

SPCM & ASSOCIATES

Chartered Accountants



SPCM
LEGAL

SAMĂCĂRA

JANUARY

2024






SAMĀCĀRA – JANUARY 2024

TEAM SAMĀCĀRA

INCOME TAX

			
CA. Suhas P. Bora	CA. Pradeep M. Katariya	CA. Disha M. Shah	Mrs. Ruchi R. Bhandari

GOODS AND SERVICES TAX


Adv. Abhay H. Bora

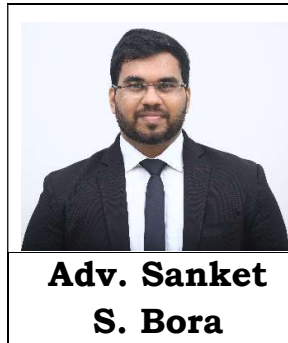


SAMĀCĀRA – JANUARY 2023

COMPANY LAW, BANKING AND FINANCE

			
CA. Manoj R. Jain	CA. Chetan R. Parakh	CA. Vishnu S. Rathi	CA. Prerna S. Bora

CIVIL, CRIMINAL, REAL ESTATE AND OTHER LAWS



FINANCE AND VALUATIONS





SAMĀCĀRA – JANUARY 2023

INDEX

SR. NO.	PARTICULARS	PAGE NO.
1.	Editorial	05-07
2.	Glimpse Of Event	08-09
3.	Income tax, PF and ESIC due date calendar for the month of January, 2024	10-10
4.	GST due dates for the month of January, 2024.	11-12
5.	55 Key Takeaways from Bombay HC judgment on constitutional validity of Sec.2(24)(xviii)1961	13-24
6.	Gist of GST Notifications	25-26
7.	GST Updates	27-28
8.	Startup India Scheme	29-34
9.	The Power of Trademarks	35-38



SAMĀCĀRA – JANUARY 2024

EDITORIAL

Dear All,

At the outset on behalf of the entire SPCM Team, I wish you all a very happy and prosperous New Year 2024.

Just like Santa who brings unexpected gifts, the world of GST also has its own surprises. The Madras High Court's decision, like a well-timed Christmas present, offers clarity and relief. Hon'ble **Madras High Court's judgment** in case of **Kavin HP GAS Gramin Vitrak Vs Commissioner of Commercial Taxes Chennai & Deputy State Tax Officer Madhurai**, on disallowance of Input Tax Credit under **section 16(4)** has caught the taxpayers' attention. The Court directed the GST authorities to **allow manual return filings for claiming ITC** against outward supplies without tax payments. Further the respondents (counter party) in this case are directed to accept the belated returns and, if the returns are otherwise in order and accordance to law, the claim of ITC may be allowed. Hence, the matter is remitted back to the authorities for reconsideration of the same.

Union Finance Minister Nirmala Sitharaman at an event organised by the Confederation of Indian Industry (CII), played down expectations for the upcoming interim Budget in February, ruling out any “spectacular announcements” before the general elections her views are:

“I am not going to play spoilsport, but it is a matter of truth that the February 1, 2024, Budget that will be announced will just be a vote on account because we will be in election mode, and elections will happen

during the coming summer. So the Budget will just be to meet the expenditure till a new government comes. So no spectacular announcements are made at that time,”

In a brief discussion on the economy in the Rajya Sabha, FM reeled out figures to show that India was doing much better than developed economies as well as some of the emerging economies considered as the world’s growth engines. She also quoted figures to show that welfare schemes are now benefiting more people. Direct Tax collection has shown an increase of 17% annual growth this year (net of refunds but before devolution). This would mean the receipts would be Rs 1.27 trillion more than the budget estimate of Rs 18.23 trillion for FY24.

In the last month of 2023 as a historic move the Lok Sabha passed the three criminal laws — the Bharatiya Nyaya (Second) Sanhita, the Bharatiya Nagarik Suraksha (Second) Sanhita and the Bharatiya Sakshya (Second) Bill. The Bharatiya Nyaya Sanhita will replace the Indian Penal Code-1860, the Bharatiya Nagarik Suraksha Sanhita will replace the CrPC of 1973 and the Bharatiya Sakshya Bill will replace the Indian Evidence Act of 1872. **The new laws are "gender-neutral", "victim-centric" and "justice-centric", rather than "punishment-centric".** The new laws also explain "organized crime" for the first time". "There was no special law for this and now cyber crimes, economic crimes, land grabbing, arms trade, dacoity, human trafficking, are also been specifically covered.

At SPCM also we are coming up with the changes in various aeras to provide better services without having to stress on all with putting out a paper with a detailed SPCM VISION 2024. I express my gratitude to Adv. Sanket S. Bora and CA. Sidhant A. Bora for taking special efforts for drafting the same and to all my partners for giving their valuable suggestions.

