

**N. D. KAPUR & CO.
CHARTERED ACCOUNTANTS**

Monthly Updates

JUNE 2024

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(I) CORPORATE LAW

MINISTRY OF CORPORATE AFFAIRS TO LAUNCH THIRD SET OF COMPANY FORMS ON JULY 15, 2024, IN V3 MCA-21 PORTAL

The Ministry of Corporate Affairs (“MCA”) has informed that it is launching the third set of Company forms which will cover 9 forms i.e. MSME, BEN-2, MGT-6, IEPF-1, IEPF-1A, IEPF-2, IEPF-4, IEPF-5, IEPF-5 e-verification report on July 15, 2024.

The Ministry has advised the stakeholders to take the following notes for facilitating implementation of these forms in V3 MCA21 portal:

- Company e-Filings on V2 portal will be disabled from July 4, 2024 12:00AM.
- All stakeholders are advised to ensure that there are no SRNs in pending payment/pending for investor details upload/Resubmission status.
- Offline payments for the above 9 forms in V2 using Pay later option would be stopped from July 1, 2024 12:00 AM. Make payments for these forms in V2 through online mode (Credit/Debit Card and Net Banking).

In view of the upcoming launch of 9 Company forms, V3 portal will not be available from July 13, 2024 12:00 AM till July 14, 2024 11:59 pm.

V2 Portal for company filing will remain available for all the V2 forms excluding above mentioned 9 forms. Stakeholders may plan accordingly.

This information has been made available on the MCA’s website.

(II) INDIRECT TAXATION

LAST DATE OF E-FILING RETURN OF PROFESSIONAL TAX IN FORM III IN WEST BENGAL EXTENDED TILL JUNE 2024; SUBMISSION IN PAPER/PHYSICAL FORM TO BE DONE BY JUNE 30, 2024

The Directorate of Commercial Taxes, Government of West Bengal, has announced an extension for the filing of returns in Form-III under the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, and its Rules for the year ending March 31, 2024.

The new deadline for filing returns in Form-III, both electronically and in paper form, has been extended as follows:

- **Period in respect of which return is required to be furnished:** Year ending on 31.03.2024
- **Last date of transmission of data electronically of that return:** 31.05.2024
- **Extended last date of transmission of data electronically of that return as specified now:** 15.06.2024
- **Extended last date of furnishing paper form of that return as specified now:** 30.06.2024

CIRCULAR REGARDING CUSTOMS DUTY ON DISPLAY ASSEMBLIES OF CELLULAR MOBILE PHONES

The Central Board of Indirect Taxes and Customs (“CBITC”), Department of Revenue, Ministry of Finance vide Circular No. 06/2024- Customs dated June 7, 2024 has issued clarifications regarding the Customs Duty on Display Assemblies of Cellular Mobile Phones.

According to the Notification No. 57/2017-Customs dated 30.06.2017, a concessional Basic Customs Duty (“BCD”) rate of 10% applies to Display Assemblies used in manufacturing cellular mobile phones. Misdeclarations of these assemblies as parts led to confusion and requests for clarity. Then, a committee reviewed this matter which resulted in a new interpretation.

The Display Assembly includes specific parts such as the Touch Panel, Cover Glass, LED Backlight, and certain sensors. If imported with additional items like frames or SIM sockets, it still qualifies for the 10% BCD rate.

However, if parts like mobile phone housings are included, the assembly does not qualify for the concessional rate and attracts the general BCD rate applicable to cellular mobile phone parts.

MINISTRY OF COMMERCE NOTIFIES SPECIAL ECONOMIC ZONES (FOURTH AMENDMENT) RULES, 2024: PERMITS SALE OF METAL AND METAL-ALLOY WASTE IN DOMESTIC TARIFF AREA

The Ministry of Commerce and Industry has issued the Special Economic Zones (Fourth Amendment) Rules, 2024, which permit the sale of non-hazardous metal and metal-alloy wastes within the Domestic Tariff Area (DTA) under certain conditions. Key points include:

- 1. Permitted Waste:** Sale of non-hazardous metal and metal-alloy wastes in metallic, non-dispersible form is allowed. These wastes must be free of contaminants listed under Basel No. B1010 in Part D of Schedule III of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. The wastes must originate from reconditioning, repair, or re-engineering processes.
- 2. Customs Duties and Import Treatment:** Such sales are subject to the payment of applicable customs duties. The sales are treated as imports.
- 3. Eligibility and Authorization:** Sales are allowed only for actual users or traders acting on behalf of actual users. Traders must be authorized by the State Pollution Control Board. Authorization is granted on a one-time basis.
- 4. Verification Requirements:** The Customs Authority must verify documents specified in Schedule VIII of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, before the sale is permitted.

