

# THE NEWSLETTER

## UPDATE YOURSELF

### CBDT Notifies Time-Limit For Deposition of TDS u/s 194M

The Central Board of Direct Taxes (“CBDT”) by amending Rule 30 through Income Tax (14<sup>th</sup> Amendment) Rules, 2019 (“Rules”) on 18.11.2019 has specified the time limit for deposition of TDS deducted u/s 194M. The TDS must be deposited within 30 days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QD. Section 194M is applicable on the payments made by any Individual or HUF to any resident for carrying out any work in pursuance of any contract by way of commission or brokerage or by way of fees for professional services availed during the year, at the rate of 5% if the aggregate payment to such resident exceeds Rs. 50 lacs in a financial year. Also, the person deducting the TDS u/s 194M shall need to provide a Certificate of Deduction of tax at source in Form No. 16D to the payee within a period of 15 days from the due date of depositing tax after generating and downloading it from the web portal.



Central Board of Direct Taxes

(CBDT)

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### Mere Ritualistic Hearing Not Sufficient to Fulfil Principles of Natural Justice

In case of *TLG India (P.) Ltd. vs. Deputy Commissioner of Income-tax, Writ Petition No. 2575 of 2019* pronounced on 18.11.2019 issue before the Hon’ble Delhi High Court (“Court”) was that whether merely giving hearing of case and passing order without understanding the such case and important submissions of the Assessee would qualify for principal of natural justice? The brief facts of the case are that the Assessee was an advertising agency which enabled its clients to place/display their advertisements on media platforms. The Assessee made payments to media owners by deducting TDS u/s 194C of the Income Tax Act, 1961 (“Act”). The Assessing Officer (“AO”), recorded a finding that short and wrong TDS is deducted u/s 194C on payments, instead of appropriate Section 194J as applies to technical services. Thereafter, declared the Assessee as ‘assessee in default’ and consequently passed the order u/s 201(1) and 201(1A) for the AYs 2017-18, 2018-19 and 2019-20. The Assessee challenged the said orders, on ground that AO has not considered submissions which go to the root of the matter and substantiate that deduction by the Assessee u/s 194C was correct in light of the CBDT circulars and judicial pronouncements. Thus, the orders are non-speaking and there is a breach of principle of natural justice. The Hon’ble Court, while arriving at conclusion analysed that:

- Mere ritualistic giving of hearing and reproducing the submissions made without understanding the party's case would not satisfy the test of natural justice.



- The object of natural justice is to ensure that parties views/ objections are taken on board and considered before it is rejected.
- The requirement of natural justice is only to ensure that the party's stand is effectively dealt with by the authorities under the Act.
- It is also not in the authorities power to reject any evidences or submissions made by the party on the prima facie view, but it is duty of the authorities to find the correct facts and then apply the law to the facts and take a decision in terms thereof.

In view of the above analysis the Court held that the test of natural justice is not satisfied when a case is decided based on mere giving of hearing as per rituals and reproductions of submission, without understanding the case.

### Restriction on Availment of Input Tax Credit

Section 16 of the Central Goods and Services tax Act, 2017 (“**CGST Act**”) lays down the condition for the availing the input tax credit. One of those conditions is that the tax paid by the registered person on it inwards supplies should have been paid to the government. To ensure the same, the Government introduced the return GSTR-2A wherein a registered person can check

## Input Tax Credit under GST

that whether his supplier has disclosed the supplies in its respective GST return. In this regard, the government vide Notification No. 49/2019-CT dated 09.10.2019 inserted rule 36(4) in the Central Goods and Services Tax Act, 2017 (“**CGST Rules**”) which entitles the registered person to avail the additional credit equals to 20 per cent of the total credit appearing in GSTR-2A. In order to bring clarity with respect to the said rule, the central government further issued a Circular No. 123/42/2019–GST dt. 11.11.2019 . As per the said circular, the provisions of rule 36(4) shall apply only on those invoices or debit notes on which **credit have been availed after 09.10.2019**. The Circular further clarified that credit

that remain unavailed by the registered person in the further months when his suppliers furnishes the requisite information of the invoices in its GSTR-1. The remaining availed credit has to be calculated in the manner as specified in rule 36(4) in the succeeding month. The Circular also clarified that the restriction of Rule 36(4) shall not apply in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc., since these GST on these transactions has to be paid by the registered person himself and the said transactions are not covered by GSTR-2A. It is also important to note that the credit availed after the calculation of rule 36(4) should otherwise be eligible as per the provisions of the CGST Act.

