

E-NEWSLETTER

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"Mindset is what separates the best from the rest."

Anonymous

NEWSLETTER COVERAGE

1. Important Circulars/Orders & Notifications
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From Editors Desk

Dear Readers,

With the poll season on its peak, it's time to participate in the process of nation-building. Thus it's an appeal to all the profound readers to go out and vote. Elections remind us not only our rights but also the responsibility of citizenship in a democracy.

We are here with yet another edition of our newsletter to upgrade you with the latest changes in the various laws. We know it's difficult to cope with the frequent changes in a dynamic environment, therefore we hope that a small initiative of knowledge sharing in concise way on part of FinTax Advisory Services helps you to grasp the information easily on the go.

Any suggestions/feedback is heartily invited.

HAPPY READING☺

DEEPALI MISHRA
(Chartered Accountant)

CIRCULARS/NOTIFICATIONS

INDIRECT TAXATION

CBIC issues Circular for taxpayers intending to pay GST @6%; shall file Form GST CMP-02, latest by April 30, 2019 [Circular No. 97/16/2019-GST dated 5th April, 2019]

On April 5, 2019, CBIC has issued a circular for registered persons who want to opt for the payment of GST at the rate of 6% (3% CGST +3% SGST) by availing the benefit of Notification no – 02/2019-Central Tax (Rate) dated March 07, 2019; they may do so by filing intimation in form GST CMP-02 by selecting the category of registered person as "Any other supplier eligible for Composition Levy" latest by April 30, 2019.

CBIC issues Circular clarifying utilization of Input Tax Credit [Circular No. 98/17/2019-GST dated 23rd April, 2019]

CBIC vide this circular clarified that , since the common portal presently does not support new order of utilization of Input tax credit as per newly inserted Rule 88A of the CGST Rules, the taxpayers may continue to utilize their input tax credit as per the functionality available on the common portal.

Circular clarifying the extension of time limit vide RoD number 05/2019-Central Tax dated 23rd April, 2019 [Circular No. 99/18/2019-GST dated 23rd April, 2019]

CBIC vide this circular clarifies that in order to remove difficulty in implementation of Order No.05/2019-Central Tax dated 23rd April 2019 a third proviso has been added to sub-rule (1) of rule 23 of CGST Rules 2017, to enable filing of application for revocation of cancellation of registration, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of thirty days from the date of order of such revocation of cancellation of registration.

CBIC clarifies the applicability of GST on Seed testing & certification [Circular No. 100/19/2019-GST dated 30th April 2019]

On April 30, 2019, vide Circular No. 100/19/2019-GST, CBIC has clarified that seed testing & certification charges, which are collected by Seed Certification Agencies of all the States, are exempt from GST. However, the supply of seed tags by the other departments/ manufacturers to the State Government/ Seed Certification Agency is a supply of goods hence liable to GST.

No GST to be levied on the upfront amount payable in installments for long term lease of plots [Circular No. 101/20/2019-GST dated 30th April 2019]

On April 30, 2019, vide Circular No. 101/20/2019-GST, CBIC has clarified that no GST shall be levied on upfront amount payable for long term lease of 30 years or more, of industrial plots or plots for development of financial infrastructure provided by the State Government Industrial Development Corporation or undertaking or entity having 50% or more ownership of Central, State Govt.

E-way bill can't be generated if the registered person has not filed return for 2 consecutive tax periods [Notification No. 22/2019 - Central Tax dated April 23, 2019].

Central Government vide this notification notifies 21st June 2019 as the date of applicability of provisions of Rule 138E of CGST Rules 2017.

UPDATES

Offline utility of Form GSTR-9A is made available in the download section of GST Portal for the composition taxpayers.

Facility for online and offline filing of Form GSTR-9C, Audited Annual Accounts and Reconciliation Statement, has been made available on GST Portal to the taxpayers. The offline utility is made available in the download section of GST Portal.

ITR 1 & 4 for AY 2019-20 is available for E-Filing. Other ITRs will be available shortly.

[Now GSTR-4 is required to be filed annually & payment shall be made on Quarterly basis \[Notification No.21/2019 - Central Tax dated April 23, 2019\].](#)

The registered persons paying tax under the provisions of section 10 of CGST Act 2017 or availing the benefit of notification No. 02/2019– Central Tax (Rate), dated the 7th March, 2019 shall now be required furnish a statement, every quarter or, as the case may be, part thereof containing the details of payment of self-assessed tax in FORM GST CMP-08 of the Central Goods and Services Tax Rules, 2017, till the 18th day of the month succeeding such quarter and shall furnish a return for every financial year or, as the case may be, part thereof in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017, on or before the 30th day of April following the end of such financial year.

