

December 2023 | F&A | Volume XL



Welcome to our
monthly newsletter

We bring you a concise and noteworthy regulatory developments in Income Tax, Goods & Services Tax, Companies Act during December 2023. We had tried to cover all important updates occurred during December 2023 in this volume of newsletter. The sole purpose of this circulation is to update finance professionals and business owners on direct & indirect taxes and other compliances. Feedbacks are welcome at info@nucleusadvisors.in.



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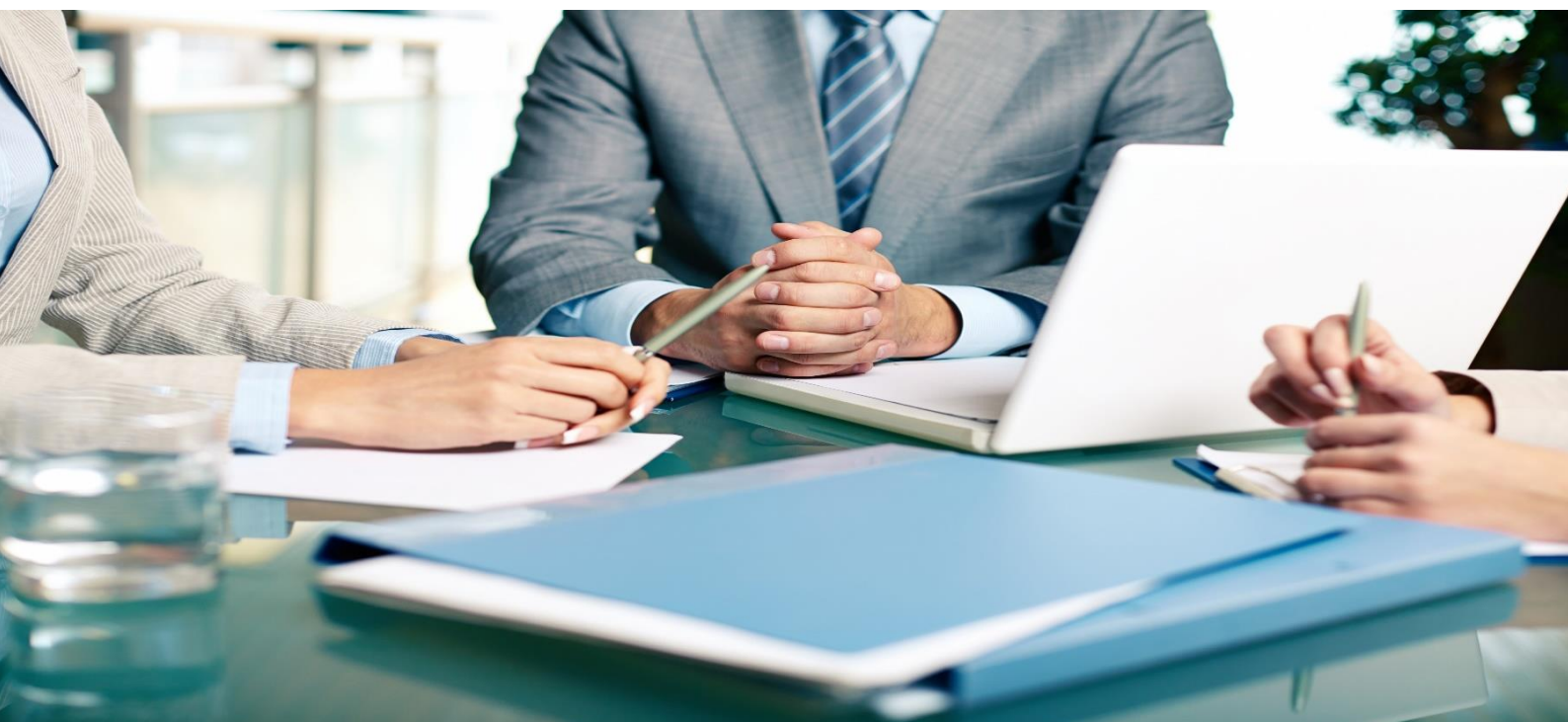
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Compliance Calendar



Why this Volume of Newsletter is important for reader?