Friends, just as children learn the virtues of patience and hope during Christmas, taxpayers too should glean insights from this judgment. It underscores the importance of compliance, timely filings, and staying abreast of legal provisions. However, it also brings to light the empathy within the judicial system, akin to Santa Claus, who understands and acknowledges genuine hardships. Taxpayers should maintain diligence, but also remember that correct interpretation of the law can offer relief and fairness.

I am concluding with the quote of **Michael Jackson:**

“In the end, the most important thing is to be true to yourself and those you love and work hard. I mean, work like there’s no tomorrow. Train. Strive. I mean, really train and cultivate your talent to the highest degree. Be the best at what you do.”

I'm wishing you the best New Year & a Rich Life. May this year be filled with prosperity for you! I wish you have 365 days of never-ending joy in 2024.

Cheers to a New Year!

Thanking You.

With Warm Regards,



CA. Suhas P. Bora
Founder Partner,
SPCM and Associates,
Chartered Accountants



GLIMPSE OF EVENT

CA Suhas P. Bora sir, Adv. Sanket Bora Sir, CA Vishnu Rathi and CA Pooja Rathi being part of Bombay Chartered Accountant's Society (BCA) conference on Reimagine - Future Ready Harnessing Change.





***Full Court Reference to Hon'ble Shri R. S. Syal,
Vice President, ITAT Pune Bench***



DUE DATES
Income Tax, PF and ESIC due date calendar for the month of January 2024:

DATE	DUE DATE FOR
07-01-2024	<ul style="list-style-type: none"> • Deposit of Tax deducted/collected for the month of December, 2023.
14-01-2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of November, 2023. (Note: Applicable in case of specified person as mentioned under section 194S.)
15-01-2024	<ul style="list-style-type: none"> • Quarterly statement of TCS for the quarter ending December 31, 2023. • Furnishing of Form 15G/15H declarations received during the quarter ending December, 2023 • Payment of ESI Contribution for the month of December, 2023. • Payment of PF for the month of December, 2023.
30-01-2024	Quarterly TCS certificate in respect of Quarter ending December 31, 2023.
31-01-2024	<ul style="list-style-type: none"> • Quarterly statement of TDS for the quarter ending December 31, 2023 • Exercising the option to opt for alternative tax regime under Section 115BAA by a domestic company for assessment year 2021-22

GST due dates for the month January 2024: -

DUE DATE	RETURN	PERIOD	DESCRIPTION
10 th January	GSTR-7 (Monthly)	December'23	Summary of Tax Deducted at Source (TDS) and deposited under GST laws.
10 th January	GSTR-8 (Monthly)	December'23	Summary of Tax Collected at Source (TCS) and deposited by E-commerce operators under GST laws.
11 th January	GSTR-1 (Monthly)	December'23	Summary of outward supplies where turnover exceeds Rs.5 crore or have not chosen the QRMP scheme for the quarter of October – December 2023.
13 th January	Furnishing Invoices in IFF Facility (Quarterly)	October – December 2023	Taxpayers who have opted for the Invoice Furnishing Facility (IFF) and choose to upload B2B outward supply invoices for first two months of the quarter. The B2B invoices relating to last month of the quarter are too uploaded while filing GSTR – 1 along with B2C invoices of entire quarter.
13 th January	GSTR-6	December'23	Details of ITC received and distributed by ISD.



DUE DATE	RETURN	PERIOD	DESCRIPTION
13 th January	GSTR-5 (Monthly)	December'23	Summary of outward taxable supplies & tax payable by a non-resident taxable person.
18 th January	CMP-08	October- December 2023	Form to declare the details or summary of self-assessed tax which is payable for a given quarter by taxpayers who are registered as composition taxable person or taxpayer who have opted for composition levy.
20 th January	GSTR-3B (Monthly)	December'23	Summary of outward supplies, ITC claimed, and net tax payable for taxpayers with turnover more than Rs.5 crore in the last FY or have not chosen the QRMP scheme for the quarter of October – December 2023.
20 th January	GSTR-5A (Monthly)	December23	Summary of outward taxable supplies and tax payable by OIDAR.
25 th January	GST Challan for all Quarterly filers	October- December 2023	GST Challan Payment if no sufficient ITC for September 2023, (for all Quarterly Filers).

**INCOME TAX****55 Key Takeaways from Bombay HC judgment on constitutional validity of Sec.2(24)(xviii)1961*****Case Background:***

Assessee, Serum Institute of India Private Limited, a biotechnology company is engaged in the manufacturing drugs and vaccines. The Government of Maharashtra, from time to time, issued several industrial policies and schemes to promote industries in less developed areas of the State of Maharashtra.

Assessee being eligible for one such scheme i.e. Package Scheme of Incentives, 2013, which came into effect from Apr 1, 2013 for a period of five years and provided benefits that included stamp duty concessions, exemption from electricity duty and VAT/CST/SGST subsidy. Accordingly, Assessee made its application for being eligible under the said Scheme on Mar 27, 2018 after making an investment of more than Rs.1500 Cr which was approved by the State of Maharashtra granting Assessee benefit of 75% of total investment.

