RAIPUR BRANCH OF CENTRAL INDIA REGIONAL COUNCIL OF ICAI

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Newsletter

September Edition - 2017

NEWS LETTER COMMITTEE

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President Message

हिंदी का सम्मान, देश का सम्मान
हमारी स्वतंत्रता वहां है हिंदी भाषा जहाँ है।

प्रिय साथियो
आप सभी को मेरा सादर नमस्कार।
आप सभी के अभूतपूर्व सहयोग व शुभकामनाओ से रायपुर सी ब्रांच ने इस वर्ष अपना स्थापना दिवस एतिहासिक रूप से मनाया। चार्टर्ड एकाउंटेंट्स ,सी ए की पढ़ाई कर रहे छात्र छात्राओं,स्कूली बच्चों, व्यापारियों व समाज के हर वर्ग के लिए अलग अलग कार्य्रकम आयोजित किये गये।
आप सभी की मेहनत व तपस्या से ही एक दिन में लगातार 10 कार्यक्रमो को आयोजित कर सफल बनाना संभव हो पाया।
रायपुर ब्रांच के लिए पहला अवसर रहा जब माननीय मुख्यमंत्री डॉ रमन सिंह व केंद्रीय मंत्री डॉ थावरचंद गहलोत सी ए डे कर कार्यक्रम में शामिल हुए।
सदा के लिए यादगार औऱ स्मृति में बने रहने वाले कार्यक्रमो में अपना अमूल्य योगदान देने के लिए मैं अपनी मैनेजिंग कमेटी व सभी मेंबर्स को बहुत बहुत बधाई व धन्यवाद देता हूं।
मित्रो ये समय बदलाओ का है और शंकाओ से भरे समय मे देश व जनमानस हम सभी से कई अपेक्षाएं कर रहा है और मुझे खुशी है कि हम सब इसपे खरे भी उतर रहे है ।हम सभी देश के आर्थिक व सामाजिक विकास में अपनी महत्वपूर्ण भूमिका निभा सके इसके लिए हम सभी को लगातार प्रयास व परिश्रम करते रहने की अनिवार्यता है।
रायपुर ब्रांच ऐसे मौके पर लगातार आपके लिए अनेक विषयों पर वर्कशॉप व सेमिनार आयोजित करता आ रहा है व आगे भी सदैव आपके सम्पूर्ण सहयोग हेतू प्रयासरत रहेगा।
मुझे ये बताते हुए भी हर्ष हो रहा है कि सभी के अथक प्रयासों से हमारी ब्रांच बिल्डिंग में बॉउंड्री वाल का काम शुरु हो चुका व जल्द ही आगे की औपचारिकताएं पूरी कर आगे की ओर अग्रसर होंगे।
मैं एडिटर बोर्ड के अध्यक्ष सहित पूरी टीम को न्यूज लेटर के लिए किए जा रहे अथक प्रयासों हेतु बहुत बहुत बधाई व साधुवाद देता हूं आप इसी तरह अपना सहयोग प्रदान करते रहे।
सत्य के साथ चलने वालों को समर्पित

पहले वो तुम्हारी उपेक्षा करेंगे
फिर वो तुम पर हँसेंगे
फिर वो तुमसे लड़ाई करेंगे
मगर अंत मे जीत तुम्हारी होगी।

आपका
अमित चिमनानी
President

Message from the Editor

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Respected Members ,

Greetings to all members. Presenting the September 2017 issue before you all covering the information on GST law and recent amendments in Company Law.

Also the ICAI Raipur is time by time organizing seminars, awareness programmes updating us with the GST Law Updates and serving the role in successful implementation and execution of the change in the Indian economy.

NEWS LETTER COMMITTEE

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CA SAURABH AGRAWAL (Member)	**CA SUMIT CHAWLA** (Member)	**CA YOGESH AGRAWAL** (Member)	**CA PRANAY JAIN** (Member)

Impact of Companies (Amendment) Bill, 2017 On Non Filing of Annual Return and Financial Statement

BRIEF SUMMARY:

As we all know that Lok Sabha has passed the Companies (Amendment) Bill, 2017 on 27th July, 2017 which contains the major amendments where one of the major amendment is additional fees of Rs. 100 per day in case of delay in filing of annual return and financial statement with the specified time under Act.

This article aims to provide an impact of proposed Companies (Amendment) Bill, 2017 on Non filing of annual return and financial statement.

PROVISIONS UNDER COMPANIES ACT, 2013

A. FILING OF FINANCIAL STATEMENT (SECTION 137):

A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403.

B. FILING OF ANNUAL RETURN (SECTION 92):

Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.

