High Court held that income tax authorities cannot retain seized cash once time-period for framing an assessment under section 153A of the Income Tax Act ("**Act**") has expired and there is no outstanding demand.

In the present case, the Petitioner had filed the petition, praying that the Respondent should handover an amount of Rs. 98,00,000/- which was seized from the Petitioner. It was held that the assessment under Section 153A of the Act is required to be completed within a period of twenty-one months from the end of the financial year in which the requisition under Section 132A of the Act was executed. In the present case, the warrant under Section 132A(1)(c) of the Act was executed on December 15, 2016, thus, the Income Tax Authorities are required to complete the assessment within the time-period stipulated under Section 153B(1)(a) of the Act.

It was held that in terms of Section 153B(1)(a) of the Act, the assessment under Section 153A of the Act is required to be completed within a period of twenty-one months from the end of the financial year in which the requisition under Section 132A of the Act was executed.

REDUCTION IN SHARE CAPITAL RESULTS INTO TRANSFER OF CAPITAL ASSET U/S. 2(47)

In the matter of ***PCIT-4 & Anr. Vs Jupiter Capital Pvt. Ltd. (Special Leave Petition No. 63 of 2025***), the Hon'ble Supreme Court held that the reduction in share capital of the subsidiary company results into the transfer of capital asset as envisaged in section 2(47) of the Income Tax Act ("**Act**"). Accordingly, petition of revenue dismissed.

As per the facts of the case, the Respondent-Assessee, a company engaged in the business of investing in shares, leasing, financing and money lending, had made an investment in Asianet News Network Pvt. Ltd., an Indian company engaged in the business of telecasting news, by purchasing 14,95,44,130 shares having face value of Rs. 10/- each. Thereafter, the Respondent-Assessee purchased 38,06,758 shares from other parties, thereby increasing its shareholding to 15,33,40,900 shares which constituted 99.88% of the total number of shares of the company, i.e., 15,35,05,750. Subsequently, the Respondent-Assessee filed a petition before the Bombay High Court for reduction of its share capital to set off the loss against the paid-up equity share capital.

The Bombay High Court ordered for a reduction in the share capital of the Respondent-Assesse company from 15,35,05,750 shares to 10,000 shares. Consequently, the shares of the Respondent-Assessee were reduced from 15,33,40,900 shares to 9,988 shares. However, the face value of shares remained the same at Rs. 10 even after the reduction in the share capital. During the year, the Respondent-Assessee claimed long term capital loss accrued on the reduction in share capital from the sale of shares of such company. However, the Assessing Officer, while disagreeing with the Respondent-Assessee's claim, held that

reduction in shares of the subsidiary company did not result in the transfer of a capital asset as envisaged in Section 2(47) of the Income Tax Act, 1961.

The Supreme Court then held that the reduction in share capital of the subsidiary company and subsequent proportionate reduction in the shareholding of the Respondent-Assessee would be squarely covered within the ambit of the expression "sale, exchange or relinquishment of the asset" used in Section 2(47) the Income Tax Act, 1961.

STAY IMPOSED BY HON'BLE SUPREME COURT OF INDIA IN THE MATTER OF TIGER GLOBAL

In August 2024, the High Court of Delhi had pronounced its much-awaited ruling in the case of ***Tiger Global International III Holdings Vs. AAR [2024] 165 Taxmann.com 850 (Delhi).***

The Court in said judgment ruled that the capital gains arising from the sale of shares in a Singaporean company (holding shares in Indian company) by a Mauritius-based

investor were not taxable in India due to the grandfathering benefit provided under Article 13(3A) of the India Mauritius Double Tax Avoidance Agreement ("**DTAA**").

The High Court had observed that once the transaction has economic substance, presence of Tax Residency Certificate and meeting of LOB condition in tax treaty are sufficient to grant treaty benefit. The onus lies on the Revenue to bring forth convincing evidence to prove lack of economic substance.

Importantly, the Court had noted that role played by holding company in decision making is not sufficient to allege lack of substance in the subsidiary.