Sub-clause (xviii) to Section 2(24) was inserted by the Finance Act, 2015 which included in the definition of income “assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee” with effect from Apr 1, 2016. Assessee challenged the constitutional validity of such amendment in the instant writ petition.

Basis of Challenge

1. The sub-clause seems to tax subsidy which is a capital receipt as 'income' which is constitutionally impermissible. It does away with the purpose test basis which capital and revenue receipt is determined.
2. The amendment does not consider the difference between taxability of capital and revenue subsidy. This is contravention of principles of real income theory, hence liable to be struck down as in violation of fundamental rights.
3. The state government provides incentives from its coffers and for the Central Government to tax these incentives is an attempt to tax Revenues of the state which is not permitted as per Article 289 of Constitution.
4. The Act levies tax on real income which is a monetary return. In case of capital subsidy there is no monetary return coming in. Earlier it was held that subsidy received on capital account is not income under Sections 4 and 5 or under Section 28.
5. Accrued rights cannot be taken away otherwise than by retrospective amendments and such unintended retrospective applicability is unconstitutional.
6. The sub-clause was not there when the subsidy was introduced and thus, the sub-clause has unintended retrospective application.
7. Thus, the sub-clause needs to be struck down as it is in violation of Articles 12, 14, 19, 246, 265 and 289 of the Constitution of India and is contrary to the provisions of Section 4 and 5.

Key Takeaways from the Bombay HC Judgment

1. As per Section 2(24)(xviii) introduced by Finance 2015, subsidies, grants, cash incentives, duty drawback, waivers, concessions or reimbursements provided by the Central or State Governments either in cash or kind, will be included within the meaning of term “income” and consequently, will be taxable under the Act. However, subsidies which are taken into account to determine the actual cost of an asset in terms of Explanation 10 to Section 43(1) will be reduced from the actual cost of asset thereby reducing the claim of depreciation.
2. Before the amendment in 2015, SC applied the “purpose test” to determine whether a subsidy was a capital or revenue receipt. SC in *Sawhney Steel* held that purpose or object of subsidy was relevant to decide the character of the incentive not the mechanism of payment and observed “If the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account”.
3. Similarly in *Ponni Sugars*, SC held that payment received by the assessee under the Scheme was not in the course of a trade but was of capital nature. If the subsidy's purpose was to help the assessee run the business more profitably or meet daily business expenses, it was considered a revenue receipt (and thus taxable). Conversely, if the subsidy aimed at setting up a new unit or expanding an existing unit, it was deemed a capital receipt (and not taxable). Coordinate bench in *Sadichha Chitra* and House of Lords in *Seaham Harbour Dock Co* made similar observations.
4. The Finance Act, 2015, sought to end the dispute by making all subsidies taxable unless used to determine the actual cost of an asset. However, “*Every legislation is an experiment in achieving certain*

desired ends and trial and error method is inherent in every such experiment. The law is very clear that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrine or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. Every legislation particularly in economic matters cannot provide for all possible situations or anticipate all possible abuses”.

5. As per SC judgment in R.K. Garg there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.
6. “There may be crudities, inequities and even possibilities of abuse but on that account alone it cannot be struck down as invalid. These can always be set right by the legislature by passing amendments”.
7. The Court must adjudge the constitutionality of economic legislation by the generality of its provisions and opined that economic laws should be viewed with greater latitude than laws touching civil rights.
8. While adjudging constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.
9. For examining the constitutional validity of a legislation in economic matters, “the Court must be resilient, not rigid, forward looking, not static, liberal, not verbal”.
10. *“The trial and error method is inherent in every legislative effort to deal with an obstinate social or economic issue and if it is found that any immunity or exemption granted under the Act is being utilised for tax*

evasion or avoidance not intended by the legislature, the Act can always be amended and the abuse terminated.”

11. As held in Federation of Hotel and Restaurant (1989 (3) SCC 634), “though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy, legislature enjoys a wide latitude in the matter of taxation”.
12. The presumption of constitutionality is significant due to the complex nature of economic regulation, since these laws are instrumental in the financial governance of the state and are often the outcome of detailed economic planning and consideration, hence, the Courts are inclined to approach them with deference.
13. *“Unless a fiscal statute is manifestly arbitrary or discriminatory in its provisions or its operation, it is typically upheld.”*
14. *“No precise or set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience.”*
15. Legislature is permitted to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. The test for hostile, discriminatory treatment is not its phraseology, but the real effect of its provisions.
16. A taxing statute is not, per se, a restriction of the freedom under Article 19(1)(g). Mere excessiveness of a tax or even the circumstance that its imposition might tend towards the diminution of the earnings or profits of the persons of incidence does not, per se, and without more, constitute violation of the rights under Article 19(1)(g).