C. FEE FOR FILING ETC. (SECTION 403):

(1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorized to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed:

PARTICULARS	EXISTING PROVISIONS UNDER COMPANIES ACT, 2013	PROPOSED AMENDMENT AS PER COMPANIES (AMENDMENT) BILL, 2017
	As per above mentioned provisions of Companies Act, 2013 if company fails to file Annual form within the additional time prescribed under Section 403 (i.e. 270 days) then company have to file application with NCLT for compounding of offence u/s 137 and 92.	It is proposed to remove the reference of Section 403 from the section 137 and 92 under Companies Amendment Bill, 2017.
SECTION 403		It means once the bill becomes Act, no additional time of 270 days shall be available for filing of MGTM °Æ§ ! / #M u/s 92 & 137. However, the requirement of compounding shall be trigger from 31st day and 61st day of Annual General Meeting.
		In the proposed Companies (Amendment) Bill, 2017 It is proposed that if any company fails to comply with the provisions of Section 92 & 137 the Companies Act, 2013 i.e. filing of e¶Ø≤≠ MGTM °Æ§ ! / #M ∑®Œ∞•≤Ø§ Ø¶ days and 30 days of date of Annual General Meeting '
ADDITIONAL FEES	As per section 403 of the Companies Act as mentioned above.	Then it proposed in the bill that the Company can file such form subject to additional fees of Rs. 100/Mper day and different amounts may be prescribed for different classes of companies.
l FOR EXAMPLE	ADDITIONAL FEES in case if company file annual return and financial statement after 300 days of statutory period requirement then it is Rs. 3600/M	Whereas if Company file annual return and financial statement as on 301 days after statutory period requirement under Act then, then it is Rs. 30100/M
l TWO OR MORE THAN TWO TIMES DEFAULT IN FILING ANNUAL RETURN AND FINANCIAL STATEMENT	As per section 403 of the Companies Act as mentioned above.	If the Company commits default of 2 or more occasions in filing of documents, facts or information required u/s 92 and 137 of the Act, the Company has to pay higher additional fee, as may be prescribed and which shall not be lesser than ' Twice the Additional Fees' as mentioned above.

CONCLUSION:

Therefore, one can have an opinion that it is urgent and important for all the Corporates and professionals to file all the pending annual e forms if any with the ROC at the earliest. Before passing of Amendment Bill, 2017 from the Rajya Sabha.

Webinar on Preparation and Filing of TRAN 1- (Addressed by Mr. Shashi Bhushan Singh, VP, GSTN) was held on September 06, 2017 as many assesses have been facing problem to file TRAN-1. Webinar speech would help assesses to understand various matters relating to TRAN-1. Relevant abstract is given below.

⁎ In case of state, there is one, critical issue that one has to declare the pending C forms. The turnover of the Forms that is pending and the tax that is applicable. payable on the differential tax because they would have paid tax on concessional rate. Similar for F form and H form, so they have to declare the tax pending on such form and pendency is from this April, 2015– June, 2017.

⁎ You should remember that there can never be a negative credit in the last carried forward. So initially, in our application was throwing a negative but now it has been corrected. It should have always been zero, the taxpayer in normal course were required to make it zero but people didn't make zero and in some cases the negative entry has got posted in which efforts are being made to correct.

⁎ In Trans 1 , the credit that will be carried forward will be zero if the difference tax payable on account of C Form , Form , H Form is more than the balance of ITC that is being carried forward of VAT

⁎ Section 6(a) & 6(b) : Taxpayer will be carrying forward the credit that he has not availed on the capital goods that are lying with the taxpayer. In most cases, the manufacturer will be having huge credits.

⁎ Now, this 7a is for central for stock that you have on the day preceding the appointed date and 7c is for state taxes and 7c is when you have invoices in which tax was paid and then 7d when you had invoice in which the tax payment was not their especially in case of states where single point taxation as their on some commodities, they are required to fill this table 7d.

⁎ Table 8 is w.r.t taxpayers having centralised registration under earlier law but are now required to have a state wise registration so that they can take credit in their centralised registered entity and then transfer credit to the different GSTN that got registered under the GST regime under different states having same PAN, they are required to indicate their distribution in this table, the credit then transferred to the different units.

⁎ Table 9a is for the job worker and manufacturer, because the transition law provide that if goods are returned within 6 months from the appointed date then there will be no tax liability

⁎ Table 10 is, in some states they have this that agents were not required to pay tax and the principal was required to pay tax but under GST both agent and principal are liable to pay tax so declaration is being taken from the principal and the agent of the stock that is lying with the agent and the input tax that has to be taken as credit by the agent.

⁎ Table 11 state that one has to take credit of the tax paid under earlier law. In certain transaction both taxes have been paid and in some transaction say like say advance on hotel booking reservations, since tax was levy under earlier law in service tax and not in VAT , so only service tax would have been paid and credit would have be taken if the supply of goods and services taking place in GST. (Copy of the full speech attached for your reference)

The GST Council met for the 21st time on 09th September 2017 to discuss some of the issues after the implementation of the Goods and Service Tax or GST. During the meet, various states raised the challenges faced by traders and enterprises in registering and filing GST returns. The major highlights of the meeting are as under:

- The last date for filing of sales return or GSTR-1 has been extended by a month to October 10 instead of September 10 earlier.
- The last date for filing GSTR-2 for July has been extended to October 31 and GSTR-3 to November 10.
- The last date for filing GSTR-4 and GSTR-6 are October 18 and October 13 respectively.

