

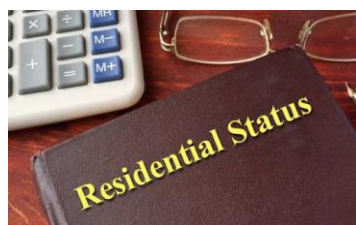
The Newsletter

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CBDT Clarification in Relation to Determination of Residential Status of Individuals as per Section 6 of the Income-tax Act

Central Board of Direct Taxes (**CBDT**) has issued a clarification vide **Circular No. 11/2020 dated 8th May 2020** to exclude the period of forced stay in India due to Novel Corona Virus Disease (**COVID-19**) for



the purpose of determining the residential

status under Section 6 of the Act of

Individuals. The said circular was issued to avoid genuine hardship in case of Individuals who had come to visit to India and were forced to prolong their stay in India due to declaration of the lockdown and suspension of international flights, owing to outbreak of COVID-19.

CBDT has decided that during the previous year 2019-20 in respect of an individual who had come to India on a visit before 22nd March, 2020 and:

a) had been unable to leave India on or before 31st March, 2020, his period of

stay in India from 22nd March, 2020 to 31st March, 2020 shall not be taken into account; or

- b) had been quarantined in India on account of COVID-19 on or after 1st March, 2020 and has departed on an evacuation flight on or before 31st March, 2020 or had been unable to leave India on or before 31st March, 2020, his period of stay from the beginning of his quarantine to his date of departure or 31st March, 2020, as the case may be, shall not be taken into account; or
- c) had departed on an evacuation flight on or before 31st March, 2020, his period of stay in India from 22nd March, 2020 to his date of departure shall not be taken into account.

Hence, period of stay shall be carefully determined for such Individuals for the purpose of determining the residential status under section 6 of the Act.

Income Tax Related Measures Announced by FM for Providing Relief to Taxpayers Amidst Covid-19

During the press conference held on 13.05.2020, the Hon'ble Finance Minister Mrs. Nirmala Sitharaman announced a variety of measures in light of the Prime Minister's vision of self-reliant India i.e., '**Aatma Nirbhar Bharat**'. While announcing the said measures, various income tax related measures were also

announced to provide relief to the taxpayers amidst the ongoing critical situation of Covid-19. The said measures as mentioned in the Press Release dated 13.05.2020 are laid out as under:

- The pending income tax refunds to charitable trusts and non-corporate

businesses and professions including proprietorship, partnerships, etc. shall be issued immediately.



- The rates of Tax Deduction at Source (“TDS”) for non-salaried specified payments made to residents and rates of Tax Collection at Source (“TCS”) for the specified receipts will be **reduced by 25 percent of the existing rates**. This relaxation only applies to payments/credits done between 14th May 2020 and 31st March 2021. By

reducing the rate of TDS/TCS, it is intended to provide more liquidity in the hands of the taxpayers. Though this measure doesn’t provide any change in cash outflow of the deductor but the same shall result in more cash in hand in the hands of the deductees.

- The due **date of all Income Tax Returns for Assessment Year 2020-21 will be extended to 30th November, 2020.**
- Similarly, **tax audit due date will be extended to 31 October 2020.**

The date for making payment without additional amount under the “**Vivad Se Vishwas**” scheme will be extended to 31st December, 2020.

SC examining Arbitral Tribunal’s Interpretation of terms of a contract in case of SEAMEC Ltd. vs. OIL India Ltd

In the case of **South East Asia Marine Engineering And Constructions Ltd. (SEAMEC Ltd.)** vs Oil India Limited vide Civil Appeal No. 673 of 2012 decided on 11.5.2020, Hon’ble Supreme Court (“**Court**”) presided over by 3 three Judges bench, set aside an arbitral award on the pretext that the rule applied by arbitral tribunal for interpretation of the contract is incorrect.