Through the series of this newsletter, we aim at covering all relevant Income Tax, Goods & Service Tax, MCA, Audit & Assurance notification, circulars and case laws which may directly or indirectly impact our readers. At Nucleus, it is our utmost priority to help our readers to be informed with respect to the changes in relevant laws for a smoother compliance.



Direct Tax Updates

- Exemption from specified incomes u/s 10(46) to “Godavari River Management Board, Hyderabad.”
- Insertion of new clause in rule 17C: “Forms or modes of Investments.”
- Introduction of significant amendments to the “Safe Harbour Rules.”
- CBDT notified ITR forms ITR-1 & ITR-4 for AY 2024-25.
- Clarification regarding TDS Deduction under section 194-O in case of multiple ECOs.

GST Updates

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DIRECT TAX **UPDATES**

➤ Exemption from specified incomes u/s 10(46) to “Godavari River Management Board, Hyderabad”

The Central Government has notified exemption under section 10(46) to, “Godavari River Management Board, Hyderabad” a board constituted by Central Government for the following specified incomes:

- Grants/Subsidies received from Central Government;
- Grants/Subsidies received from State Governments of Andhra Pradesh and Telangana; and
- Interest from bank deposits, including savings account.

Subject to the following conditions:

- shall not engage in any commercial activity;
- activities and the nature of the specified income shall remain unchanged throughout the financial years; and
- shall file return of income in accordance with the provision of clause (g) of section 139(4C).

The said notification have been applied for the AY 2020-21 to 2023-24.

➤ Insertion of new clause in rule 17C: “Forms or modes of Investment”

A new clause (x) has been inserted under rule 17C, Forms or modes of Investments shall include investment by way of acquiring units of Power GRID Infrastructure Investment Trust.

➤ Introduction of significant amendments to the “Safe Harbour Rules”

• Changes in Rule 10TA:

- a) Scope of intra-group loan as provided in Rule 10TA(f) has been widened to **include any associate enterprise (not non-resident)**, not advanced by any financial institution or enterprise engaged in lending or borrowing as a normal course of business.
- b) Widening definition of **operating expenses** as provided in Rule 10TA(J) to **include any loss on transfer of asset or investments** other than assets on which depreciation forms as a part of operating expenses.
- c) Widening definition of **operating revenue** as provided in Rule 10TA(J) to **include any income on transfer of asset or investments** other than assets on which depreciation forms as a part of operating expenses.

Changes in Rule 10TD:

Rule 10TD has been amended to replace the conditions for safe harbor in the event of the advancement of intra-group loans denominated in a foreign currency. The reference to “CRISIL”^{*} credit rating has been omitted from Rule 10TD. Thus, the credit rating of any other entities can be used while determining Safe Harbour.

*- Credit Rating Information Services of India Limited

➤ CBDT notified ITR Forms ITR-1 & ITR-4 for AY 2024-25

- CBDT has introduced ITR forms ITR-1 (SAHAJ) for individuals being resident having total income up to Rs.50 Lakhs, having income from salaries, one house property, other sources and agricultural income up to Rs.5000 only. (Not for an individual who is either Director in a company or has invested in unlisted equity shares or in cases where TDS has been deducted u/s 194N or if income-tax is deferred on ESOP)
- CBDT has introduced ITR forms ITR-4 (SUGAM) for Individuals, HUFs, and Firms (other than LLP) being a resident having total income up to Rs.50 lakh and having income from business and profession which is computed under sections 44AD, 44ADA or 44AE. (Not for an individual who is either Director in a company or has invested in unlisted equity shares or if income-tax is deferred on ESOP or has agricultural income more than Rs.5000)

➤ Clarification regarding TDS Deduction under section 194-O in case of multiple ECOs

1. Where Multiple ECOs are involved in single transaction and no seller-side ECO is the actual seller? The tax shall be deducted on gross amount of such sale and shall be deducted by the seller-side ECO at the time of credit to the account of a seller or at the time of payment to such seller whichever is earlier.