The deadline for GSTR-3B—a self-declaration form—have been extended by four months i.e. till December. Detail of returns with revised due date is given below

Return	Month	Revised due date	Additional comments
GSTR-1	July 2017	10-Oct-17	3rd October for persons with turnover more than Rs. 100 crores
GSTR-2	July 2017	31-Oct-17	—
GSTR-3	July 2017	10-Nov-17	—
GSTR-4 (Composite scheme)	July-September 2017	18-Oct-17 (no change)	GSTR-4A is not required for this quarter
GSTR-6 (ISD)	July 2017	13-Oct-17	—

- The Council increases cess on mid-sized cars by 2%, big cars by 5 % and SUV by 7%. No change in small cars, 13-seater vehicles & hybrid cars.
- Handicraft artisans with annual earnings of upto Rs 20 lakh will not require GST registration.
- The government decided to form a 3-member inter-ministerial team to look at the functioning of GSTN to address issues faced by users while uploading GST returns
- The Council discussed tax rates of 134 items, including unbranded food products.
- Businesses selling branded food are deregistering their brands to evade tax as unbranded food is not taxed. The fitment committee proposed to the GST Council to consider May 15, 2017, as the cut-off date for considering a brand as registered for the purpose of levy of GST, irrespective of whether or not the brand is subsequently deregister.

–Notification no. 33/2017 Central tax dated 15th September, 2017

Central Government has notified category of persons as specified in clause (d) of sub-section (1) of section 51 of CGST Act which are required to deduct tax from payment made to the suppliers of taxable goods or services. However, the date from which tax is to deducted will be notified later. list of persons notified by CG.

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as "the deductor"),

to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees: Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice

–Notification 34/2017 Central tax dated 15th September, 2017

Central Government has amended Central Goods & Service Tax rules, 2017. Relevant changes in relation to Form Trans -01 are stated below:

- Every registered person who has submitted declaration inForm GST TRAN-01 within the time period specified, may revise such declaration once and submit the revised declaration within the time prescribed.(31st October 2017)
- In Form GST TRAN -01:

(i) In Serial No. 5(a) in the heading after the words, figures & brackets "section 140(1)", the words, figures, brackets & letter. "section 140(4)(a) and section 140(9) shall be inserted.

(ii) In Serial No. 7(a), in the table, in Serial No. 7A, in the heading, after the word "invoices", the words, brackets and letters "(including Credit Transfer Document (CTD))" shall be inserted.

(iii) Following instructions shall be inserted in Form TRAN -01 :

1. Central Tax credit in terms of sub-section (9) of section 140 of the CGST Act, 2017 shall be availed in column 6 of table 5 (a).

2. Registered persons availing credit through Credit Transfer Document (CTD) shall also file TRANS 3 besides availing credit in table 7A under the heading "inputs."

–Notification 35./2017 Central tax dated 15th September, 2017

Central Government has notified the last date for filiing form GSTR 3B along with payment of tax liability for respective month from August to December, which is stated as under:

S.No	Month	Last date for filing Form GSTR -3B	Last date for payment of tax, interest etc.
1	August, 2017	20th September, 2017	20th September, 2017
2	September, 2017	20th October, 2017	20th October, 2017
3	October, 2017	20th November, 2017	20th November, 2017
4	November, 2017	20th December, 2017	20th December, 2017
5	December, 2017	20th January, 2018	20th January, 2018

Alignment of duty drawback scheme with GST law

Central Government has notified the Customs and Central Excise Duties Drawback Rules, 2017 ('Drawback Rules') to replace the existing Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. These rules are effective from October 1, 2017 onwards.

Under the Drawback Rules, drawback will be granted for incidence of customs and central excise duties and not for GST and compensation cess. Hence, drawback to offset customs duty incidence will only be available (popularly known as 'lower rate drawback'). The exporters can avail credit of GST and compensation cess.

Consequently, revised All Industry Rates (AIR) of Drawback have also been notified. In case where Nil rate or no rate of drawback is provided in AIR Schedule, an exporter can apply for fixation of brand rate of drawback. The exporters who got brand rate fixed earlier, will be required to get the same fixed afresh for exports post October 1, 2017

Extension of date of implementation of electronic self-sealing for exports

Vide Circulars No. 26/2017-Cus dated July 1, 2017 and 36/2017-Cus dated August 28, 2017, CBEC introduced the procedure of electronic self-sealing of containers using RFID seals for the exporters. The procedure was proposed to be made effective from October 1, 2017. CBEC has extended the effective date of implementation of electronic self-sealing procedure to November 1, 2017.

Reduction in rate of GST for various goods, and amendment relating to branded food items – Notification Nos. 27 and 28/2017-Central Tax (Rate), 27 and 28/2017-Integrated Tax (Rate) and 27 and 28/2017-Union Territory Tax (Rate) have been issued on 22-9-2017 to amend Notification Nos. 1 and 2/2017 (Rate) for CGST, IGST and UTGST laws, respectively. GST rate in respect of various goods has been revised by the said notifications.

Following goods have been exempted from GST

Cotton seed oil cake

Khadi fabric, sold through KVIC and KVIC certified institutions/outlets

Idols made of clay

Brooms or brushes, consisting of twigs or other vegetable materials

Indigenous handmade musical instruments are exempted as per S. No. 143 of Notification No. 2/2017-Central Tax (Rate). Now, 134 such musical instruments have been specified for coverage under this exemption.

