

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

Monthly Updates

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(I) CORPORATE LAW

DETAILS REQUIRED FOR SRNS PENDING FOR E-VERIFICATION REPORT FOR WHICH COMPANY IS UNABLE TO UPLOAD REVISED VR OR DOCUMENTS

The Ministry of Corporate Affairs (“MCA”) has issued a notification regarding details required for the SRNs Pending for E-Verification Report for which Company is unable to upload Revised VR/ documents wherein the Company is required to provide the list of such SRNs on the last working day of every month those pending for EVR and the Company is unable to upload the documents, so that the Resubmission option can be opened for the Company to upload the documents.

RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING OF LLP BEN-2 AND LLP FORM 4D UNDER THE LLP ACT, 2008

The MCA has introduced Form LLP BEN-2, which is used to file a return to the Registrar regarding the declaration of significant beneficial ownership (SBO), and LLP Form 4D, which is for the declaration of beneficial interest in contributions received by an LLP.

In light of the transition from MCA 21 version 2 to version 3, MCA vide circular dated May 7, 2024 has further extended the deadline for filing Form LLP BEN-2 and LLP Form 4D without incurring additional fees until July 1, 2024. Previously the last date was May 15, 2024.

(II) INDIRECT TAXATION

CORPORATE GUARANTEE BY PARENT COMPANY TO SUBSIDIARY DOES NOT CONSTITUTE "BANKING AND OTHER FINANCIAL SERVICES" UNDER SECTION 65 OF FINANCE ACT

In India Yamaha Motor Private Limited v. Commissioner of Customs, Central Excise & Service Tax (Service Tax Appeal No. 52127 of 2016), the Customs, Excise & Service Tax Appellate Tribunal, New Delhi ("CESTAT/ Tribunal") has held that a parent company providing a corporate guarantee to its subsidiary is not considered as providing 'Banking and other Financial Services' as defined under section 65(12)(a)(ix) of the Finance Act, 1994, before July 1, 2012. Consequently, service tax for such transactions cannot be levied under the reverse charge mechanism for that time frame.

As per the facts of the case, Yamaha Motors Co. Ltd., Japan ("Parent Company"), engaged in the business of manufacturing motor bikes and their parts, had scrutinized certain documents of its Indian subsidiary - India Yamaha Motor Private Limited ("Appellant") and observed that it had (i) availed external commercial borrowings ("ECBs") during financial year 2009-10 to 2013-14, and (ii) entered into ECB Agreement/ Guarantee Fee Agreements dated June 25, 2009 and September 30, 2013 ("Agreements") which mandated issuance of guarantee by the Parent Company.

Accounting to the ECBs and the Agreements, the Appellant had obtained loan facility from various banks and to make the banks extend the loan to them, the Parent Company had agreed to issue its guarantee for their repayment. Accordingly, the Department issued show cause notices to the Appellant alleging non-payment of service tax under reverse charge mechanism required to be paid for the services provided by the Parent Company to the Appellant in relation to the issuance of guarantees for the external commercial borrowings (ECBs). The Department contended that the issuance of guarantees by the Parent Company for the ECBs availed by the Appellant constituted a 'service' under the Finance Act, 1994, and therefore, service tax was liable to be paid under the reverse charge mechanism.

The Appellant argued that the guarantees were provided by the Parent Company as part of the overall corporate strategy to support its subsidiary, and not as a service and no consideration was paid by the Appellant for the issuance of these guarantees, and hence, it did not fall within the purview of taxable services.

The Tribunal observed that the definition of 'service' under the Finance Act was broad enough to include any activity carried out by a person for another for consideration. However, it also noted that to levy service tax, there must be a provision of service and a consideration for the same.

The Tribunal held that the issuance of corporate guarantees by the Parent Company for the ECBs did not fall within the definition of 'Banking and Other Financial Services' (BOFS) under Section 65(12) of the Finance Act, 1994, prior to July 1, 2012. The Tribunal concluded that providing a corporate guarantee cannot be equated with providing BOFS as the Parent Company is not engaged in the business of banking

or financial services nor is it a financial institution, non-banking financial company, or any other body corporate or commercial concern engaged in extending financial support.