2. Where Multiple ECOs are involved in single transaction and no seller-side ECO is the actual seller?
The tax shall be deducted on gross amount of such sale and shall be deducted by the ECO (making payment to the seller-side ECO) at the time of credit to the account of a seller or at the time of payment to such seller whichever is earlier.
3. ECOs may be levying convenience fees or charging commission and seller might levy logistics or delivery charges, would these form part of Gross Amount for TDS purpose?
The inclusion of convenience fees, commission charges, and logistics/delivery fees in the “gross amount” for TDS calculation. Additionally, it clarifies that payments to platform providers for facilitating transactions are part of the gross amount if linked to the transaction.
4. Whether GST & various State Taxes other than GST such as VAT/Sales Tax/Excise Duty/ CST would be treated while calculating gross amount for deduction under 194-O?
Tax deduction under section 194-O should be on the amount credited without including GST, state levies, or other taxes if separately indicated in the invoice.
5. Adjustment of TDS regarding Purchase Return?
It specifies that if tax has already been deducted before the purchase-return, adjustments can be made against the next transaction with the same seller in the same financial year.

Notifications Issued

Seeks to extend date of orders specified under section 73(10) - notification no. 56/2023:

The time limit specified under section 73(10) for issuance of orders i.e. within three years from the **due date of annual return** for recovery of tax not paid or short paid or ITC wrongly availed or utilized has been extended:

- For financial year 2018-19 up to the date of April 30, 2024*
- For financial year 2019-20 up to the date of August 31, 2024*

**Previously the said date for FY 2018-19 was March 31, 2024 and for FY 2019-20 was June 30, 2024.*

Advisory for Pilot Project of Biometric-Based Aadhar Authentication and Document Verification for GST Registration Applicants of Andhra Pradesh - December 01, 2023:

An Applicant can be identified on the common portal, based on data analysis and risk parameters for biometric-based Aadhaar Authentication and taking photograph along with verification of original copy of documents uploaded with the application.

After the submission of the application in Form GST REG-01, the applicant will be provided with one of the following links via email:

- (a) A link for OTP-based Aadhaar Authentication OR
- (b) A link for scheduling an appointment to visit GST Suvidha Kendra for verification purpose.

At the time of visit to GSK, the applicant is required to carry the following:

- A hard/soft copy of appointment confirmation e-mail
- Details of jurisdiction as mentioned in e-mail
- Aadhaar Number
- Original documents as uploaded with an application

The advisory explained above now would be applicable to the following states:

- Gujarat
- Puducherry
- Andhra Pradesh.

Advisory: Two-factor Authentication for Taxpayers - December 01, 2023

GSTN is introducing two-factor authentication for security to login to GST Portal. This authentication is activated for the states: Haryana, Punjab, Chandigarh Uttarakhand, Rajasthan & Delhi. The same will be activating soon in other states as well.

Taxpayers will be required OTP delivered to their primary authorized signatory Mobile Number and E-mail. The above functionality has been activated since December 01, 2023.

CASE LAWS:

1. Suzlon Energy Ltd. v/s Department:

Taxpayer is entitled to refund under Inverted Duty Structure (Section 54(3)(ii)) when tax on input erroneously charged by the supplier at higher rate:

Summary of case: The Hon'ble Madras High Court in *The Commercial Tax Officer v. M/s Suzlon Energy Limited and Others*, [W.P. No. 10852 & 10855 of 2021 dated November 16, 2023] dismissed the Writ Petition filed by the Department and reaffirmed the order of refund passed by the Assistant Commissioner (Appeals), thereby holding that, **the Taxpayer is entitled to refund under Inverted Duty Structure when Input tax is erroneously charged by Supplier at higher rate.**

Revenue Department.....Appellant

M/s Suzlon Energy Limited....Respondent

Facts of the case:

- The Revenue Department (Appellant) has filed a Writ Petition wherein respondent has claimed the refund of Input Tax Credit (ITC) under Inverted Duty Structure (Section 54(3)(ii)).
- The respondent paid Integrated Goods and Services Tax at the rate of 18 percent on input material procured and paid IGST at the rate of 5 percent on outward supply.
- The supplier should have paid 5 percent IGST on input products but erroneously paid 18 percent IGST.
- The Petitioner stated that, as the supplier of the Respondent has paid IGST at the rate of 18 percent, therefore, the Respondent should have paid IGST at the rate of 18 percent on the final product.