Revision in GST rate

2.5% CGST or 5% IGST rate has been prescribed for:

Walnuts, Dried tamarind, Roasted gram

Lobhan, dhoop batti, dhoop, sambhrani

Grass, leaf or reed or fibre products, including mats, pouches, wallets

Paper mache articles

Duty Credit Scrips

Corduroy fabrics, Saree fall

Cotton quilts of sale value not exceeding Rs. 1000 per piece

Worked corals other than articles of coral

Rosaries, prayer beads or Hawan samagri

6% CGST or 12% IGST has been prescribed for:

Batters, including idli / dosa batter

Rubber bands

Idols of wood, stone and metals (excluding precious metals)

Tableware and Kitchenware of wood

Textile caps

Stone inlay work

Statues, statuettes, pedestals; other ornamental goods essentially of stone

Tableware, kitchenware, other household articles and toilet articles (Headings 6911, 6912)

Cotton quilts of sale value exceeding Rs. 1000 per piece

9% CGST or 18% IGST has been prescribed for:

Custard powder

Medical grade sterile disposable gloves

Plastic raincoats

Rice rubber rolls for paddy de-husking machine

Computer monitors not exceeding 20 inches

Kitchen gas lighters

0.125% CGST or 0.25% IGST has been prescribed for: Unsorted diamonds (Earlier they were liable to 1.5% CGST or 3% IGST)

Brand Name on certain food items and animal or vegetable fertilisers.

Phrase 'brand name' along with 'registered brand name' has also been defined now.

Registered brand name will mean a brand registered as on 15-5-2017 under Trade Marks Act, 1999 or Copyright Act, 1957 or under any law in force in any other country. De-registration of the brand after the above date will not be relevant.

Person availing exemption from GST will have to file affidavit before jurisdictional Commissioner and print with indelible ink on the unit container, that he is voluntarily foregoing his actionable claim or enforceable right on such brand name.

Amendments to the Customs Valuation Rules, 2007

Definition of “place of importation” has been inserted in Rule 2 of the Customs Valuation Rules, 2007, to mean “customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse”.

The following amendments have been made vide Notification No. 91/2017-Cus. read with Circular No. 39/2017-Cusrstwhile Rule 10(2)(b) which prescribed inclusion of loading, unloading and handling charges associated with the delivery of the imported good s at the place of importation has been deleted. Rule 10(2)(a) has been substituted to include cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation.

Effect of amendments

Costs incurred towards loading, unloading and handling charges at the place of importation are not to be included in the assessable value.

The erstwhile practice of loading one per cent of the CIF value towards loading, unloading and handling charges has been removed.

The new provision gives the basis for computation of transport costs, inclusive of loading, unloading and handling charges in cases where information relating to actual costs are not available.

Questions left to be answered

- As costs towards (i) transport and (ii) loading, unloading and handling are provided within Rule 10(2)(a) itself, would the non-availability of the cost of either element lead to a complete rejection of the additions and adoption of the notional rate of twenty per cent of the value of the goods?
- In terms of the definition of "place of importation", can the charges incurred towards unloading at the customs station be included in the assessable value as Circular No. 29/2017-Cus. only discusses the nature of loading and handling charges at the load port?

Service tax

Certain transitional issues arising with respect to payment of service tax after 30th June 2017 (Refer Circular 207/5/2017-Service Tax dt 28-09-2017)

Reflection of transitional credit arising out of payment of service tax on reverse charge basis after 30th June 2017 and by 5th/6th July 2017

Details of credit arising as a consequence of payment of service tax on reverse charge basis after 30th June 2017 by 5th/6th July 2017, the details should be indicated in Part I of Form ST-3in entries, 13.1.2.6, 13 2.2.6 and 13 3.2.6. Linked entries should be made in Part H of Form ST-3. In case the return has already been filed by or after the due date, these details should be indicated in the revised return, the time for filing of which is 45 days from the date of filing of the return.

Hence allST-3 returns for the period 1-4-2017 to 30-6-2017 which have been filed upto and inclusive of the 31st day of August 2017, shall be deemed to have been filed on 31-8-2017. This will give all such assessees some more days to file a revised return, if necessitated. Once details of such credit are reflected in the ST-3, the assessee may proceed to fill in the details in Form GST TRAN-1. It may be noted that as on date, GST TRAN-1 can be filed upto 31-10-2017 and can also be revised.

Payment of service tax on or after 1-7-2017 as a consequence of detection of evasion or any other circumstances

In the case of assessees who were not registered under ACES. It may be recalled that in the registration module of ACES, there is a category of "non assessee registration". This may be used to obtain registration and make payment of service tax.

Appellant did not have the capacity to act as pure agent and did not fulfill the conditions of pure agent under the relevant rule. Hence the appellant will not be entitled to exclude expenses incurred – (Appeal No. ST/2744/2012-CU[DB] M/s. Sercon India Pvt. Ltd. Vs. CST- FINAL ORDER No. 56789/2017)

Central Excise

Duty demanded by the department on Nuts, bolts and washers which were being supplied directly at the project sit as it should be included in the value of galvanized tower materials- Held that the authorities below have not examined the issues

properly in a right perspective , therefore, matter remanded to the Adjudicating Authority for denovo adjudication. (M/s KEC International Ltd Vs. CCE Jaipur Delhi Tribunal Final Order No. 56812/2017 Dated

Exemption of the excise duty under Notification No. 67/1995-CE dated 16/03/1995 denied by the Department. – Held that there is no any evidence to prove that the goods (Sugar syrup) , in question, in form in which they come into existence in the appellant's factories, are marketable. The same is set aside. The appeals are allowed with consequential relief. (M/s Ganesh Bakers Pvt. Ltd. Vs. CCE, Raipur Final Order No. 56814/2017 Dated : 27/09/2017.