SEAMEC Ltd. (“**Appellant**”) was awarded contract in 1994 for the purpose of well drilling in Assam by OIL India Ltd. (“**Respondent**”). During the subsistence of

the contract, the prices of High Speed Diesel (“**HSD**”), one of the essential materials for carrying out the drilling operations, increased by Government Order. Appellant raised a claim that an increase in the price of HSD, triggered the “change in law” under clause 23 of the contract, thus, Respondent became liable to reimburse them for the same.

The arbitral tribunal allowed the claim of the Appellant citing that ‘*an increase in HSD price through a circular issued under the authority of State or Union is not a “law” in the literal sense, but has the “force of law” and thus falls within the ambit of Clause 23.*’ The tribunal order was further upheld by District Judge. However, on further appeal Hon’ble Guwahati High Court held that the

interpretation of the terms of the contract by the Arbitral Tribunal is erroneous and against the public policy of India.

On further appeal, Supreme Court held that the interpretation of Clause 23 of the Contract by the Arbitral Tribunal, to provide a wide interpretation cannot be accepted, as the thumb rule of interpretation is that the document forming a written contract should be read as a whole. Court is of the view that

if the purpose of the tender was to limit the risks of price variations, then the interpretation done by the Arbitral Tribunal cannot be said to be possible one, as it would completely defeat the explicit wordings and purpose of the contract. Thus, the Court upheld the order of High Court while setting aside the arbitral award.

Employers Liability to Pay Wages during Lockdown

During the lockdown, much hue and cry has been raised on the controversy relating to payment of wages to the employees. COVID-19 has not only impacted the physical and mental health of the individuals but has also crippled the economy of the country; the worst among the effected ones are the labourers and



migrant workers.

The Central Government along with its ministries has taken

earnest efforts in controlling the spread of COVID and ensuring availability of cash flow with these labourers and migrant workers. The lack of employment in the country is pushing people towards poverty line. Many administrative orders have been passed in this respect by various Ministries, first among them **dated 20.03.2020** came from **Ministry of Labour and Employment, Government of India** in a form of advisory as per which all the Employers of the Public and Private establishments were advised to extend their co-ordination by not terminating their employees, particularly casual or

contractual workers from job or reduce their wages.

This advisory was followed by, **Ministry of Home Affairs (MHA) order dated 29.03.2020** wherein all the employers, be it in the Industry or the Shops and Commercial Establishments, were directed to mandatorily make payment of wages of their workers, at their work place, on due date, without any deduction, for the period their establishment are under closure during lockdown. Any violation of the said order is punishable section 51 and 60 of the Disaster Management Act, 2005 and Section 188 of Indian Penal Code, 1860. Orders on similar lines have been passed by various State Governments also under the Disaster Management Act, 2005.

On 31.03.2020, the Hon'ble Supreme Court while hearing a Writ Petition in **Alakh Alok Srivastava vs. Union of India** observed that *“Disobedience to an order promulgated by a public servant would result in punishment under Section 188 of the Indian Penal Code, 1860. An advisory which is in the nature of an order made by public authority attracts section 188 of the IPC. We trust and expect that all concerned viz. State Governments, Public Authorities and Citizens of this Country will faithfully comply with the directives, advisories and order issued by the Union of India in letter*

and spirit in the interest of public safety.” This order gave rise to the controversy whether the advisory issued by the government will be considered binding or not.

In a situation where MSMEs are facing cash crunch on account of economic slowdown, the mandatory requirement of paying full wages coupled with extension(s) of lockdown, added to the problems being faced by such MSME. Many of such aggrieved employers, approached the Hon'ble Supreme Court and challenged the MHA order dated 29.03.2020. **In one such case of Indian Jute Mills Association and Anr. Vs. Union of India**, the Court directed the Central Government to file its reply to the said Petition within one week, until which time directions for no adverse actions have been passed in favour of the Petitioner employers. Recently, in another case, after hearing the entire matter, the court has ordered for listing the case for June 12, 2020.