17. The domain of economic and fiscal policy formulation is primarily vested in the legislature and the executive. The judiciary's role is limited to ensuring conformity with the Constitution without delving into the policy merits.
18. Overturning fiscal statutes could lead to economic chaos and undermine the authority of the legislative body, therefore, Courts must balance the necessity to uphold constitutional mandates with the practical implications of interfering with legislative judgments in fiscal matters.
19. In tax and economic regulation cases, there are good reasons for judicial self restraint if not judicial deference to legislative judgment. Thus, "*The courts have only the power to destroy, not to reconstruct*". When these words are added to complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.
20. Rejected Assessee's reliance on SC Constitution Bench judgments in Shayara Bano (1981 (4) SCC 675) and Re Natural Resources Allocation (1989 (3) SCC 634) wherein it was held that a section is liable to be struck down as manifestly arbitrary. However, observed that there is nothing to indicate that there was anything arbitrary in introduction of the impugned sub-clause rather all have been treated with equality and uniformity and thus, there is no discrimination against any particular persons or classes.
21. Accepted Revenue's reliance on SC judgment in Exide Industries (2020 (5) SCC 274) as per which the approach of the Court in testing the constitutional validity of a provision is well settled. Firstly, the Court is to inspect the existence of enacting power and the next examination is to ascertain whether the enacted provision impinges upon any right enshrined in Part III of the Constitution.

22. Thus, observed that the legislative power of the Parliament to enact the said sub-clause in the light of Article 245 of the Constitution is not disputed. Moving on to the next examination whether any right enshrined in Part – III of the Constitution is contravened, observed, *“the Court begins with a presumption in favour of constitutionality.”*
23. The process of testing validity is not to sneak into the prudence or proprieties of the legislature in enacting the impugned provision nor is it to examine the culpable conduct of the legislature as an appellate authority.
24. *“The only examination of the Court is restricted to the finding of a constitutional infirmity in the provision, as is placed before the Court. In the absence of any finding of any constitutional infirmity in a provision, the Court is not empowered to invalidate a provision”.*
25. The reason behind this self-imposed restriction by the judiciary is because of the fundamental reason that different organs of the State do not scrutinise each other's wisdom in the exercise of their duties.
26. The approach of Constitutional Courts ought to be different while dealing with fiscal statutes. It is trite that the legislature is the best forum to weigh different problems in the fiscal domain and form policies to address the same including to create a new liability, exempt an existing liability, create a deduction or subject an existing deduction to new regulatory measures.
27. *“Such laws are always pin-pointed in nature and are only meant to target a specific avenue of taxability depending upon the experiences of tax evasion and tax avoidance at the ground level.”*
28. General principles of exclusion and inclusion do not apply to taxing statutes with the same vigour unless the law reeks of constitutional infirmities, thus, a larger discretion is given to the legislature in fiscal statutes than in other spheres.

29. Relied on SC judgment in *Malwa Bus Services* ((1983) 3 SCC 237) to observe that merely because tax falls more heavily on certain goods or persons may not result in its invalidity. Opined, *“the Constitution safeguards the right to trade under Article 19(1)(g) but does not extend this protection to the right to profit.”*
30. *“Subsidies and concessions are inherently designed to stimulate certain economic activities or to steer the economy in a desired direction. They are not, however, intended to serve as permanent fixtures beyond the scope of taxation, especially when such benefits have fulfilled their economic purpose.”*
31. Rejected Assessee’s argument that such taxation effectively nullifies the distinction between capital and revenue subsidies, leading to the erosion of what they perceive as a benefit or savings. Observed, *“imposition of tax on these subsidies under the amended provision does not constitute “taking away” of a benefit but rather represents a recalibration of fiscal advantages in line with broader economic and policy considerations.”*
32. It is the duty of the legislature to ensure that taxation policy reflects a balance between incentivizing economic activity and ensuring the equitable distribution of fiscal resources. Opined, *“Section 2(24)(xviii) is an example of this balancing act, and its imposition is a reflection of a subsidy’s life cycle coming to its fiscal fruition.”*
33. Noted that taxation of subsidy would erode profit, however, observed that erosion of profits would not be a tenable basis to impugn the constitutional validity of the amended provision. Observed that this logic could open floodgates of untenable demands from loss-incurring entities seeking tax exemptions to improve profitability.
34. Relied on SC judgement in *Nazeria Motor Service* (1969 (2) SCC 576) to observe that reduction in profits is not an infringement of Article 19(1)(g) under Part III of the Constitution of India.