Custom

Issuance of SCN by The Additional Director General, DRI was was challenged- It has been held that DRI prospectively appointed as 'proper officer' for the purpose of Section 28 of the Customs Act. Hence, from 06/07/2011 ADG-DRI has been empowered to issue demand notice under Section 28 – Matter remanded back to the authority for fresh decision. (M/s Disha Overseas Pvt. Ltd. CC (ICD), New Delhi Final Order No. 56807-56809/2017)

In order to avail duty draw back benefits on export goods- old/torn cloths were packed in the boxes and department found after reopened for examination- appellants who submits that the goods are still in the custody of the Department and requests that the goods need to be re-examined but under the supervision of an independent authority on the cost of the appellant. (M/s Krush Exim Vs. CC,Delhi- Final Order Nos. 56750 – 56751/2017)

*Member ZAC Chandigarh, Service Tax, Govt. of India, Member RAC Chandigarh, Central Excise & Customs, Member Indirect Tax committee SIAM , Member, ASSOCHAM Indirect Taxes Committee, Chief General Manager Finance- SML Isuzu Ltd. , Winner Achiever Award 2015 By ICAI (CMA)

Information source- M/s LKS, M/s Nitya tax Associates, Economic Times, Financial express, GST.com and other sources- many thanks to all.

With Warm Regards & Jai Hind

Up to Date Information on TRAN 01 updated till 30-09-2017

CLARIFICATION REGARDING FILING OF TRANS 01-Keeping in consideration many Notifications/Rules/Orders have been given/published by Govt TILL 29/09/2017

After going through Notification No.36/2017 dt 29/09/2017 Govt has rectified or become more kind therefore shortcomings of Notification No.34 dt.15/09/2017 & Order No.2/2017 dt.18/09/2017 Plus Order No.3/2017 dt.21/09/2017, following was the situation:

1. Through Notification No.34 CGST Rules amended & new section 120A was inserted which allows/empowered to Commissioner to extend the date of filing of REVISED TRANS 01 to be filed under Rule 117,118,119 & 120.
2. Then Order No.2 came on 18/09/2017 which allowed such extended date 31/10/2017 only for submission of "Revised Trans -01".
3. Then Govt was pressurized by Industry or on suo moto extended date to 31/10/2017 by Ordr No.3 dt.21/09/2017 "not only for Revised Trans 01 but also for Original Trans 01 with one rider that was only Trans 01 which were filed under rule 117". In this order Commissioner took power from Rule 117 only along with Rule 120A for date extension.

So, before Notification No.36/2017 dt.29/09/2017 only Trans 01 Original could be submitted up to 31st Oct, 2017 which were filed u/r 117.

Now, what is gift from Govt to the Industry, that is as under:

By amending CGST Rules, 2017 following will take place, as per Notification No.36/2017 dt. 29/09/2017:

Under Clause 2 of this Notification: In the Central Goods and Services Tax Rules, 2017, –

(i) in rule 24, in sub-rule (4), for the figures, letters and word, "30th September", the figures, letters and word "31st October" shall be substituted;

(ii) in rule 118, for the words "a period of ninety days of the appointed day", the words and figures "the period specified in rule 117 or such further period as extended by the Commissioner" shall be substituted;

(iii) in rule 119, for the words "ninety days of the appointed day", the words and figures "the period specified in rule 117 or such further period as extended by the Commissioner" shall be substituted;

(iv) in rule 120, for the words "ninety days of the appointed day", the words and figures "the period specified in rule 117 or such further period as extended by the Commissioner" shall be substituted;

(v) in rule 120A, the marginal heading "Revision of declaration in FORM GST TRAN-1" shall be inserted;

With effect of above clause now TRAN 01 filed under rule 118/119 & 120 will also be qualified to file Original up to 31/10/2017 as well revised one.

Now let understand what is difference between Tran 01 filed under following rules:

U/r 117 – Every registered person entitled to take credit of input tax under section 140 which says to claim CENEVAT Credit/VAT etc c/f in return filed in existing law to GST.

U/r 118 – Applies to those suppliers on whom section 142(11)(c) of CGST Act, is applicable that says – if you have paid Service Tax/VAT/Excise under existing law to the certain extent or whole but supplies are being made in current GST Laws.

U/r 119 – Declaration of stock held by a principal and job-worker – where section 141 is applicable – these are related to partially removed goods or service provided in existing law and partially under GST

U/r 120 – Details of goods sent on approval basis – where section 142(12) applies that says Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

In above all rules 90 days period has been given for submitting TRAN 01 which was being expired on 28/09/2017 but in Rule 117 it was extended to 31/10/2017 or further it may extended by commissioner.

NOTE: Cap by Act is only further 90 days extension can be given, it means if any further extension come then it cannot go beyond 27th December, 2017.

CONCLUSION:

THEREFORE DATES FOR FILING TRAN 01 HAS BEEN EXTENDED FOR ALL TYPE OF C/F WHICH ARE COVERED U/R 117, 118, 119 & 120 OF CGST RULE, 2017 AS WELL BY RESPECTIVE STATES WILL GIVE SAME EFFECT FOR VAT ETC.