Another twist in the matter was when the government while issuing **new guidelines dated 17.05.2020 for Lockdown 4.0** withdrew all its previous orders including the one relating to payment of wages with effect from 18.05.2020. This meant that w.e.f. 18.05.2020, there were no directions for mandatory payment of full wages and

the employers were given a free hand to take measures as they deem fit in compliance with labour laws. However, for the period of lockdown prior to 18.05.2020, unless quashed by the Hon'ble Supreme Court, the MHA orders and the similar orders issued by various State Governments continue to hold the field.

Various states like Uttar Pradesh etc, in the meanwhile, were in the process of bringing amendments to certain labour laws to cease their applicability in order to give relief to the employers. However, various protests were staged against such amendments as they were detrimental for workers.

In these distressful times, it is almost impossible for laid off employees to attain a new job. The fear of being fired at the whims of the employer is giving sleepless nights to the employees. Increase in employment will give rise to various other issues in the society. At the same time, in this downturn, long term sustainability of MSMEs, which are the largest employers in India, is equally important. There should be a balanced uniform policy which benefits both employers and employees and only then, the objective of Atmanirbhar Bharat can be achieved.

Relaxations Relating to Procedural Matters of Takeovers and Buy-back

Securities Exchange Board of India (“**SEBI**”) *vide* Circular SEBI/CIR/CFD/DCR1/CIR/P/2020/83 dated 14.05.2020 granted one time relaxation from strict enforcement of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereafter “**Takeover Regulations**”) and SEBI (Buy-back of securities) Regulations,

2018 (hereafter “**Buy-back Regulations**”) pertaining to open offers and buy-back tender offers opening upto July 31, 2020. The said circular comes in force with immediate effect. As per the Circular, service of letter of offer and other offer



related material to shareholder may be undertaken by electronic transmission as provided under Regulation 18(2) of Takeover Regulation and Regulation 9(ii) of Buy back Regulations subject to the following:

1. The acquirer/company shall publish the letter of offer and tender form on websites of the company, registrar, stock exchanges and managers to offer.
2. The acquirer/company along with lead managers shall undertake all necessary steps to reach out to its shareholders through SMS, audio-visual advertisements on television or digital advertisement etc.
3. The acquirer/company shall make an advertisement containing details

regarding dispatch of offer letter electronically.

4. The acquirer/company may have the flexibility to publish the dispatch advertisement in additional newspapers, over and above those required under respective regulations.
5. The acquirer/company shall make use of advertisements in television, radio, internet etc to disseminate information relating to tendering process.
6. All the advertisement issued should be also made available on the website of the company, registrar, managers to offer and stock exchanges.

The acquirer company and the manager to offer shall provide procedure for inspection of documents electronically.

Retrospective Amendments in Transitional Credit Provisions under GST Act

Section 128 of Finance Act, 2020 has been notified w.e.f. 18.05.2020 **Notification No.**

43/2020 - Central Tax dated

16.05.2020. This section has amended Section 140 of the Central

Goods and Service Tax Act, 2017 ("**CGST Act**") that deals with transitional credits. By this amendment, enabling provisions for prescribing time limit for availment of transitional credit have been inserted. Earlier such time limit was not prescribed by the Act, however it was given under Rule 117 of the CGST rules. (The last extension granted under Rule 117 was till 31.03.2020 for registered persons who could not submit Form TRAN-1 on account of technical difficulties on the common portal

and for whom the Council made a recommendation in this regard). The aforesaid notification has been issued subsequent to the decision given by the Delhi High Court in **Reliance Elektrik Works and Ors. vs. UOI and Ors** [WP(C) 13203/2019] which directed the Government to let the taxpayers claim ITC through Form GST TRAN-1 till 30.06.2020. The court had also stated that since the statutory time limit for the said Form is a directory provision therefore, the period of limitation of 3 years under the Limitation Act would apply. The amendment has been made effective retrospectively from 01.07.2017, implying that now the last date for Form TRAN-1 shall remain to be 31.03.2020. This amendment would also affect the judgements given by various High Courts like **M/s Siddharth Enterprises VS. The Nodal Officer High Court of**

Gujarat [R/SCA NO. 5758/2019] and Adfert Technologies Pvt. Ltd vs. Union Of India And Others [CWP No. 30949/2018] where the High Courts had held that the time limit for availing

transitional credit was only directory and not mandatory and had allowed the Petitioners to manually file their Form TRAN-1.