### Insolvency and Bankruptcy of Personal Guarantors of Corporate Debtors

The Insolvency and Bankruptcy Code, 2016 (“**Code**”) classifies individual into three classes, namely, personal guarantors to Corporate Debtors, partnership firms and proprietorship firms,

and other individuals, to enable implementation of individual insolvency in a phased manner. In light of the same, the Ministry of Corporate Affairs (‘**MCA**’) vide notification no. F. No. 30/21/2018-Insolvency Section dated November 15, 2019 appointed December 01, 2019 as the commencement date for provisions of Code relating to personal guarantors of Corporate Debtors. Till now, the Code was limited to adjudication of cases of corporate insolvency and corporate guarantors

Further, the MCA issued (i) the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 as issued vide notification no. [F. No. 30/21/2018-Insolvency Section] dated November 15, 2019; and (ii) the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to



Corporate Debtors) Rules, 2019 *vide* notification no. F. No. 30/21/2018-Insolvency Section] dated November 15, 2019. The Rules will be in effect from December 01, 2019 and will apply to insolvency resolution process for personal guarantors to corporate debtors. These Rules provide for the process and forms of making applications for initiating insolvency resolution and bankruptcy proceedings against personal guarantors to Corporate Debtors, withdrawal of such applications, forms for public notice for inviting claims from the creditors, etc.

### Supreme Court Strikes Down Provision Granting Automatic Stay on Arbitral Award

The three-judges bench of the Hon'ble Supreme Court comprising of R.F. Nariman, Surya Kant and V. Ramasubramanian, JJ. in *Hindustan Construction Company Limited vs. Union of India*, has struck down Section 87 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") which was recently inserted vide Arbitration and Conciliation (Amendment) Act, 2019 (hereinafter referred to as the "2019 Amendment Act"). Section 87 (*now repealed*), states that the 2015 Amendment to the Act will not apply to the Court proceedings arising out of or in relation to Arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015. Previously in the year 2018, the Hon'ble Supreme Court in *Kochi Cricket Private Limited case* went on to hold that the 2015 Amendment to Section 36 of the Act i.e. *Enforcement* of the Arbitral Award would apply not only to arbitral proceedings commenced on or before 23<sup>rd</sup> October 2015 but also to the arbitration related court proceedings filed on or before such date even if such arbitral proceedings have commenced before the coming into force of 2015 Amendment Act.



### Supreme Court Holds CJI Office to Be Under The Ambit of RTI

In a landmark judgment Supreme Court of India vs. Subhash Chandra Agarwal (*Civil Appeal No. 10044 of 2010*), the Hon'ble Supreme Court ("Court") on 13.11.2019 held that the office of Chief Justice of India ("CJI") is a public authority under the Right to Information Act, 2005 ("Act"). With respect to the information relating to assets of judges, the Court held that such disclosure would not, in any way, impinge upon the personal information and right to privacy of the judges. The fiduciary relationship rule in terms of clause (e) to Section 8(1) of the Act is also inapplicable to this information. Details of personal assets of judges would not amount to personal information and disclosure of the same will not violate right to privacy. Court asked the information commissioner to apply test of proportionality while entertaining applications seeking information from CJI's office, keeping in mind right to privacy and independence of judiciary. Court further held that Supreme Court of India and the office of the CJI are not two different public authorities. The Supreme Court would necessarily include the office of CJI and other judges in view of Article 124 of the Constitution. Transparency does not undermine Judicial independence and Judicial independence and accountability go hand in hand. Disclosure is a facet of public interest.