CASE LAWS

Legal Decisions

I. DIRECT TAX

1. HC referred to SC ruling in Custodian of Branches of BANCO National Ultramarino vs. Nalini Bai [AIR 1989 SC 1589] and noted that the definition of legal representative given in the Code of Civil Procedure, 1908 is inclusive in character and its scope is wide. It is not confined to legal heirs only. It may be a person who may or may not be the heir, competent to inherit the property of the deceased. However, such person is representing the estate of the deceased. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. Such persons are covered by the expression legal representative. Thus, ruling in favour of Revenue, HC noted that the assessee was the heir and legal representative of the deceased.

HC further remarked that a Writ Court is not the second Appellate Authority. A Writ Court is called upon to interfere in an order impugned before it, without the assessee before it, substantiating that, the impugned order is without jurisdiction, or is vitiated by the principles of natural justice, or is a non-speaking one or is vitiated by fraud or actuated by mala fides. As per HC, such were not the facts of this instant case.

2. LD/66/36

Commissioner of Income Tax vs. Rural Electrification Corporation Ltd. 28th August 2017 SC held notices issued u/s. 148 on assessee as time barred u/s. 149 and held that relaxation u/s. 150 read with Explanation 3 to Section 153 was not applicable; Re-assessment notice was issued on assessee based on a ITAT order passed in case of another entity to whom assessee advanced loan, wherein it was held that interest income was not to be taxed in the hands of that entity but was taxable in the hands of assessee The assessee had advanced loans to one cooperative electrical supply society ltd. which created a special corpus fund. The said society earned interest on the special corpus fund which was not disclosed by it in its returns stating that the income earned was on behalf of the assessee. ITAT in that case agreed with the said society and held that the said interest income was taxable in the hands of the assessee. Based on this ITAT order, notice u/s. 148 was issued in order to reopen assessments for AY's 1999-2000 to 2002-2003. Aggrieved, assessee filed writ petitions before Delhi HC. Before HC, assessee held that since notices u/s. 148 had been issued beyond the period of six years as stipulated in Section 149, the bar of limitation u/s. 149 would be applicable unless revenue established that the present cases fall u/s. 150 read with Explanation 3 to Section 153.

Thus, assessee submitted that Section 150 could be invoked only if the reassessment was done as a consequence of any finding or direction contained in an order passed by any authority in any proceeding by way of appeal, reference or revision or by a Court in any proceeding under any other law.

HC stated that Explanation 2 in Section 153 makes it clear that even where any income is

excluded from the total income of the assessee from a particular AY, then, an assessment of such income for another AY shall, for the purpose of Section 150 and also Section 153 be deemed to be made in consequence of any finding contained in the said order. HC thus held that a finding in respect of a different year can also be used for the purposes of invoking the provisions of Section 150 by virtue of the deeming provision in Explanation 2 in Section 153. Further, Explanation 3 stipulated that where, by an order inter-alia passed by the ITAT in an appeal, any income is excluded from the total income of one person and held to be the income of another person, then, assessment of such income on such other person shall be deemed to be made for the purpose of Section 150 and Section 153 to give effect to any finding in the said order. However as per HC, the aforesaid deeming provision is subject to a proviso that such other person be given an opportunity of being heard before such an order is passed.

HC noted that ITAT did not give an opportunity to the assessee when it held that interest income was not taxable in the hands of the said society but was taxable in the hands of the assessee, thereby making Section 150 and Explanation 3 to Section 153 inapplicable. As per HC, deeming provision of Explanation 3 to Section 153 required that the person ought to be given an opportunity of being heard before an order is passed where under any income is excluded from the total income of one person and held to be the income of another person.

In view of above inapplicability, HC held that the normal provisions of limitation prescribed u/s. 149 would apply as the notices u/s. 148 which were issued beyond the said period of six years were time-barred.

HC had therefore allowed assessee's writ petitions. The SLP filed by Revenue against this HC order was also dismissed by the SC, thereby ruling in favour of assessee

II. INDIRECT TAX

1. Service Tax

LD/66/45 A.S. Babu Sah Designs vs. Commissioner of Central Excise (Appeals)

Commissioner (Appeals) is empowered to remand portion of assessment to Adjudicating Authority for reconsideration

Though the assessee had effective alternative remedy of appeal before the CESTAT, assessee filed this writ petition by contending that the Commissioner (Appeals) had no power to remand the matter to the Adjudicating Authority, in light of the 2001 amendment to Section 35A of Central Excise Act. Assessee submitted that it would be put to great prejudice if it had to agitate some portion of assessment before Adjudicating Authority, and some before the Tribunal.

The assessee submitted that in terms of Section 85(5), the Commissioner (Appeals) was required to exercise the same powers and follow the same procedure as under Central Excise Act. The pre 2001 amendment Section 35A provided for a power to remand the matter to the Adjudicating Authority and this power had been specifically deleted when sub-Section (3) was substituted by Finance Act 2001. Revenue relied on SC ruling in Union of India vs. Umesh Dhaimode [1998 (98) ELT 584 (SC)], which considered the effect of Section 128(2) of the Customs Act and held that the said provision vested the Appellate Authority with powers to pass such orders as it deemed fit thereby confirming, modifying or annulling the decision appealed against. According to Revenue, order of remand necessarily annulled the decision which was under appeal before the Appellate Authority. SC had further held that the order remanding the matter to the Adjudicating Authority would fall within the power of annulling the order-in-original.