Operational Guideline Notified in Relation to Emergency Credit Line Guarantee Scheme (ECLGS)

The Finance Minister had announced for **Emergency Credit Line Guarantee Scheme (ECLGS) ('scheme')** in her speech on 13th May 2020 and consequently the operational guidelines for the scheme were notified on 26th May 2020 by National Credit Guarantee Trustee Company Ltd [NCGTC], the Company responsible for providing guarantee to the Emergency Credit Line. Under the scheme, a pre-approved sanction limit of up to 20% of loan outstanding as on 29th February, 2020 is extended to eligible borrowers, in the form of additional working capital term loan facility. The facility shall provide with a moratorium period of one year for principal repayment. Interest needs to be paid as and when becomes due while the total tenor of the loan shall be of 4 years.

Eligible Borrowers defined so as to cover all Business Enterprises / MSME institution borrower accounts with outstanding loans of up to Rs. 25 Crore as on 29.2.2020, and annual turnover of up to Rs. 100 crore in

FY 2019-20. The guidelines clarify that in case accounts for FY 2019-20 are yet to be audited/finalized, the MLI may rely upon the borrower's declaration of turnover. The guidelines further clarify that Borrower accounts should be less than 60 days past due as on 29th February, 2020 in order to be eligible under the Scheme. For detailed guidelines you may refer to:-

<http://www.chiramritlaw.com/wp-content/uploads/2020/05/ECLGS-Operational-Guidelines-Updated-26.05.2020.pdf>.

Further, as per the recent FAQ issued on 06.06.2020 in relation to the said scheme, it has been clarified vide Q27 that Udyog Aadhar or recognition as MSME is not a mandatory requirement under this Scheme to be an eligible borrower.

For detailed FAQ refer-

https://www.eclgs.com/documents/FAQs_on_ECLGS-Updated_as_on_06.06.2020.pdf

RBI on Extension of Moratorium for Term Loans and Deferment of Interest on Working Capital Facilities

RBI in view of the extension of lockdown and continuing disruption on account of COVID-19, vide its Notification No. RBI/2019-20/244 dated 23.05.2020 permitted all commercial banks, cooperative banks, All-India Financial Institutions, and Non-banking Financial Companies (including housing finance

companies) to extend the moratorium by another three months i.e. from June 1, 2020 to August 31, 2020 on payment of all installments in respect of term loans.



Similarly, for working capital facilities offered in form of CC and OD, the RBI permitted lending institutions to allow a deferment of 3 months i.e. from June 1, 2020 to August 31, 2020, on recovery of interest applied in respect of all such facilities and further permitted the lending

institutions, at their discretion, to convert the accumulated interest for the deferment period up to August 31, 2020, into a funded interest term loan (FITL) which shall be repayable not later than March 31, 2021.

FAQ's on Reduction in Employee Provident Fund Contribution Rate

1. What is the revised rate of Employee Provident Fund ("EPF") Contribution?

The Central Government, vide SO 1513 (E) dated 18.05.2020 published in the Gazette of India, has reduced the EPF contribution rate for both employer and employee to 10% of basic wages and dearness allowance from existing 12% for all establishments covered under Employee Provident Funds and Miscellaneous Provisions Act, 1952 ("Act").

2. Which establishments are eligible for the reduced rates of EPF contributions?

All class of establishments covered under Act including exempted establishment except government establishments like central and state public sector enterprises or establishment owned or controlled by central or state government and establishments eligible for Pradhan Mantri Garib Kalyan Yojna (PMGKY) benefits.