The Tribunal further noted that the Appellant had paid the service tax along with interest for the only invoice dated February 28, 2013, prior to the issuance of the Order-in-Original. Consequently, the Tribunal set aside the demand for service tax for the period prior to July 1, 2012, and allowed the appeal in favor of the Appellant.

INFORMATION FROM MANUFACTURERS OF PAN MASALA AND TOBACCO TAXPAYERS

Government had issued a notification to seek information from taxpayers dealing in the goods mentioned therein vide Notification No. 04/2024 - Central Tax dated 05-01-2024. Two forms have been notified vide this notification namely GST SRM-I and GST SRM-II. The former pertains to registration and disposal of machines while the later asks information on inputs and outputs during a month.

To begin with, facility to register the machines have been made available on the GST Portal to file the information in Form GST SRM-I. All taxpayers dealing in the items mentioned in the said notification may use the facility to file the information about machines. Form GST SRM-II will also be made available on the portal shortly.

ADVISORY ON LAUNCH OF E-WAY BILL 2 PORTAL

GSTN is pleased to inform that NIC is releasing the E-Way Bill 2 Portal (<https://ewaybill2.gst.gov.in>) on 1st June 2024. This portal ensures high availability and runs in parallel to the e-way Bill main portal (<https://ewaybillgst.gov.in>). The e-way bill 2 portal synchronises the e-way bill details with main portal within a few seconds.

The highlights of the portal are as follows:

1. Presently, E-Way Bill 2 Portal provides the critical services of E-Way Bill system, and gradually it will be extended with other services of e-way bill system.
2. E-Way Bills can be generated and updated on the E-Way Bill 2 Portal independently.
3. E-Way Bill 2 portal provides the web and API modes of operations for e-way bill services.
4. The taxpayers and logistic operators can use the E-Way Bill 2 portal with the login credentials of the main portal.
5. The taxpayers and logistic operators can use the E-Way Bill 2 portal during technical glitches in e-way bill main portal or any other exigencies.
6. The Criss-Cross operations of printing and updating of Part-B of E-Way Bills can be carried out on these portals. That is, updating of Part-B of the E-Way bills of portal 1 can be done at portal 2 and vice versa.

7. In case E-Way Bill main portal is non-operational because of technical reasons, the Part-B can be updated to the E-Way Bills, generated at Portal 1, at portal 2 and carry both the E-way Bill slips.

GUIDELINES FOR INITIATION OF RECOVERY PROCEEDINGS BEFORE THREE MONTHS FROM THE DATE OF SERVICE OF DEMAND ORDER - REGARDING.

Attention is invited to sub-section (1) of section 79 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), which provides that where any amount payable by a person to the Government under any of the provisions of CGST Act or Rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the modes specified in the said sub-section. Attention is further invited to Section 78 of the CGST Act, which provides for the time for initiation of such recovery proceeding. These sections are reproduced below for ease of reference:

Section 78: Initiation of recovery proceedings.

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

Section 79: Recovery of tax.

1. Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:

- 1.2 On reading the above sections, it becomes clear that the general rule for initiating recovery proceedings is that, where any amount payable by a taxable person in pursuance of an order passed under the CGST Act is not paid within a period of three months from the date of service of such order, recovery proceedings shall be initiated by the proper officer only after the expiry of the said period of three months.

- 1.3 Only in exceptional cases, where it is necessary in the interest of revenue, the proper officer may require the said taxable person to pay the said amount within a period less than the period of three months from the date of service of the order, as may be specified by him, after recording the reasons for doing so in writing. If the said amount is not paid by the said taxable person within the period specified by the proper officer under the proviso to section 78 of CGST Act or even after the expiry of three months from the date of the service of the order, the same can then be recovered by the proper officer as per provisions of sub-section (1) of section 79 of CGST Act.

2. It has been brought to the notice of the Board that some of the field formations are initiating recovery before the specified period of three months from the date of service of the order, even in the cases where

the taxable person has not been specifically required by the proper officer, for reasons to be recorded in writing, for payment of such amount within a period less than the period of three months from the date of service of the order. Therefore, in order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 of the CGST Act, hereby issues the following instructions to be followed in cases where it is necessary, in the interest of revenue, to initiate recovery before the period of three months from the date of service of the order.