[Third Amendment in CGST Rules 2017 \[Notification No.20/2019 - Central Tax dated April 23, 2019\]](#)

In order to implement the smooth execution of Notification No. 21/2019 and RoD Order No. 5/2019-GST dated 23rd April 2019 respectively, Central Government vide this notification amended CGST Rules 2017.

Insertion of Second Proviso in Rule 23 sub rule (1)

“Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.”

[Editorial Comment: Since the common portal does not allow furnishing of returns after the effective date of cancellation, therefore it was not possible to file the application for revocation of cancellation of registration. It was due to this reason a third proviso was added to sub-rule \(1\) of Rule 23 of CGST Rules 2017.](#)

In order to give effect to annual filing of GSTR 4 and Quarterly payment in CMP 08 by registered persons paying tax under the provisions of section 10 of CGST Act 2017 or availing the benefit of notification No. 02/2019– Central Tax (Rate), dated the 7th March, 2019 relevant substitutions in Rule 62 of CGST Rules 2017 has been made.

[Editorial Comment: Self-assessed tax in FORM GST CMP-08 shall be furnished till the 18th day of the month succeeding such quarter and GSTR 4 shall be furnished annually on or before the 30th day of April following the end of such financial year.](#)

[One time opportunity to apply for revocation of cancellation of registration on or before the 22nd July, 2019 for the specified class of persons for whom cancellation order has been passed up to 31st March, 2019.\[Order No. 5/2019-GST dated 23rd April 2019\]](#)

Central Government vide Removal of Difficulty order provides that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed upto 31.03.2019, shall be allowed to file application for revocation of cancellation of the

registration not later than 22.07.2019.

COMPANY LAW

Director-KYC needs to be done within period 30 days from date of deployment of e-form: MCA clarifies

The Ministry of Corporate Affairs (MCA) has issued clarification with regard to Director's KYC whereby it has clarified that the DIN holders are required to file the DIR-3KYC form every year, so that they are aware of and confirm the data and information as available in the MCA21 system.

Due date of filing 'ACTIVE' e-form extended up to June 15, 2019: MCA

In order to provide big relief to the corporate entities, the Ministry of Corporate Affairs has extended the due date of filing e-form INC-22A with the MCA from April 25, 2019 to June 15, 2019.

BULLETIN BOARD

- CBDT vide order dated 30th April 2019 stated that Income Tax department to share ITR data with GSTN to detect tax evasion by business persons. The move aims at curbing tax evasion by the businesses by cross-checking data between their GST returns and ITR.
- Form DPT-3 is likely to be revised on MCA21 Company Forms Download page w.e.f 1st May, 2019. Stakeholders are advised to check the latest version before filing.
- E-Form MSME (Form for furnishing half yearly return with the registrar in respect of outstanding payments to Micro or Small Enterprises) will be available on MCA21 Company Forms Download page w.e.f 1st May 2019.
- GST officers are working on a system where businesses above a certain turnover threshold will have to generate 'e-invoice' on government or GST portal for every sale, thereby effectively reducing the room for tax evasion. To start with, businesses above a specified threshold will just get a unique number for every electronic invoice or e-invoice generated.

LEGAL UPDATES

INDIRECT TAXES

Interest will be levied on both Cash & ITC component if there is delay in filing of GST Returns.

M/s. Megha Engineering & Infrastructures Ltd. Vs the Commissioner of Central Tax (Telangana) [**Download Judgment/Order**](#)

Facts of the case

- The company had delayed filing GST returns from July 2017 to May 2018 when its tax liability added upto Rs. 1014 crore. It had ITC of Rs 968 crore and it claimed that the shortfall was to the tune of Rs. 45crore.
- The tax authorities demanded 18% of interest on entire amount.
- Megha Engineering argued that interest should be calculated only on the net tax liability, after deducting ITC from the total liability.

HELD

High Court held that until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger take place. As a consequence, no payment can be made from out of such a credit entry. It is true that the tax paid on the inputs charged on any supply of goods and/services are always available. But, it is available in the air or cloud. Just as information is available in the server and it gets displayed on the screens of our computers only after connectivity is established, the tax already paid on the inputs is available in the cloud. Such tax becomes an input tax credit only when a claim is made in the returns filed as self-assessed. It is only after a claim is made in the return that the same gets credited in the electronic credit ledger. It is only after the credit is entered in the electronic credit ledger that payment could be made, even though the payment is only by way of paper entries.