3. Whether exempted establishments can avail the benefit of the EPF Reduced contribution rates?

Yes, even exempted establishments can avail the benefit of the EPF reduced contribution. However, depending upon the structure of the trust created by such exempted

establishment, necessary resolutions / rules / amendments may have to be passed in order to give effect to the reduced contribution rates.

4. Whether establishments availing the benefit of Pradhan Mantri Rojgar Protsahan Yojana (PMRPY) can contribute on the reduced EPF contribution rates?

Yes, such establishments can avail the benefit of reduced EPF contribution rates and remit the EPF contribution at reduced rates.



5. What is the period for which the reduced contribution rate is applicable?

The reduced rate for EPF contribution at 10% is applicable for the May, 2020, June, 2020 and July 2020 wage months.

6. Whether the reduced EPF contribution rate is mandatory on the employee and employer?

The reduced EPF Contribution rate prescribes the minimum rate for EPF contribution, however, the employer, employee or both may contribute to EPF on a higher rate. In certain cases, employer may be required to take consent of the employee for

contributing employee's contribution at rate above the statutory threshold.

7. Whether there is any change in rate of administrative charges and insurance?

There is no change in the EPF administrative charges i.e. 0.5% of the wages subject to minimum prescribed and insurance contribution at 0.5% of the wages both payable by the employers.

8. How can the establishment avail the benefit of the reduced EPF contribution rate?

The Establishment has to remit the EPF dues at the reduced rate of EPF contribution at 10% of the wages through electronic challan cum return.

9. Whether the reduced rate of contribution will have impact on the amount of pension in the longer run?

The EPS contributions 8.33% of wages (subject to ceiling of Rs.15000/-) is diverted from employer's share of EPF contributions. The reduced rate of EPF contributions to 10% will not reduce the pension contributions or benefits which can be understood from the following table:

Contribution		Before EPF rate reduction	After EPF rate reduction
Employee's Contribution	PF	12%	10%
Employer's Contribution	PF	3.67% (12%- 8.33%)	1.67% (10%- 8.33%)
Employer's Pension Contribution	Employee Fund	8.33%	8.33%

10. What is the impact of reduced EPF contribution rates an employer not following Cost to Company ("CTC") model?

This will increase the employee's take home salary as deduction on account of EPF will be reduced by 2% and employers will also benefit on account of reduction in liability by 2% of wages. Like for example an employee is earning Rs.10000/- per month then Rs.1000/- instead of Rs.1200/- is deducted from employee's wages and employer pays Rs.1000/- instead of Rs.1200/- towards EPF contributions.

11. What is the impact of reduced EPF contribution rates an employer in the event the employer follows a Cost to Company ("CTC") model?

The EPFO has clarified that in event, the employer follows CTC model, the reduced EPF Rates, the employers would not be able to derive the benefit of such reduction as the same will pass on the employee. For example, an employee is receiving Rs. 10,000 as wages, in the CTC model, then on account of the reduced EPF contribution rates, the employee will get Rs. 200 directly from employer as employer's EPF contribution has been reduced and Rs. 200 less is deducted from his wages. Thus, in such a case, the employee's salary in hand will increase, however, employer is not receiving any benefit from the reduced contribution rate. However, each employer must review and analyze the applicability of the above position as per its terms of employment.