35. Taxation is an economic reality that every business entity must contend with. Policy of a tax, in its effectuation, brings in some hardship in some individual cases. But that is inevitable, so long as law represents a process of abstraction from the generality of cases and reflects the highest common factor.
36. *“Every cause, it is said, has its martyrs. Then again, the mere excessiveness of a tax or even the circumstance that its imposition might tend towards diminution of the earnings or profits of the persons of incidence, like in the case at hand – savings get reduced resulting in lower profitability, does not, per se, and without more, constitutes violation of the rights under Part III of Constitution”.*
37. When the Assessee applied for subsidy, Section 2(24)(xviii) was already in place for more than two years. Thus, observed that the Assessee was having full knowledge or ought to have had full knowledge of the tax treatment of such subsidies post-amendment.
38. The act of applying for a subsidy after the amendment came into force indicates an acceptance of the prevailing tax regime and hence, by choosing to partake in the subsidy scheme, Assessee implicitly acknowledged and consented to the accompanying tax obligations as legislated by the amendment.
39. Ignorance of the law is no excuse and also the Assessee cannot claim ignorance of the amendment or its implications as the legislative change was not done surreptitiously but was the result of a transparent legal process, providing ample opportunity for all stakeholders to acquaint themselves with the new provisions.
40. Rejected Assessee’s argument that the removal of the very basis of SC judgement exempting subsidies from taxation, ought to be done by an explanation and not by introduction of sub-clause. Observed, *“it should be left to the wisdom of the Legislature to decide whether there should be an amendment or explanation”.*

41. As per SC judgment in Hindustan Gum and Chemicals Ltd (1985 (4) SCC 124), it is permissible for a competent Legislature to overcome the effect of a decision of a Court setting aside imposition of tax by passing a suitable legislation, by amending the relevant provisions of the statute concerned with retrospective effect, thus taking away the basis on which the decision of the Court had been rendered and by enacting an appropriate provision validating the levy and collection of tax made before the decision in question was rendered.
42. There is no scope of any doubt to assume or find that legislature was irrational in inserting the impugned sub-clause and the Assessee failed to demonstrate a clear transgression of constitutional principles to question the constitutionality of the amendment.
43. It is not the function of the Court to consider the propriety or justness of the tax or enter upon the reality of legislative policy. Opined, “If the evident intent and general operations of the tax legislation is to adjust the burden with a fair reasonable degree of equality, the constitutional requirement is satisfied”.
44. *“Mere excessiveness of a tax or even the circumstances that its imposition might tend towards the diminution of the earnings or profits of petitioner, per se and cannot constitute violation of constitutional rights.”*
45. *“If in the process a few individuals suffer severe hardship that cannot be helped, for individual interests must yield to the larger interests of the community or the country as indeed every noble cause claims its martyr”.*
46. Concurred with Revenue’s submission that judicial invalidation of this provision would precipitate not merely a legal conundrum but a fiscal catastrophe with far-reaching consequences. A retrospective annulment would cause a state of chaotic disarray.

47. Assessee that availed of subsidies and complied with the tax obligations thereof, acted in good faith under the existing legislative policy, and to dismantle this retrospectively would be to penalize compliance and create an environment of uncertainty and unpredictability in tax matter.
48. Declined to strike down Section 2(24)(xviii) with retrospective effect observing that it would not only instigate a flood of claims and litigations for refund of taxes paid straining the administrative machinery, judicial resources, disrupting the revenue stream but also place an undue burden on the exchequer.
49. Considered Revenue's reliance on SC judgment in Bhagwan Dass Jain (1981 (2) SCC 135) wherein it was held that words in the Constitution conferring legislative power should receive a liberal construction and should be interpreted in their widest amplitude.
50. The matters of economic policy should be best left to the wisdom of the legislature and should not be lightly interfered with except only in those few cases where the view reflected in the legislation is not possible to be taken at all.
51. Assessee's case definitely does not fall under the said exception as by inserting Section 2(24)(xviii) there is no case of any perversity or gross disparity resulting in clear or hostile discrimination.
52. In the very nature of taxing statutes, legislature holds the power to frame laws to plug in specific leakages and merely because tax falls more heavily on the Assessee due to this amendment, that cannot result in its invalidity.
53. Insertion of Section 2(24)(xviii) is a perfect example of a legislative endeavour to align the definition of "income" with the evolving economic landscapes and judicial precedent of it being an inclusive and elastic term. The amendment indicates the well-established jurisprudential path ensuring that the income tax laws remain

attuned to the economic realities and continue to serve as a vital cog in the nation's fiscal machinery.

54. Concurred with the submission of Revenue that it is the duty of the legislature to ensure that taxation policy reflects a balance between incentivizing economic activity and ensuring the equitable distribution of fiscal resources.
55. Dismissed Assessee's writ petition observing that Assessee was more concerned with its diminished profits and failed to appreciate overarching legislative intent to foster a comprehensive and equitable taxation regime.