Contention of the Appellant:

- The respondent had wrongly paid 18% IGST and since there is no inverted duty structure in this case, the refund application can be rejected on this ground.
- Another stand taken by the petitioner is that since the supplier of the first respondent had paid IGST for the input products at the rate of 18%, the first respondent also should have paid IGST for the final products at the rate of 18%.

Contention of the Respondent:

- Section 54(3) specifies the conditions under which we can claim a refund:
 - Zero-rated supplies made without payment of tax.
 - Where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies (other than nil-rated or fully exempt supplies), except supplies of goods or services or both, as may be notified by the Government.

Findings of the Hon'ble High Court of Madras:

The Hon'ble High Court Mr. JUSTICE KRISHNAN RAMASAMY:

- Noted that, as per Section 54(3)(ii) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") states that if rate of tax of input is higher than the rate of tax of output, the refund application can be filed to refund the excess amount paid in Input Tax.
- Further Noted that, the Respondent is entitled to refund even when the duty on input is charged at the rate of 18 percent erroneously though it is chargeable at the rate of 5 percent.

- Opined that, there is no illegality in the Impugned order passed by the Assistant Commissioner (Appeals).

Decision of Hon'ble High Court:

The esteemed High Court has rejected the department's Writ Petition (WP) and held that, the writ petition is dismissed.

Directed that, the Petitioner shall pass the refund order and deposit the refund amount along with interest within the period of 30 days from the date of receipt of copy of the order.

Further the court ordered that interest rate will be 9 percent per annum for the delay period in terms of Section 56 of the GST Act.

2. Suncraft Energy Pvt Ltd v/s Department:

ITC can't be denied to the Recipient if Supplier has not remitted the tax:

Hon'ble Supreme Court has dismissed the department's Special Leave Petition (SLP) against the Calcutta High Court judgment in the case of Suncraft Energy Pvt. Ltd.

Suncraft Energy Pvt Ltd....Appellant

Revenue Department....Respondent

Facts of the case:

- Suncraft Energy Pvt Ltd. (Appellant) has filed an appeal wherein respondent has reversed the Input Tax Credit (ITC) availed by the appellant.
- The appellant has purchased goods and services from the supplier and made the corresponding payment of tax against the same.
- A Scrutiny of the return was made by the tax authorities under section 61 of the CGST Act, 2017 wherein they sent a show cause notice to the appellant asking to explain why they shouldn't require to pay back the excess credit claimed for the FY 2017-18.
- Amount was determined from the difference between GSTR-2A v/s GSTR-3B.
- The appellant has submitted a detailed reply that he has already paid taxes to the supplier and only thereafter claimed ITC on such invoices.

Contention of the Appellant:

- The respondent issued notices for recovery of the input tax credit availed by the appellant without conducting any enquiry on the supplier and without effecting any recovery from the supplier.
- The Appellant has fulfilled all the conditions given under Section 16(2) of CGST Act.
- The appellant paid tax to the supplier and a valid tax invoice has been issued by the supplier for installation and commission services.
- The appellant had made payment to the supplier within the time stipulated under CGST Act.

Contention of the Department:

- It was contended that the supplier has not shown the Bill in GSTR 1 and hence the appellant is not eligible to avail the credit as the tax charged in respect of such supply has not been actually paid to the Government.
- However, there is no denial of the fact that the appellant is in possession of a tax invoice and the appellant has received the goods or services or both.
- The reason for denying the ITC is that the detail of the supplier are not reflecting in GSTR 1 of the supplier.