RECOMMENDATIONS OF 53RD GST COUNCIL MEETING

The 53rd GST Council meeting was held on June 22, 2024. The recommendations of the 53rd GST Council meeting, include several measures to lessen the tax and legal burdens on taxpayers in India as well as steps that can be taken to facilitate trade. These recommendations will be implemented once the relevant circulars, notifications, or law amendments are issued, which will have legal force. Some of the recommendations are as follows:

- 1. Uniform rate of 5% IGST on imports of parts, components, equipment etc. of aircrafts:** The Council has recommended a uniform rate of 5% IGST on imports of 'Parts, components, testing equipment, tools and tool-kits' of aircrafts, irrespective of their HS classification to ensure improvement in maintenance, repair and overhaul ('MRO') activities. The same would be subject to specified conditions
- 2. GST rate on carton classifiable under HSN 4819 10; 4819 20 to be reduced from 18% to 12%:** The Council has recommended that the GST rate shall be reduced from 18% to 12% on 'carton, boxes and cases of both corrugated and non-corrugated paper or paper-board' (HS 4819 10; 4819 20).
- 3. GST on Milk cans:** The Council has recommended that all milk cans (of steel, iron and aluminium) irrespective of their use will attract 12% GST.
- 4. GST on solar cookers:** The Council has recommended that all solar cookers whether single or dual energy source, will attract 12% GST
- 5. Exemption from IGST and/or Compensation Cess:**
 - The Council has recommended to extend IGST exemption on imports of specified items for defence forces for a further period of five years till 30 June 2029.

- Also, to provide Adhoc IGST exemption on imports of technical documentation for AK-203 rifle kits imported for Indian Defence forces.
 - Further it is also recommended to extend IGST exemption on imports of research equipment/buoys imported under the Research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction ('RAMA') programme subject to specified conditions.
 - The Council has recommended exempting Compensation Cess on the imports in SEZ-by-SEZ Unit/developers for authorised operations w.e.f. 1 July 2017.
 - To exempt Compensation Cess on supply of aerated beverages and energy drinks to authorised customers by Unit Run Canteens under Ministry of Defence.
- 6. Exempt to SPV on providing the services to Indian Railway:** The Council has recommended to exempt GST on the services provided by Special Purpose Vehicles ('SPV') to Indian Railway by way of allowing Indian Railway to use infrastructure built & owned by SPV during the concession period and maintenance services supplied by Indian Railways to SPV. Further, it is also clarified that the issue for the past will be regularized on 'as is where is' basis for the period from 1 July 2017 till the date of issue of exemption notification in this regard.
- 7. New entry for exemption of accommodation services of up to Rs. 20,000/-:** The Council has recommended introduction of a new entry in Notification No. 12/2017- Central Tax (Rate) dated 28 June 2017 ('Services Exemption Notification') under heading 9963 to exempt accommodation services having value of supply of accommodation up to Rs. 20,000/- per month per person subject to the condition that the accommodation service is supplied for a minimum continuous period of 90 days. Further, the Council also recommended extending such benefits for past cases.
- 8. Collections made by Real Estate Regulatory Authority ('RERA') are exempt from GST:** The Council has recommended to issue a clarification that statutory collections made by Real Estate Regulatory Authority are exempt from GST as they fall within the scope of entry 4 of Services Exemption Notification i.e., Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution
- 9. Sharing of incentive by acquiring bank with stakeholders:** The Council has recommended to issue clarification on further sharing of the incentive by acquiring bank with other stakeholders, where the sharing of such incentive is clearly defined under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions and is decided in the proportion and manner by NPCI in consultation with the participating banks is not taxable.
- 10. No supply under Schedule III of CGST Act:** It is clarified by council that Co-insurance premium apportioned by lead insurer to the co-insurer for the supply of insurance service by lead and co-insurer to the insured in coinsurance agreements, may be declared as no supply under Schedule III of the CGST Act, 2017 and past cases may be regularized on 'as is where is' basis. It is also clarified that transaction of ceding commission/re-insurance commission between insurer and re-insurer may be declared as no supply under Schedule III of CGST Act, 2017 and past cases may be regularized on 'as is where is' basis.

- 11. Insertion of Section 128A in CGST Act to provide for conditional waiver of interest and/or penalty relating to demands raised under Section 73 from F.Y. 2017-18 to F.Y. 2019-20:** The Council has recommended for waiving interest and penalties, by insertion of Section 128A in the CGST Act, for demand notices issued under Section 73 of the CGST Act for fiscal years 2017-18, 2018-19 and 2019-20 in cases where taxpayers pay the full amount of tax demands in the notice upto 31 March 2025.
- 12. Reduction in amount of pre-deposit for filing appeals under GST:** The Council recommended amendment to Section 107 and Section 112 of CGST Act for reducing the maximum amount of pre-deposit for filing appeal with the Appellate Authority from INR 25 crores to INR 20 crores (CGST and SGST each). Further, it was recommended that the amount of pre-deposit for filing of an appeal in Appellate Tribunal be reduced from 20% (maximum amount of INR 50 crores for CGST and SGST each) to 10% (maximum of INR 20 crores for CGST and SGST each).
- 13. Reduction in TCS rate for ECOs:** The Council has recommended reducing the TCS rate from 1% to 0.5% to ease the financial burden on the suppliers supplying through the ECOs.
- 14. Time for filing appeals in GST Appellate Tribunal:** The Council recommended to amend Section 112 of the CGST Act for allowing a three-month time period for filing appeals before Appellate Tribunal from the date of notification by the Government in respect of appeal/revision orders passed before the date of said notification
- 15. Relaxation in condition of Section 16(4) of the CGST Act**
 - **From F.Y. 2017-18 to F.Y. 2020-21**