As a consequence, the payment of the tax liability, partly in cash and partly in the form of a claim for ITC was made beyond the period prescribed. Therefore, the liability to pay interest under Section 50(1) arose automatically. The petitioner cannot, therefore, escape from this liability.

Hon'ble High Court permitted the petitioner to revise GST TRAN-2 holding that TRAN-2 is merely an admission of facts, and even in the absence of specific Rule, any person filing it should be entitled to revise/rectify the same. The verification of grounds for revision can be examined by the Department in the course of assessment.

Optival Health Solutions Private Limited & Anr. Vs. Union of India & Ors [**Download Judgment/Order**](#)

Facts:

The Petitioner had filed the Tran 1 form within time. It had filed the Tran 2 form within time. However, the petitioners had noticed that, there were certain mistakes in the Tran 2 form. The petitioner wanted to correct the same. However, the present scheme of things does not allow

rectification or revision of the Tran 2 form. The petitioners therefore sought for a direction upon the Department to allow them to revise/ rectify their Form GST TRAN 2 electronically or manually.

Held:

Hon'ble High Court noted that, although the Rules of 2017 were subsequently amended to provide for revision/rectification of TRAN 1 form by insertion of Rule 120 A, similar provisions have not been incorporated in the Rules of 2017 for rectification/revision of TRAN 2. Since the Rules of 2017 do not contemplate revision of Form GST TRAN 2, the common portal available under the Act and Rules of 2017, does not provide for revision of Form GST TRAN 2 in the electronic manner. The petitioners are therefore unable to file a revised declaration under Form GST TRAN 2 electronically. *Relying upon Always Sugar Agency vs. Asst. Commr. (Assmnt) 2018 (10) GSTL 228 (Ker.) and Commercial Taxes Special Circle, Aluva) and Infra Innovations vs. Union of India) 2018 (18) G.S.T.L. 28 (Ker.) GC*, the Hon'ble High Court held that, although Taxing statutes are to be strictly construed, such interpretation should not lead to a reckless or a mindless mechanical application of the statute. Hon'ble Court held that, the Form GST TRAN 2, at best, is an admission of the person filing the same with regard to the contents of the document. Admission is a strong evidence against the person making it. However, law contemplates that, the person making such admission has the opportunity to explain the same. A person making an admission, is entitled to prove that, the admission was made by mistake or was untrue. If a person making the admission is able to substantiate with cogent evidence that the admission was a mistake or was untrue, then such facts have to be taken into consideration for the purpose of deciding the evidentiary value of the admission and the relevancy thereof. In other words, the law permits a person making an admission, the liberty of explaining the same, if he so chooses. However, neither the Act of 2017 nor the Rules of 2017 can be read to mean that the same excludes the right of a person making an admission, to forfeit the opportunity to explain it. Neither the Act of 2017 nor the Rules of 2017 forfeits the right of a person making an admission to substantiate that, such admission was made by mistake or was untrue. Hon'ble High Court, therefore, held that a person filing Form GST TRAN 2, therefore, should be afforded an opportunity to explain the Form GST TRAN 2, in the event where such person chooses to do so. Moreover, Form GST TRAN 2 will be taken into consideration for the purpose of assessment. In the assessment proceedings, the person filing the Form GST TRAN2 would be at liberty to establish by cogent evidence that the figures filed therein are incorrect or untrue. The Assessing Officer will be obliged to take into consideration such a stand while pronouncing upon the assessment. Therefore, when such a person is seeking to correct Form GST TRAN 2 on its own, an opportunity should be afforded to such person to correct the same. The authorities may retain the original GST TRAN 2 Form for their assessment purpose and can confront the person seeking to revise the GST TRAN2 with the Form GST TRAN2 as originally filed and require explanation from the person filing a revised Form GST TRAN 2 as to why such revision was required and whether such revisions are justified or not. Such an enquiry can be held in the assessment proceedings. There is no ground as to why a person filing Form GST TRAN 2 should not be allowed to revise Form GST TRAN 2 after its initial filing. Accordingly, Hon'ble High Court directed the authorities to allow the petitioner to file a revised Form GST TRAN 2, either electronically or manually, in accordance with law within four weeks from the date of communication of this order.

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