सूचना का  
अधिकार  
RIGHT TO  
INFORMATION

## KEY TAKE AWAYS

- The Ministry of Corporate Affairs *vide* its **General Circular No. 17/2019 dated 30.12.2019** has extended the last date of filing of CRA-4 (cost audit report) for all eligible companies for the Financial Year 2018-19, without payment of additional fee, till 29.02.2020.
- As per **Notification No. 72/2019-CT dated 13.12.2019** issued by CBIC, a registered person whose aggregate turnover in a financial year exceeds five hundred crore rupees making supplies to an unregistered person (hereinafter referred to as B2C invoice) has been notified as the category of persons who shall have Quick Response (QR) code. This notification shall come into force from the 01.04.2020.
- The CBIC *vide* **Notification 74/2019-CT dated 26.12.19** has waived the late fee payable under section 47 of the Central Goods and Services Tax Act, 2017 for the registered persons who failed to furnish the details of outward supplies in FORM GSTR-1 for the months/quarters from July, 2017 to November, 2019 by the due date but furnishes the said details between the period from 19.12.2019 to 10.01.2020.
- The CBIC *vide* **Notification 75/2019-CT dated 26.12.19** has made amendments in the Central Goods and Service Tax Rules, 2017 by substituting 10% in place of 20% in Rule 36(4) w.e.f. 01.01.2020 as the amount of credit that can be availed in cases where such credit has not been reflected in the taxpayer's GSTR-2A.
- The CBIC *vide* **Notification No. 73/2019-CT dated 23.12.2019** has made amendments in Notification No. 44/2019 – Central Tax, dated the 09th October, 2019 by inserting a proviso that “the return in FORM GSTR-3B of the said rules for the month of November, 2019 shall be furnished electronically through the common portal, on or before the 23.12.2019.”
- As per **Notification No. 70/2019-CT dated 13.12.2019** issued by CBIC, a registered person whose aggregate turnover in a financial year exceeds one hundred crore rupees has been notified as a class of registered person who shall prepare an invoice as per Rule 48(4) of the CGST Rules in respect of supply of goods or services or both to a registered person.
- The CBIC has *vide* **Notification No. 06/2019-CE-NT dated 04.12.2019** specified the enactments to which the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 shall be applicable which are as follows:- Cine-Workers Welfare Cess Act, 1981; Industries (Development and Regulation) Act, 1951; Sugar Export Promotion Act, 1958; Sugar (Regulation of Production) Act, 1961; Tea Act, 1953; Finance Act, 2001; Finance Act, 2005 and Finance Act, 2010.



## KNOWLEDGE CENTRE

### MCQs on Copyright Law

- 1) Which act governs copyright law in India?**
- Copyright Act, 1974.
  - Copyright Act, 1952.
  - Copyright Act, 1957.
  - Copyright Act, 1967.
- 2) What type of works are protected under Copyright law?**
- Literary and dramatic work.
  - Artistic work and musical work.
  - Producers of cinematograph films and sound recordings.
  - All of the above.
- 3) Is it necessary to register a work in order to claim copyright?**
- Yes.
  - No.
  - Only for Literary Works.
  - Only for Musical Works.
- 4) Who can apply for copyright registration of a work?**
- Author of the work.
  - First owner of the work.
  - First owner of the work or author where he/she is the first owner.
  - All of the above.
- 5) Who is the owner of copyright in a government work?**
- Author of the work.
  - Government, in absence of any agreement to the contrary.
  - Government.
  - None of the above.
- 6) Is copyright infringement a criminal offence?**
- Yes, according to Section 63 of the Copyright Act, if a person knowingly infringes or abets the infringement
  - No.
  - Yes, but only in the cases of government work.
  - No, except if the infringement is of dramatic work.
- 7) Are computer programmes protected under Copyright Act?**
- No, computer programmes are the subject matter of Patents.
  - Yes, they are treated as literary works.
  - Yes, they are treated as artistic works.
  - Yes, only if they are not registered under the Patent Act.
- 8) Which court can try copyright offence cases?**
- High court will have original jurisdiction.
  - If the matter is above Rs. 1 lakh, then High Court will have original jurisdiction.
  - No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under the Copyright Act.
  - Judicial magistrate of the second class will have original jurisdiction.
- 9) Is translation of an original work also protected by copyright?**
- Yes. All the rights of the original work apply to a translation also.
  - No, translation of work same will have no copyright.
  - No, translation of will have separate copyright.
  - Yes, only when the translation is done by the same author.
- 10) Can any person translate a work without the permission of the owner of the copyright in the work?**
- Yes, it will be treated as literary works.
  - Yes, ideas can be expressed in a different way without prior permission of owner.
  - No, not without the permission of the copyright owner.
  - Only dramatic works can be translated without prior permission.