(Republished with the permission of Tax Sutra management)

GST

GIST OF GST NOTIFICATIONS

NOTIFICATION NO.	DATE	SUBJECT / HIGHLIGHTS
56/2023- Central Tax	28-12-2023	<p>CBIC notified issued extention the time limits for the issuance of orders under section 73(9) of the CGST Act, 2017. This pertains specifically to the recovery of tax or excess Input Tax Credit (ITC) utilized in the financial years 2018-19 and 2019-20.</p> <p>For the financial year 2018-19, the new deadline for issuing orders related to the recovery of tax not paid, short paid, or input tax credit wrongly availed or utilized is the 30th day of April 2024. Similarly, for the financial year 2019-20, the extended date is the 31st day of August 2024.</p>
55/2023-Central Tax	20-12-2023	<p>CBIC notified due date for filing GSTR-3B for Nov. 2023 Extended for the persons registered in the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamilnadu upto 27th Dec 2023.</p>
Instruction No. 05/2023 GST	13-12-2023	<p>Judgment of the Honourable Supreme Court in the case of Northern Operating Systems Private Limited (NOS).</p>



NOTIFICATION NO.	DATE	SUBJECT / HIGHLIGHTS
		<p>The Instruction is based on the Hon'ble Supreme Court's judgment dated 19.5.2022 in the case of CC, CE & ST, Bangalore (Adj.) etc. Vs. Northern Operating Systems Private Limited (NOS) in Civil Appeal No. 2289-2293 of 2021 on the issue of nature of secondment of employees by overseas entities to Indian firms and its Service Tax implications.</p> <p>Representations have been received in the Board that, subsequent to the aforesaid judgment, many field formations have initiated proceedings for the alleged evasion of GST on the issue of secondment under section 74(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act').</p>



GST UPDATES

1. Date extension for reporting opening balance for ITC Reversal.

GSTN has issued an advisory dated 29-12-2023 for date extension for reporting opening balance for ITC reversal.

- a. In order to facilitate the taxpayers in correct and accurate reporting of ITC reversal and reclaim thereof and to avoid clerical mistakes, a new ledger namely Electronic Credit and Re-claimed Statement was introduced on the GST portal. This statement was made available to help the taxpayers in tracking their ITC that has been reversed in Table 4B(2) and thereafter re-claimed in Table 4D(1) and 4A(5). Kindly click here for the detailed advisory provided earlier.
- b. Now to facilitate taxpayers further, opportunity to declare opening balance for ITC reversal in the statement has been extended till 31st January, 2024.
- c. Kindly note that after declaring the opening balance for ITC reversal, only three amendment opportunities post the declaration will be provided to correct declared opening balance in case of any mistakes or inaccuracies in reporting.
- d. Facility to amend declared opening balance for ITC reversal will be available till 29th February, 2024.

2. GST payments can be made through 25 banks; GSTN added 2 new banks:

The Goods and Services Tax Network has added 2 new banks i.e. Karnataka Bank Limited and RBL Bank Limited, for accepting GST payments.

3. Functionalities available on the portal for the GTA taxpayers:

The following Functionalities are made available on the portal for the GTA Taxpayers.

- Filing of Online Declaration in Annexure V and Annexure VI for the existing GTA Taxpayers
- Filing of Online Declaration in Annexure V for the Newly registered GTA Taxpayers
- Uploading manually filed Annexure V Form for the FY 2023-24 on the portal

However, the GTAs who filed declaration for the FY 2024-25 on the portal for the period from 27.07.2023 till 22-08-2023 has been considered as filed and valid. Those taxpayers are requested that they need not file declaration in Annexure V Form for the subsequent FYs if they wish to continue their option for pay GST on Forward charge mechanism.

FINANCE AND VALUATIONS**#startupindia**

In the current landscape characterized by a rapidly evolving startup ecosystem and a face paced developing economy, the topic of startup registration and its procedural aspects has been consistently prevalent. Exploring this further, it becomes imperative to grasp the fundamental concept of what constitutes a startup and the benefits that are accessible to these entities through the Startup India Scheme.

A startup is a budding enterprise driven by innovation, aiming to address a market need through its distinctive products, services, or technologies. These ventures, often characterized by their agility, novel ideas, and potential for scalability, play a pivotal role in propelling economic growth, fostering technological advancements, and generating employment opportunities.

1. What is Startup India Scheme?

Startup India Scheme is an initiative by the government designed to bolster and support such enterprises. It becomes crucial to understand the array of advantages it offers. Under this scheme, startups gain access to benefits spanning financial incentives, regulatory support, tax exemptions, and facilitative measures aimed at easing their operational journey. These incentives are tailored to nurture innovation, encourage entrepreneurship, and alleviate certain challenges that startups typically encounter in their early stages.

Startup India Scheme	
Date of launching	16th January 2016
Government Ministry	Ministry of Commerce and Industry
Department	Department for Promotion of Industry and Internal Trade
Launched by	Arun Jaitley (Former Finance Minister of India)

2. What is the objective of Startup India Scheme?

The Startup India initiative offers eligible companies the opportunity to attain recognition as startups by DPIIT. This recognition grants access to a range of advantages including tax benefits, simplified compliance procedures, expedited IPR processes, and more.