Other Important Updates

1. CBDT vide notification no. 105/2019 dated 30.12.2019 had prescribed **mandatory electronic payment acceptance facilities** such as (i) RuPay Debit Card, (ii) (UPI) (BHIM-UPI); and (iii) (UPI QR Code) (BHIM-UPI QR Code) for every business having turnover exceeding Rs. 50 Crore. However, considering practical difficulty **for B2B businesses**, the said requirement as per **section 269SU has been relaxed** vide Notification No. 12/2020 dated 20th May 2020 for businesses having B2B transactions (i.e. no transaction with retail customer/consumer) if at least 95% of aggregate of all amounts received during the previous year are by any mode other than cash.
2. **Safe Harbour Rules for Transfer Pricing** under Income Tax Act **extended for FY 2019-20** vide Notification No. G.S.R. 304(E) dated 20th May 2020 by insertion of sub-rule 3B in Rule 10TD, after sub-rule (3A), namely:—
“(3B) The provisions of sub-rules (1) and (2A) shall apply for the assessment year 2020-21”
3. CBDT notifies new **Form 26AS** [Annual Information Statement] vide Notification No. 30/2020 dated 28th May 2020 pursuant to Finance Act, 2020 by inserting new **Rule 114-I** to be effective from 1st June, 2020 and omits Rule 31AB. Apart from the TDS / TCS details, revised Form 26AS shall now contain information relating to assessee’s specified financial transaction (Information of property and share transactions etc.), payment of taxes, demand/ refund and pending / completed proceedings.
4. **Income Tax Return Forms for previous year 2019-20 i.e. AY 2020-21** notified vide Notification No. GSR 338(E) dated 29th May 2020
5. The Ministry of Corporate Affairs vide notification F.No.13/18/2019-CSR dated 26 May, 2020 included the term **‘Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES fund)’** under item (viii) of Schedule VII of the Companies Act, 2013. The said notification has come into force on March 28, 2020.
6. The Reserve Bank of India vide notification no. RBI/2019-20/235 DOR.NBFC (HFC).CC.No.111/03.10.136/2019-20 dated May 19, 2020 extended the application of **Master Direction-Know your customer (KYC) Directions, 2016 to Housing Finance Companies.**
7. The Securities and Exchange Board of India vide circular SEBI/HO/CFD/CMD1/CIR/P//2020/84 dated May 20,2020 issued an advisory on **disclosure of material impact of COVID-19 pandemic on the listed entities** under SEBI Listing Obligations and Disclosure Requirements, 2015. The circular specified certain information, subject to materiality, which listed entities may consider disclosing like impact of COVID-19 on business, ability to maintain operations, closing down of factory, schedule for restarting of operations, estimation of future impact on COVID-19 on its operations, impact of COVID-19 on its capital and financial resources, profitability, assets, supply chain, demand of its products etc. so that

the all investors have access to timely, adequate and updated information regarding the listed entity.

8. The CBIC vide Notification No. 40/2020 – CT dated 05.05.2020 has stated that the **e-way bills** which were generated on or before 24.03.2020 and whose validity was to expire during the period between 20.03.2020 to 15.04.2020 shall now be deemed to be valid till 31.05.2020.
9. As per Notification No. 39/2020-Central Tax dated 05.05.2020 **IRP/RP** who were required to obtain separate **registration under GST** within 30 days of issuance of Notification No.11/2020- Central Tax dated 21.03.2020 may now obtain the same within 30 days of appointment as IRP/RP or by 30.06.2020 whichever is later.
10. The **due date for furnishing of Annual Return GSTR 9 and reconciliation statement GSTR 9C for FY 2018-19** has been extended till 30.09.2020 vide Notification No. 41/2020 – CT dated 05.05.2020.
11. The CBIC vide Notification No. 39/2020 – CT dated 05.05.2020 has stated that where **GSTR 1 and GSTR 3B returns** for all the tax periods prior to appointment of IRP/RP have been furnished under the registration of the corporate debtor, then such IRP/RP need not take separate registration.
12. It has been clarified vide Circular No. 138/08/2020-GST dated 05.05.2020 that the due date of furnishing of **FORM GST ITC-04** for the quarter ending March, 2020 stands extended up to 30.06.2020 vide Notification No.35/2020-Central Tax dated 03.04.2020.
13. The Government of Rajasthan vide notification dated 15.05.2020 has increased the **rate of surcharge chargeable under Section 3-B (Surcharge for conservation and propagation of cow and its progeny) of the Rajasthan Stamp Act, 1998 (“Act”)** from 10% to 20% with effect from 15.05.2020. It is relevant to mention that there is no change in rate of surcharge chargeable under Section 3-A of the Act which is 10% at present. Accordingly, the total surcharge chargeable on stamp duty shall now be equivalent to 30% with effect from 15.05.2020.