3.1 As per Circular No. 3/3/2017- GST dated the 5th July 2017, the proper officer for recovery under Section 79 of the CGST Act is the jurisdictional Deputy or Assistant Commissioner of Central Tax. It is also mentioned that the proper officer under proviso to Section 78 is the jurisdictional Principal Commissioner/ Commissioner of Central Tax.

3.2 Therefore, while recovery proceedings under sub-section (1) of section 79 of CGST Act are required to be undertaken by the jurisdictional Deputy or Assistant Commissioner of Central Tax, however, in the cases, where it is felt that recovery proceedings in respect of an amount payable by a taxable person in pursuance of an order need to be initiated in the interest of revenue before completion of three months from the date of service of the order, the matter needs to be placed by the jurisdictional Deputy or Assistant Commissioner of Central Tax before the jurisdictional Principal Commissioner/ Commissioner of Central Tax, along with the reasons/ justification for such an action. The jurisdictional Principal Commissioner/ Commissioner of Central Tax shall examine the reasons/ justification given by the jurisdictional Deputy or Assistant Commissioner at the earliest and if he is satisfied that it is expedient in the interest of revenue to ask the said taxable person to pay the said amount before completion of three months from the date of service of the order, he must record in writing, the reasons as to why the concerned taxable person is required to make payment of such amount within such period, less than a period of three months, as may be specified by him. After recording such reasons in writing, he may issue directions to the concerned taxable person to pay the said amount within the period specified by him in the said directions. Copy of such directions must also be sent to the jurisdictional Deputy or Assistant Commissioner of Central Tax for information.

3.3 It is further mentioned that jurisdictional Principal Commissioner/ Commissioner of Central Tax should provide the specific reason(s) for asking the taxable person for early payment of the said amount, clearly outlining the circumstances prompting such early action. Such reasons could include high risk to revenue involved in waiting till the completion of the three month period due to apprehension that the concerned taxable person may close the business operations in near future, or due to possibility of default by the taxable person due to his declining financial conditions or impending insolvency, or likely initiation of proceedings under Insolvency and Bankruptcy Act, etc. Reasons to believe for the apprehension of risk to revenue should be based on credible evidence, which may be kept on record to the extent possible. While issuing any such directions, the proper officer must duly consider the financial health, status of business operations, infrastructure, and credibility of the taxable person, and strike a balance between the interest of the revenue and ease of doing business. It is implicit that such directions for early payment of the confirmed demand should not be issued in a mechanical manner and must be issued only in cases

where interest of revenue is required to be safeguarded due to specific apprehension/ circumstances in the said case.

3.4 Wherever such directions are issued by the jurisdictional Principal Commissioner/Commissioner of Central Tax as per powers conferred under proviso to section 78 of CGST Act, and where the taxable person fails to make payment of the said amount within the period specified in the said directions, the jurisdictional Deputy or Assistant Commissioner of Central Tax shall proceed to recover the said amount as per the procedure specified in subsection (1) of section 79 of CGST Act.

(III) DIRECT TAXATION

DELHI HIGH COURT: RELYING SOLELY ON CBIC'S AUTHORITY WITHOUT ANALYSIS OF INFORMATION IS INSUFFICIENT FOR MAKING UNEXPLAINED ADDITION OF EXPENDITURE

In **Bausch and Lomb India Private Limited Versus Assessment Unit, National Faceless Assessment Centre, Delhi, (W.P.(C) 5768/2024; CM APPL. 23894/2024)**, the Hon'ble Delhi High Court has emphasized that relying solely on the Central Board of Indirect Taxes and Customs' ("CBIC") authority without properly analysing the information is insufficient for making an unexplained expenditure addition.

As per the facts of the case, the Petitioner ("Assessee") had challenged an assessment order under Section 143(3) read with Section 144B of the Income Tax Act, 1961, for the assessment year 2022-23 relevant to the previous year 2021-22. The Petitioner argued that the order violated the principles of natural justice. The Assessing Officer ("AO") had added an amount of Rs. 70,10,37,475 as unexplained expenditure under Section 69C and initiated penalty proceedings under Section 271AAC(1) for concealment of income. This addition made by the AO pertained to certain purchases made by the Petitioner during the previous year (2021-22).