3. What are the benefits of Getting registered Under startup India Scheme?

1. Startups shall be allowed to be self-certify compliance for 6 Labour Laws and 3 Environmental Laws through a simple online procedure.
2. In the case of labour laws, no inspections will be conducted for a period of 5 years. Startups may be inspected only on receipt of credible and verifiable complaint of violation, filed in writing and approved by at least one level senior to the inspecting officer.
3. In the case of environment laws, startups which fall under the 'white category' (as defined by the Central Pollution Control Board (CPCB)) would be able to self-certify compliance and only random checks would be carried out in such cases
4. To reduce the patent registration fees.
5. Improvement of the Bankruptcy Code ensuring a 90-day exit window.

6. To provide freedom from mystifying inspections and capital gain tax for the first 3 years of operation.
7. To create an innovation hub under the Atal Innovation Mission.
8. Targeting 5 lakh schools along with the involvement of 10 lakh children in innovation-related programs.
9. To develop new schemes that will provide IPR protection to startup firms.
10. To encourage entrepreneurship throughout the country.
11. To promote India as a start-up hub across the world.

4. Who is eligible to apply under the Startup India scheme?

An entity is eligible to apply when:

- It is incorporated as a private limited company or partnership firm or a limited liability partnership in India
- It has less than 10 years of history i.e. less than 10 years have elapsed from the date of its incorporation/registration
- The turnover for all of the financial years, since the incorporation/registration has been less than INR 100 crores
- Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Note: An entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'Startup'.

Here are few instances not considered as startup:

- a) Merger/ Demerger/ Acquisition/ Amalgamation/ Absorption: Resultant entity or entities formed due to merger demerger/ acquisition/ amalgamation/ absorption/will not be recognized as Startup. However, merger or amalgamation under section 233 of the Companies Act, 2013 between any of the following class of companies

will be allowed subject to fulfillment of norms of DPIIT Notification by the resultant company:

- a. two or more start-up companies; or
 - b. one or more start-up company with one or more small company
- b) **Compromise/ Arrangement:** Entities formed due to compromise/ arrangement as provided under the Companies Act, 2013 will not be recognized as Startup.
- c) **Conversion:** Conversion of an entity from one form to another shall not be a bar for availing recognition subject to the fulfilment of condition provided in sub-section (3) of section 80-IAC of the Income-tax Act, 1961.
- d) **Holding including foreign holding, Subsidiary including foreign subsidiary, Joint Ventures, entities incorporated outside territory Indian Territory**
- e) Name change
- f) CIN/LLPIN change
- g) **Incorporating additional entities:** Incorporating additional entities having similar address with same production line/services and at least one common director/ designated partner/partner will not be recognized as startup.
- h) **Common directorship/partnership:** Recognition of an entity having common director/designated partner/ partner with any other entity shall be allowed to the extent permissible under the provisions of the Companies Act, 2013. Related party transaction shall not be allowed except transactions on arm's length basis.



- i) Regulatory Areas: Entities operating in domains specifically prohibited by law shall not be recognized.
- j) Sole Proprietorship

5. What are Documents required for DPIIT registration?

- a) PAN of entity
- b) Certificate of Incorporation
- c) Postal and Registered address proof of entity
- d) Authorised signatory details
 - a. Name
 - b. Designation
 - c. Date of birth
 - d. PAN
 - e. Email address
 - f. Mobile No
 - g. Address
- e) Logo of entity
- f) Short description of entity

6. What is 80IAC Tax Exemption?

After getting your DPIIT Certificate, Startups can Apply for 80 IAC Tax Exemption.

Post getting recognition a Startup may apply for Tax exemption under section 80 IAC of the Income Tax Act. Post getting clearance for Tax exemption, the Startup can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation.

7. What are the eligibility Criteria for applying to Income Tax exemption (80IAC)?

- The entity should be a recognized Startup

- Only Private limited or a Limited Liability Partnership is eligible for Tax exemption under Section 80IAC
- The Startup should have been incorporated after 1st April, 2016
- The startup must not be formed by the transfer of existing plant and machinery already in use.
- The startup must be operating with the primary aim of financial growth, employment generation, and wealth creation.
- The concerned startup must either develop new innovative products, services, or processes, or innovate an improved version of the existing ones. However, the entities formed by splitting up or reconstruction of an existing business are not eligible for DPIIT Startup Tax Benefits.

8. What is list of documents for 80 IAC tax exemption application?

1. CIN / LLPIN
2. MOA / Partnership Deed
3. Business PAN
4. DPIIT Recognition Certificate
5. CA Certified Balance Sheet for last 3 FY
6. ITR of last 3 FY
7. Section 56 Exemption Certificate
8. Link to Video Presentation
9. Pitch Deck
10. Board Resolution (for company only)

The registration process for Section 80IAC for Startups relies entirely on submitting an application. Approval chances are contingent upon the accuracy and completeness of the documents provided during the application submission and subject to approval of the ministry.