HC analysed provisions of Sections 85 and 86 of Finance Act as well as Sections 35A and 35C of Central Excise Act, and observed that sub-Section (5) does not specifically state the provisions of Section 35-A of the Central Excise Act, and has to be read into the provisions of the Finance Act.

In fact, Section 83 of the Finance Act enumerates the Sections, under the Central Excise Act 1944, which would apply to the matters relating to the Service Tax and it does not include Section 35-A of the Central Excise Act. This is a clear indication that the said provision cannot be superimposed into Section 85 of the Finance Act. HC also observed that provisions of Section 85(4) was para materia to Section 128(2) of Customs Act, which provision was considered by SC in Umesh Dhaimode (supra).

HC noted that power to annul a decision, necessarily, included remand and even after the amendment to Section 35A, the Appellate Authority had power to set aside the decision. HC observed that the amendment to Section 35A(3) in Finance Act 2001 did not in any manner impact power of Commissioner (Appeals) while dealing with an order passed under the Act. HC thus ruled in favour of Revenue.

2. LD/66/47 M/s BCP Advisors Pvt. Ltd. vs. Commissioner of Service Tax, Mumbai-I

Mere fact that foreign service recipient has used advisory service provided by Indian service provider while taking decisions for making investment in India, would not invalidate the export nature of such service provided by Indian service provider.

In absence of time limit prescribed by CENVAT Credit Rule, 2004 for utilisation of credit, once the credit has been taken/availed, refund of such unutilised credit can be claimed without any time bar.

Facts:

Appellant, being exporter of services, filed refund claim of unutilised Cenvat credit under Rule 5 of Cenvat Credit Rules, 2004. While rejecting the refund claim, revenue, inter alia, alleged that since foreign service receivers had utilised advices provided by appellant for making investment in India, services provided by appellant would not constitute 'export' and refund claim being hit by unjust enrichment as the services are not exports. Further, for period 'April 2012-June 2012', since appellant had utilised Cenvat credit pertaining to period 'April 2008- March 2009', revenue alleged that for deciding whether services constitute 'exports or not', exports rules prevailing during period 'April 2008-March 2009' would be applicable and not those prevailing during 'April 2012-June 2012'.

Held:

As regards question of whether appellant's services would constitute export, Hon'ble Tribunal held that findings of lower adjudicating authority that, "though the appellant has provided service to a foreign client from India for which payment were received from abroad, but services have been provided in relation to investment made in India", is misconceived in as much as the service has been used and received by the recipient of service located outside India. Thus, Tribunal held that it is of no consequence as to whether such advisory service received by the recipient located outside India, is used by recipient for taking investment decisions for making investment in India. Tribunal also referred to decision in case of M/s Paul Merchants Ltd. vs. CCE, Chandigarh (Tri.-Delhi) 2013 (29) STR 257 As regards refund claim for the period April, 2012 to June, 2012, Tribunal held that since export of service is provided

during the said period as per the Export Rules of India and as such the appellant is entitled to rebate, as they have both exported the service and discharged the tax liability on the same and appellant has utilised the credit earlier taken for discharge of service tax liability during the said period, appellant is entitled to refund of Cenvat credit without any time bar. Further, Tribunal held that neither there is any question of unjust-enrichment, nor the refunds of Cenvat credit under Rule 5 of CCR, 2004, are hit by time bar, as no time limit has been provided for utilisation of Cenvat credit, once it has been taken.

Accordingly, since appellant proved that due to its business being export of service, they have been unable to utilise the Cenvat credit taken, Tribunal held appellant to be entitled to refund of Cenvat credit without any time bar.

III. Insolvency and Bankruptcy Code

M/s. Schweitzer Systemtek India Private Limited vs. Phoenix ARC Private Limited

National Company Law Tribunal (NCLT), Mumbai Bench, Mumbai Special Civil Application No. 12434 of 2017 3rd July, 2017 Amount in Default: Rs. 4.69 Cr. Section 10 of the Insolvency and Bankruptcy Code, 2016–Initiation of corporate Insolvency resolution process by Corporate applicant- Moratorium shall prohibit the action against the properties reflected in the Balance Sheet of the Corporate Debtor-Moratorium has no application on the properties beyond the ownership of the Corporate Debtor

Facts:

The main issue before the Tribunal was that “whether a property(ies) which is/are not 'owned' by a Corporate Debtor shall come within the ambit of the Moratorium?" In the instant case the personal properties of the promoters have been given as security to the banks while taking loans.

Held:

This Code of 2016 has prescribed certain limitations which are inbuilt and must not be overlooked. The “Moratorium” indeed is an effective tool, sometimes being used by the corporate debtor to thwart or frustrate the recovery proceeding.

The plain language of Section 14 is that on the commencement of the Insolvency process the 'Moratorium' shall be declared for prohibiting any action to recover or enforce any security interest created by the Corporate Debtor in respect of “its” property. Relevant section which needs in-depth examination is Section 14(1)(c) of the Code.

There are recognised canons of interpretation. Language of the statute should be read as it existed. This is a trite law that no word can be added or substituted or deleted from the enacted Code duly legislated. Every word is to be read and interpreted as it exists in the statute with the natural meaning attached to the word. Rather in this section the language is so simple that there is no scope even to supply 'casus omissus'.