## EDITORIAL

### **Recent Amendments in GST Rates For Hospitality Industry**

*-By Bhavya Varma, Advocate*

GST is levied on services provided by hotels under Heading 9963 as ‘*Accommodation, food and beverage services*’ of Notification No. 11/2017-CT(R) (‘*Rate Notification*’). The GST Council in its 37<sup>th</sup> Meeting held on 20.09.2019 had recommended that the rate of GST applicable on the accommodation services provided by a hotel should be reduced. To give effect to this recommendation, Notification No. 20/2019-CT(R) dated 30.09.2019 (‘*Amending Notification*’) has been issued. A brief analysis of the Amending Notification relevant to the hospitality industry is as follows:

#### **Changes in GST applicable on Accommodation Services**

The Amending Notification has introduced new entries from (i) to (vi) under S. No. 7 pertaining to Heading 9963. A summary of the rate on accommodation applicable before and after the amendment is as below:

S. No.	Value of supply per unit (room) per day for accommodation	Old Rate	New Rate	Entry as per Notification
(1)	Less than Rs. 1000	Nil	Nil	[Exempted <i>vide</i> Notification No. 12/2017-CT(R)]
(2)	Rs. 1,000 and above but less than Rs. 2,500	12%	12%	No. 7(i) of Rate Notification
(3)	Rs. 2,500 and above but less than Rs. 7,500	18%	12%	No. 7(i) of Rate Notification
(4)	Rs. 7,500 and above	28%	18%	No. 7(vi) of Rate Notification

At this instance, it is pertinent to highlight that the definition of ‘*hotel accommodation*’ has also been added to the Rate Notification *vide* the Amending Notification which reads as follows:

*“Hotel accommodation” means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation.*

It appears that the above definition has been added in order to remove any ambiguity regarding the scope of services. However, there are different streams of inflows to a hotel from its’ guests and it is advisable that the rate of tax on each type of transaction should be carefully vetted post 01.10.2019, particularly with regard to the concept of composite supply of services.

#### **Changes in GST applicable on Restaurant Services**

The Amending Notification has also introduced new rates for restaurant services. As per the said rates, supply of restaurant service other than at ‘*specified premises*’ is chargeable at 5% GST (without ITC). However, supply of restaurant services at ‘*specified premises*’ is chargeable at the existing rate of 18% itself. Hence, in order to analyse the new prescribed rates, it is first pertinent to examine the newly introduced definitions of ‘*restaurant services*’ and ‘*specified premises*’ as prescribed *vide* the Amending Notification. The definitions are reproduced below:

*“Restaurant service” means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.*

*“Specified premises” means premises providing “hotel accommodation” services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.*

A reading of the definition of ‘specified premises’ with the definition of ‘restaurant services’ implies that the food provided by the restaurants in hotel premises which do not have any unit of accommodation with a declared tariff above Rs. 7500 will be charged GST at 5% (without ITC) for the restaurant services provided at such premises/hotel. However, the Amending Notification in Entry No. 7(vi) has prescribed a rate of 18% for food, beverages and accommodation services which are not covered anywhere else in Entry No. 7(i) to 7(v). Thus, those hotels having a declared tariff above Rs. 7,500 for any unit of accommodation shall have be charged GST at 18%.

It is pertinent to note that while the value of supply will be taken into account for the purpose of calculating the GST rate applicable on accommodation however, for determining the rate of tax applicable on ‘restaurant services’, the declared tariff of a unit of accommodation of the hotel shall be taken into consideration. Moreover, a hotel will qualify as ‘specified premises’ if the declared tariff value of any of the units of accommodation of that hotel is above Rs. 7,500.

### **Changes in GST applicable on Outdoor Catering Services**

A major source of revenue for a hotel is from ‘MICE’, i.e., meetings, incentives, conferences and exhibitions; where food supplied along with rented premises as a bundle. The Amending Notification has prescribed the following GST rate for such activities as follows:

- a. The GST rate on ‘outdoor catering services’ shall be 5% (without ITC).
- b. Cases where renting of premises and ‘outdoor catering services’ are being provided as a composite supply the rate applicable shall also be 5% (without ITC).

However, the aforementioned rates in (a) and (b) shall not be applicable on supply of ‘outdoor catering services’ in the cases listed below:

- a. Where catering is being carried out **at a hotel** whose declared tariff exceeds Rs. 7,500 for any of their rooms.
- b. Where the catering is being done **by a hotel** whose declared tariff exceeds Rs. 7,500 for any of their rooms.
- c. Where the catering is being done **by a supplier located in a hotel** whose declared tariff exceeds Rs. 7,500 for any of their rooms.

For the cases as mentioned in (1), (2) and (3) above, the applicable GST rate shall be 18% as per Entry No. 7(vi) of the Rate Notification. Hence, the GST rate of 18% shall be applicable on ‘outdoor catering’, and on composite supply of ‘outdoor catering’ along with renting of premises, when it is provided by a hotel whose declared tariff exceeds Rs. 7,500 for any of their rooms, at such hotel or by a supplier located at such hotel.

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