THE POWER OF TRADEMARK

INTRODUCTION:

Consider registering a trademark as an expression of devotion to your business. A trademark registration is an expression of legal commitment to the firm / entity to protect its brand and distinctive identity, much like a person might in a letter to their companion. It delineates the core distinctiveness of your business and safeguards against unapproved imitations.

A trademark emerges as a beacon of light in the arena of business, skillfully navigating across the huge sea of products. It's more than just a sign; it's a defender of identity, standing tall in the face of market rivalry.

According to Section 2(zb) of the Trademarks Act, 1999, a trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods and services of one person from those of others and may include shape of goods and their packaging and combination of colours. Simply, it means that it is capable of setting your goods and services apart from the rest.

Picture this: a trademark is a shield, encompassing symbols, words, phrases, designs, logos, or their harmonious blend. It's the very essence that breathes life into a product, a distinct source of goods or services. In the Indian legal landscape, trademarks are protected under the Trademark Act, 1999, and common law. Interestingly, registration isn't compulsory, yet it serves as a formidable ally, bestow on legal rights and a protection to embrace for a decade, which is extendable through renewal.

***REGISTERING FOR A TRADE MARK IS A STRONG LEASH TO UNLEASH***

- Registering a trademark opens a whole new world with prodigy. It's not just about claiming ownership; It's about unveiling the right to proudly showcase your brand as a certified trade mark.
- This is not merely a legal formality, but it's a proclamation to the world, a signal that echoes through the corridors of the competition. Trademarks provide legal protection for your brand name, logo, or slogan, preventing others from using it without your permission. This protection extends to similar marks that could cause confusion among consumers.
- The beauty of the trade mark registration lies not just in legal rights but the strategic advantages it provides. By proudly displaying the registered trade mark, the owner sends out a clear message, a preventive strike against any claims of innocent infringement. It's a shield that guards not only against unauthorized usage but also against the unintentional overlap that can occur in the bustling marketplace. A strong trademark can help customers identify and distinguish your products or services from those of competitors, building brand recognition and loyalty.
- When you register your trade mark, it becomes a prominent presence in trade mark search reports, functioning as a disincentive to others considering registering a similar or identical mark. It's like a well-placed bookmark indicating to other explorers that this region has been claimed. Now consider this interesting fact. When you are the first to register a trade mark, the National Trade Mark Office in New Delhi acts as a diligent watchdog, refusing registration to any trademarks that are confusingly similar to the registered brand.

VARIOUS TYPES OF TRADE MARK

There are various types of marks that can be registered under the Trade Marks Act, 1999. The marks are:

1. Product Mark
2. Service Mark
3. Word Mark
4. Device Mark
5. Certificate Trade Marks
6. Collective Trade Marks
7. Colour Trade Mark
8. Sound Trade Marks
9. Shape Trade Marks

LEGAL REMEDIES AVAILABLE

Once the trademark is registered, an infringement of the existing trademark can be sued by the owner. Trademark registration provides access to legal remedies, to name a few the ability to sue for trademark infringement and seek damages or injunctions against unauthorized use of your mark. A registered trademark provides for legal protection in following situations:

- Obtaining a trademark registration grants the trademark owner the right to seek restitution from an infringer, with the possibility of recovering up to three times the actual damages caused.
- When a trademark is registered, the owner obtains a presumption of legitimacy, identifying them as the rightful and valid owner of the mark. Securing a trademark enhances the prospects of successfully initiating a dispute resolution policy for an internet domain name that is deemed to infringe upon the registered mark.
- The act of registering a trademark confers its owner with an inherent entitlement to initiate legal proceedings in court.

Conversely, an unregistered trademark exposes itself to the vulnerability of being subject to legal actions.

GOVERNMENT FEES FOR REGISTRATION

- For Start-Ups, MSME registration, Entities / Individuals / Proprietorship – Rs. 4500/- Per Mark, Per Class.
- For Firms / Companies not being an MSME / Start-Up – Rs. 9000/- Per Mark, Per Class.

VALIDITY AND COMPLIANCE POST REGISTRATION

- Validity lasts for 10 years which can be renewed till perpetuity.
- No compliance such as periodical returns required once the registration certificate is issued

Overall, trademarks are valuable assets that can contribute significantly to the success and longevity of a business and considering the cost per year being so low it ought to be considered irrational in not registering a mark.

THANK YOU!

DISCLAIMER

While every care has been taken in the preparation of this “Samācāra” to ensure its accuracy at the time of publication, SPCM & Associates and/or SPCM Legal assumes no responsibility for any errors which despite all precautions, may be found therein. Neither this alert nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/ substitute professional advice that may be required before acting on any matter. All images, pictures, logos and trademarks appearing in the “Samācāra” are property of their respective owners.