The judgment was of vital importance for all the investment holding companies investing in India directly or through step down subsidiaries.

Against the above decision of the High Court, the Revenue had preferred Special Leave Petition ("**SLP**") before the Hon'ble Supreme Court of India.

Recently, the Supreme Court in its Order dated January 24, 2025, has imposed a stay on the operation, implementation and execution of the judgement and order passed by the Delhi High Court.

The Apex Court has noted that the issues raised in the petition requires thorough consideration.

As a result of the Supreme Court Order, the implementation and execution of the judgment in the case of underlying taxpayer shall be stayed till the further Order of the Supreme Court. Further, during the pendency of the stay, the High Court's order shall not be binding on the lower authorities, till further orders from the Supreme Court.

JOINT COMMISSIONER NOT AUTHORIZED FOR REASSESSMENT APPROVAL U/S 151 OF THE INCOME TAX ACT, 1961

In the matter of, ***Rohit Kumar v. ITO (W.P.(C) 2830/2022)***, the Hon'ble Delhi High Court ruled that the Supreme Court's decision in Union of India v. Rajeev Bansal (2024) does not affirm the authority of a Joint Commissioner to approve reassessment proceedings under Section 151 of the Income Tax Act, 1961. The Finance Act, 2021, amended Section 151 to restrict such approval powers to the Principal Chief Commissioner, Chief Commissioner, Principal Commissioner, or Commissioner. The court emphasized that under the amended law, reassessments initiated after four years from the end of the relevant assessment year require approval from these higher authorities. The division bench clarified that the Rajeev Bansal case only addressed time frames for seeking approval under Section 151, without affirming the Joint Commissioner's authority. The petitioner in this case challenged the reassessment proceedings on the grounds that approval by the Joint Commissioner was not legally valid.

Consequently, the reassessment proceedings were quashed.

ITAT RULES AGAINST S.80P INCOME TAX EXEMPTIONS FOR COOPERATIVE SOCIETIES ON INTEREST FROM NATIONALIZED BANKS

In the matter of ***Balwa group Coop Society, Gandhinagar v The ITO (ITA No. 1636/Ahd/2024),*** the Hon'ble Ahmedabad Bench of the Income Tax Appellate Tribunal (ITAT) held that cooperative societies are not eligible to avail tax exemptions under Section 80 of the Income Tax Act, 1961 on interest income received from deposits held with nationalized banks.

In an income tax appeal filed by Balwa Group Coop Society (Balwa Society), the society contested an assessment order passed by the National Faceless Appeal Centre **('NFAC")**, Delhi for Assessment Year **("A.Y.")** 2018-19 averring the fault of the Commissioner of Income Taxes **("Appeals")** (CIT(A)) in making addition of ₹18,86,277 on account of interest income received from nationalized banks.

Balwa Society maintained that the interest income received from the nationalized banks were used for the objects of the society and thus eligible for deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961. Furthermore, the Society also held that the interest income had been sought to be taxed by the Revenue diminishing the Appellant's claims of the same being pro-rata expenditure as claimed by the Appellant under Section 57 of the Income Tax Act, 1961.

Senior Departmental Representative Nitin Vishnu Kulkarni submitted that the assessee had taken into consideration the entire expenditure of ₹1,22,78,772 debited to profit and loss account while calculating the proportionate allowable expenditure and that the impugned interest income had been earned by the assessee from of surplus funds/income earned by the assessee from its regular activity.

The Bench observed that interest received from nationalized banks are not an allowable u/s. 80P of the Income Tax Act. 1961 while observing that the issue of allowability of the expenditure incurred by the

assessee on the said interest had to be further verified. As had been averred by the Departmental Representative, the assessee while giving revised working of proportionate interest expenditure allowable u/s. 57 had considered the entire expenditure debited to their profit and loss account of ₹1,22,78,772 and thus the same is required to be remitted to the Assessing Officer for proper verification and adjudication.

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