Article – GST Implication on Contracts due to COVID 19

By- Advocate Bhanu Shree Jain

The whole economy is suffering from the COVID pandemic and the same is affecting business of all sizes. Although the Government is trying to ease the burden on the business by various measures like extending the time limits for filing returns and waiving off late fees. However, there are certain contractual issues which the businesses have faced due to nationwide lockdown. Following are certain contractual issues that the parties may have faced due to COVID pandemic and nationwide lockdown and GST implication on the same:

1. Cancellation of the contract and supplier receiving compensation from the recipient:

Due to lockdown, there may arise a situation wherein there is cancellation of the contract for supply of goods or services and as per the terms of the contract, in such situations, the supplier may receive compensation from the recipient for such cancellation. It is pertinent to analyse that whether GST will be applicable on such compensation or not. As per section 7 of the CGST Act, scope of supply states that the same includes all forms of supply of goods or services **made or agreed to be made** for a consideration by a person in course or furtherance of business. From perusal of the said definition, it can be inferred that for supply there has to be an act by the supplier for another party to whom goods or services are provided. In present situation, there isn't any act on part of either parties to render any supply to the other party. Thus, the compensation is being received for merely compensating the cancellation of contract.

In such cases, department might argue that there is **toleration of an act** and as per Clause 5(e) of Schedule II of CGST Act, there is supply of service on which GST is payable. Herein, reference may be made to the case of **GE T & D India Ltd. vs. Deputy Commissioner of Central Excise** [2020] 115 taxmann.com 213 (Madras); wherein while analysing the payment made by the employee to the employer for sudden termination of employment contract without completing the notice period, it was held that the “*employer has not 'tolerated' any act of the employee but has permitted a sudden exit upon being compensated by the employee in this regard. Though normally, a contract of employment qua an employer and employee has to be read as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of non- compete. Notice pay, in lieu of sudden termination however, does not give rise to the rendition of service either by the employer or the employee.*” On the basis of the said case, it may be contended that the compensation paid for cancellation of contract, in present case also does not amount to ‘tolerating’ an act and is merely for compensating the cancellation. Hence, in such cases it may be said that there is no supply and no GST is payable in such situation.

2. Supplier receives compensation from the recipient for delay in payment of consideration:

There may arise situation wherein owing to lockdown there is delay in payment of consideration for the supply and as per the contract, the recipient has to pay compensation for such delay. In such situation as well, there is an underlying supply and due to delay in

payment of consideration of said supply, compensation has been paid. As per Section 15(2)(d) of CGST Act, any late fee or penalty charged/levied for delayed payment of any consideration for a supply shall be includible in value of supply. Thus, the said amount has to be included in the value of supply and GST has to be discharged on the same accordingly.

3. Issues related to Advance paid by the recipient and subsequent cancellation of contracts:

There may arise situation wherein the recipient paid advance in respect of the supply and the supplier may have issue an invoice in respect of the said supply. However, the said contract may get cancelled due to the lockdown. In such a scenario, the time of supply as per Section 12 will be the date issuance of invoice and accordingly, the supplier will be liable to pay the output tax liability. However, since the contract has been cancelled, the supplier may issue the credit note in respect of the said supply and the output tax liability will be adjusted accordingly in the month in which the credit note has been issued.

In case where no invoice has been issued and a receipt voucher has been issued as per Section 31(3)(e) of the CGST Act, then on cancellation of contract, the supplier may issue refund voucher as per Section 31(3)(f) of the CGST Act. In respect of the tax that has been paid by the supplier, a refund claim may be filed in Form RFD-01 under the head 'excess payment of taxes made'. The said position has been clarified in the Circular No. 137/07/2020-GST dated 13.04.2020.



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