The Tribunal added that the doctrine of 'Noscitur a Sociis' is somewhat applicable that the associated words take their meaning from one another so that common sense meaning coupled together in their cognate sense be interpreted. As a result, “its” denotes the property owned by the Corporate Debtor. The property not owned by the Corporate Debtor does not fall within the ambit of the Moratorium. Even Section 10 is confined to the books of accounts of the Corporate Debtor, due to the reason that Section 10(3) has specified that the Corporate Applicant shall furnish “its” books of accounts. This Bench has no legislative authority to expand the meaning of the term “its” even

under the umbrella of 'ejusdem generis'.

The outcome of this discussion is that the Moratorium shall prohibit the action against the properties reflected in the Balance Sheet of the Corporate Debtor. The Moratorium has no application on the properties beyond the ownership of the Corporate Debtor. As a result, the Order of the Hon'ble Court directing the Court Commissioner to take over the possession shall not fall within the clutches of Moratorium. Even otherwise, the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (the SARFAESI Act) may be having different criteria for enforcement of recovery of outstanding debt, which is not the subject matter of this Bench. The Tribunal held that the SARFAESI Act may come within the ambit of Moratorium if an action is to foreclose or to recover or to create any interest in respect of the property belonged to or owned by a Corporate Debtor, otherwise not. The Application under Section 10 of the Code was accordingly “Admitted”.

EVENT PHOTOS

EVENT PHOTOS

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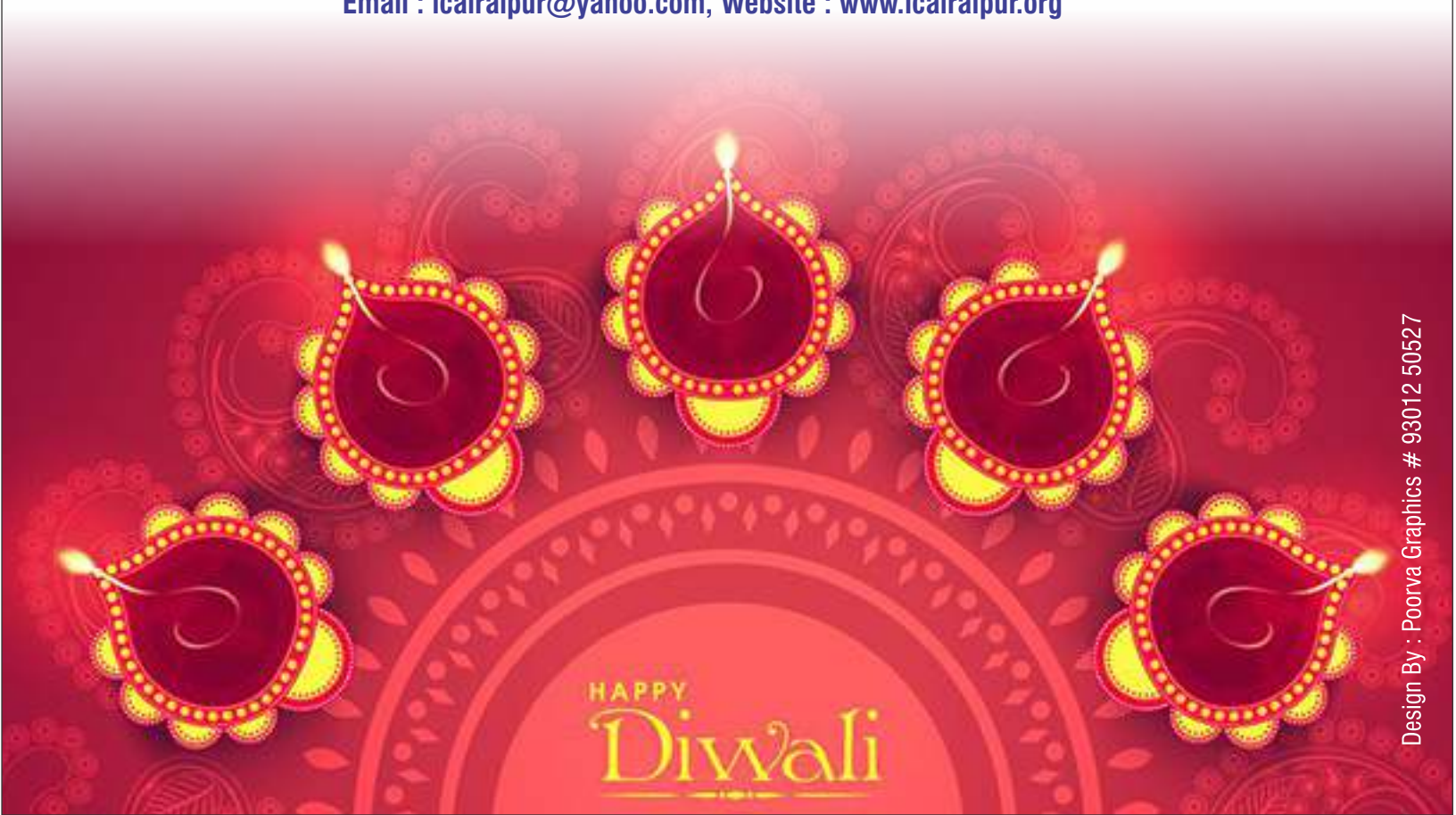

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