Findings of the Hon'ble High Court of Calcutta:

The Hon'ble High Court held that:

- The Department has not conducted any enquiry on the supplier, particularly when clarification has been issued that the reflecting ITC in GSTR 2A does not impact the ability of the taxpayers to avail the ITC on self-assessment basis.
- However, reversal of ITC can be made when in exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.
- Therefore, before directing the appellant to reverse the ITC, the Department has intended to take an action against the supplier unless and until the department is able to bring out the exceptional case.
- Hence, the demand raised on appellant is not sustainable.

Decision of Hon'ble Supreme Court:

The esteemed Supreme Court has rejected the department's Special Leave Petition (SLP) challenging the Calcutta High Court's decision in the Suncraft Energy Pvt. Ltd. case. Consequently, the Input Tax Credit (ITC) for the purchasing dealer cannot be denied on the grounds that supplier has not remitted the tax so collected except in exceptional cases, such as the supplier going missing or a situation where it becomes impossible for the department to collect tax from the supplier.

The dismissal of the SLP and the validation of the Calcutta High Court judgment is a significant victory for honest taxpayers.



COMPLIANCE CALENDER

Direct Taxes

January 07, 2024

- Due date for deposit of Tax deducted [except under Section 194-IA, Section 194-IB, Section 194M, or Section 194S (by specified person)] or collected for the month of December, 2023.
- Due date for deposit of TDS for the period October 2023 to December 2023 when Assessing Officer has permitted quarterly deposit of TDS under Sections 192, 194A, 194D or 194H.

January 14, 2024

- Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194-M & 194-S in the month of November, 2023.

January 15, 2024

- Due date of furnishing of Form 24G by an office of the Government where TDS/TCS for the month of December, 2023 has been paid without the production of a challan.
- Quarterly statement of TCS for the quarter ending December 31, 2023.
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending December, 2023.
- Due date for furnishing of Form 15G/15H declarations received during the quarter ending December, 2023.
- Furnishing of statement in Form No. 49BA under Rule 114AAB (by specified fund) for the quarter ending December 31, 2023.

Indirect Taxes

January 11, 2024

- Due date for filing monthly return GSTR-1 for the month of December 2023.
- Due date for filing monthly return GSTR-8 for the month of December 2023.
- Due date for filing monthly return GSTR-7 for the month of December 2023.

January 13, 2024

- Due date for filing quarterly return GSTR-1 for taxpayers opted for QRMP Scheme for the quarter October 2023 to December 2023.
- Due date for filing monthly return GSTR-5 for the month of December 2023.
- Due date for filing monthly return GSTR-6 for the month of December 2023.

January 18, 2024

- Due date for filing quarterly return CMP-08 for taxpayers opted for composition Scheme for the quarter October 2023 to December 2023.

January 20, 2024

- Due date for filing monthly return GSTR-3B for the month of December 2023.

December 20/24, 2024

- Due date for filing quarterly return GSTR-3B for taxpayers opted for QRMP Scheme for the quarter October 2023 to December 2023.

January 30, 2024

- Quarterly TCS certificate in respect of quarter ending December 31, 2023.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194-M & 194-S in the month of December, 2023.

January 31, 2024

- Quarterly statement of TDS for the quarter ending December 31, 2023.
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of 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.
- Intimation by Sovereign Wealth Fund in respect of investment made in India for quarter ending December, 2023.
- Intimation by a pension fund in respect of investment made in India for quarter ending December 31, 2023.



OUR CONTRIBUTORS



CA PRAVESH GOEL
Managing Partner



Email - pkg@nucleusadvisors.in



CA Hemendra Singh Chauhan
Partner



Email - hemendra@nucleusadvisors.in



CS Neha Rathore
Secretarial Partner



Email - neha@nucleusadvisors.in



CA Abhishek Gupta
Partner



Email - abhishek@nucleusadvisors.in

ABOUT US

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info@nucleusadvisors.in