The Council recommended a retrospective amendment with effect from 1 July 2017 in Section 16(4) of the CGST Act deeming 30 November 2021 as the time limit for availment of ITC for F.Y. 2017-18 to F.Y. 2020-21.
 - **W.r.t cases where returns have been filed after revocation**

The Council recommended for conditionally relaxing Section 16(4) of the CGST Act by way of a retrospective amendment from 1 July 2017 in cases where returns for the period from cancellation of registration to date of revocation of cancellation of registration are filed within thirty days of the order of revocation.
- 16. Insertion of Section 11A in CGST Act:** The Council recommended inserting a new Section 11A in CGST Act to allow regularization of non-levy or short levy of GST where tax was being short paid or not paid due to common trade practices.
- 17. Refund of additional IGST:** The Council recommended prescribing a mechanism for availing refund of additional IGST paid on account of upward revision of price of goods subsequent to export.
- 18. Clarification on Corporate Guarantee:** It has been clarified that Rule 28(2) of the CGST Rules would not be applicable in case of export of corporate guarantee services and also where the recipient is eligible for full ITC. Further, Rule 28(2) has been proposed to be retrospectively

amended from 26 October 2023 and a circular ought to be issued for clarifying various issues regarding corporate guarantee.

19. It has been recommended that detailed clarifications are, *inter alia*, issued with respect to the following issues:

- Taxability of re-imbursalment of securities as ESOP/ESPP/RSU by company to its employees
- Warranty/ Extended Warranty provided by Manufacturers to the end customer
- ITC on repair expenses incurred by the insurance companies in case of reimbursement mode of settlement of motor vehicle insurance claims
- Taxability of loans granted between related person or between group companies
- Place of supply of goods supplied to unregistered persons, where delivery address is different from the billing address.
- Mechanism for providing evidence by the suppliers for compliance of the conditions of Section 15(3)(b)(ii) of CGST Act, 2017 in respect of post-sale discounts, to the effect that input tax credit has been reversed by the recipient on the said amount.
- Various issues pertaining to special procedure for the manufacturers of the specified commodities, like pan masala, tobacco etc

20. Exemption from filing annual return for taxpayers having turnover below INR 2 crores: The Council recommended an exemption of filing of annual return in FORM GSTR-9/9A for F.Y. 2023-24 for taxpayers having aggregate annual turnover upto two crore rupees.

21. Place of supply for custodial services by banks: The place of supply for custodial services supplied by Indian banks to foreign portfolio investors would be location of the recipient as per Section 13(2) of the IGST Act.

22. Restriction on refund on export of goods subjected to export duty: The Council recommended that Section 16 of IGST Act and Section 54 of CGST Act are amended for curtailing the refund of IGST where exported goods are subjected to export duty (including supplies to SEZ developer/unit for authorized operations).

Taxpayers deducting TDS under Section 51 to file FORM GSTR – 7: The Council recommended that the registered persons who are required to deduct tax at source under Section 51 of CGST Act would be required to file invoice-wise details in FORM GSTR-7 every month irrespective of whether any tax has been deducted during the said month or not. It has also been recommended that no late fee will be payable for delayed filing of NIL return.

(III) DIRECT TAXATION

TELANGANA HIGH COURT DISMISSES CHALLENGE TO NOTICE INVOKING GAAR

The Telangana High Court vide its order dated June 7, 2024 in the matter of *Ayodhya Rami Reddy Alla v. Principal Commissioner of Income-tax (Central) [WP Nos. 46510 & 46467 of 2022]* dismissed petitions challenging a notice invoking the General Anti-Avoidance Rule (GAAR) under Chapter X-A of the Income Tax Act, 1961. GAAR, introduced in April 2016, targets arrangements aimed at obtaining tax benefits through practices deemed impermissible. Such arrangements include those lacking commercial substance or misusing provisions of the Act.

In this case, the petitioner purchased shares in 2019, and after a significant decline in their face value due to bonus share issuance, sold them to offset a long-term capital gain, reporting the transaction as capital gains in their tax returns. The Assessing Officer (AO) issued a notice under Rule 10UB(1) of the Income Tax Rules, 1962, followed by a notice under Section 144BA invoking GAAR provisions, questioning the legitimacy of these transactions.

The Court rejected arguments that general provisions did not apply due to specific provisions in Chapter X of the Act, emphasizing GAAR's overriding effect as per a non-obstante clause. It highlighted inconsistencies in the petitioner's arguments regarding the applicability of Section 94(8), determining that the transactions lacked practical justification.

Consequently, the Court upheld the applicability of Chapter X-A to the case, ruling that the transactions constituted impermissible tax avoidance arrangements, and dismissed the petitions challenging the GAAR notice.

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