In rebuttal, the Petitioner stated that all purchases in question were imports and that it had provided all the relevant details. However, the AO concluded that the Petitioner failed to disclose all the purchases in question, relying entirely on CBIC's information, which stated that the Petitioner had purchased / imported goods worth Rs. 2,21,51,93,180. This conclusion was based on cumulative figures from CBIC without any specific import bill details or reconciliation efforts.

The AO's sole reliance on CBIC information, without reconciling this with the Petitioner's disclosed purchases, led to the contention that the Petitioner's declarations were incomplete. The information from CBIC was shared with the Petitioner in a tabular form, indicating cumulative invoice values, duty paid, and assessable value for each month, but lacked specific bill of entry or import dates.

To the facts and contentions placed before the Hon'ble Court, the Hon'ble Court noted that the AO had no knowledge as to which imports or purchases were allegedly undisclosed by the Petitioner. The Hon'ble Court held that the assessment order was unsustainable as it violated the principles of natural justice, emphasizing that the AO must have concrete evidence to justify such an addition and the cumulative amounts from CBIC without detailed expenditure information were inadequate.

CENTRAL BOARD OF DIRECT TAXES ISSUES GUIDELINES FOR COMPULSORY SELECTION OF RETURNS FOR COMPLETE SCRUTINY DURING THE FINANCIAL YEAR 2024-25 AND PROCEDURE FOR COMPULSORY SELECTION IN SUCH CASES

The Central Board of Direct Taxes (“CBDT”) has issued guidelines outlining the criteria and procedures for compulsory selection of income tax returns for complete scrutiny during the financial year 2024-25.

The key scenarios and parameters for compulsory scrutiny include:

1. **Survey Cases (Section 133A):** Returns filed in connection with surveys conducted under Section 133A of the Income-tax Act, 1961.
2. **Search and Seizure Cases:** Returns related to search and seizure operations.
3. **Non-filing of Returns (Section 142(1)):** Cases where notices under Section 142(1) were issued but returns were not filed.
4. **Reassessment Notices (Section 148):** Cases where notices under Section 148 were issued for reassessment.
5. **Registration/Approval Cases:** Cases involving approval or registration under various sections of the Act, including 12A, 12AB, 35(1)(ii)/(ia)/(iii), and 10(23C)(iv)/(v)/(vi)/(via).
6. **Recurring Issues:** Cases with additions in previous years on recurring legal or factual issues.
7. **Tax Evasion Information:** Cases based on specific information regarding tax evasion.
8. **Exemptions:** Returns furnished in response to notices under Section 142(1) due to information from NMS Cycle, AIS, Statement of Financial Transactions (SFT), CPC-TDS information, or information from the Directorate of Investigation and Coordination (I&CI) will not be subject to compulsory scrutiny. Such cases will be selected for scrutiny through the CASS cycle.

Procedures:

- 1) **International Taxation and Central Circle Charges:** These cases will be selected for compulsory scrutiny following the prescribed parameters and with prior administrative approval from the relevant Principal Commissioners (Pr.CIT) or Directors (Pr.DIT/CIT/DIT). Information about these cases will not be transferred to NaFAC unless the case itself is transferred. Communication to NaFAC for access or further action after selection for compulsory scrutiny will not apply to International Taxation and Central Charges.

- 2) Handling of Cases: Cases selected for compulsory scrutiny by International Taxation and Central Circle charges will continue to be handled by them as earlier.
- 3) Information from Search & Seizure: Information related to persons not integrally connected with the main assessee group, and who do not belong to the same business group, will be passed on to the jurisdictional Assessing Officer (AO) for assessment under Section 148, unless covered by specific Board guidelines.
- 4) Timelines: Due to amendments brought by the Finance Act, 2021, the time limit for service of notice under Section 143(2) has been reduced to 3 months from the end of the financial year in which the return is filed. For returns filed in FY 2023-24, the time limit for service of notice under Section 143(2) is June 30, 2024.

The following timelines shall be followed with regards to returns filed in FY 2023-24:

- Selection and transfer of cases, for actions related of cases under Parameters at S. No. 4(i), 5, 6 and 7 of Para 2 above, wherein assessments have to be completed in faceless manner, to NaFAC: May 31, 2024.
- Service of Notice u/s 143(2) of the Act in cases selected for Compulsory Scrutiny: June 30, 2024.

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