

DIRECT TAX

News

Software isn't manufacturing, won't be eligible for 15% tax



Software development is not manufacturing and will not be eligible for the 15% tax rate applicable to new manufacturing entities, a

government official said. The government will table a Bill in Parliament in the upcoming winter session to clarify this and other related matters. The Bill will replace its earlier ordinance in September. "The amendment Bill will clarify that 15% corporate tax rate is only for new manufacturing entities and that software development is not manufacturing," the official, who is privy to the development, told ET. The amendment comes after industry sought clarity on whether software development could be treated as manufacturing and be eligible for the reduced tax rate. 72101556 On September 20, finance minister Nirmala Sitharaman slashed the corporate tax rate to 22% for companies that do not seek exemptions or incentives, and to 15% — from the current 25% — for new manufacturing companies.

Notifications

Notification No. 85/2019, dated 1st Nov., 2019

CBDT amends Notification No. 61/2019- Income Tax dated 12th September, 2019 related to E-assessment Scheme, 2019 to rectify the spelling misstates for assessee to be read as assessee.

Notification No. 86/2019, dated 1st Nov., 2019

CBDT amends Notification No. 62/2019- Income Tax dated 12th September, 2019 related to E-assessment Scheme, 2019 to rectify the spelling misstates for assessee to be read as assessee.

Notification No. 87/2019, dated 5th Nov., 2019

CBDT notifies Special Court for trial of offences under section section 280A of Income-tax Act, 1961.

Notification No. 88,89,90,91,92,93,94/2019, dated 5th Nov., 2019

In exercise of the powers conferred by sub-sections (1) and (2) of section 120 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the amendments in the notification of the Ministry of Finance, Department of Revenue (Central Board of

Direct Taxes), published in the Official Gazette *vide* **number S.O. 2752(E)**, S.O. 2754(E), **dated the 22nd October, 2014**, S.O. 2793(E), dated the 30th October, 2014, S.O. 2814(E), dated the 3rd November, 2014, S.O. 2816(E), dated the 3rd November, S.O. 2914(E), dated the 13th November, 2014, S.O. 3125(E), dated the 10th December, 2014, the words "Jammu, Jammu and Kashmir", the words "Jammu, the Union territory of Jammu and Kashmir and the Union territory of Ladakh" shall be substituted.

Notification No. 95/2019, dated 6th Nov., 2019

CBDT has notified that in various income-tax forms and Rules the word 'Permanent Account No.' or 'PAN' is to be substituted by the words 'Permanent Account Number or Aadhaar Number'. Changes has made it possible for A person, not having PAN to furnish his Aadhaar number in lieu of PAN, in all those transaction where furnishing of PAN is mandatory. Earlier Section 139A was amended by *vide* Finance (No. 2) Act, 2019 to provide for interchangeability of PAN and Aadhaar number.

Notification No. 96/2019, dated 11th Nov., 2019

In exercise of the powers conferred by clause (XI) of the proviso to clause (x) of sub-section (2) section 56 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. Short title and commencement.-
(1) These rules may be called the Income tax Amendment (13th Amendment), Rules, 2019.
(2) They shall come into force from the 1st day of April, 2020.
2. In the Income-tax Rules, 1962, after rule 11UAB, the following rule shall be inserted from the 1st day of April, 2020 and shall be applicable for assessment year commencing on the 1st day of April, 2020 and subsequent assessment years.

Notification No. 97/2019, dated 13th Nov., 2019

The name of the approved organization "Diabetes Research Centre Foundation, Chennai" shall be read as "Prof. M. Viswanathan Diabetes Research Centre, Chennai" with effect from 01.04.2010.

Notification No. 98/2019, dated 18th Nov., 2019

The CBDT has notified that any sum deducted under section 194M shall be paid to the credit of the Central Government within a period of thirty days from the end of the month in which the

deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QD. Every person responsible for deduction of tax under section 194M shall furnish the certificate of deduction of tax at source in Form No.16D to the payee within fifteen days from the due date for furnishing the challan-cum-statement in Form No.26QD under rule 31A after generating and downloading the same from the web portal.

Notification No. 99/2019, dated 27th Nov., 2019

CBDT notifies that the organization M/s International Centre for Research in Agroforestry, South Asia Regional Programme, NASC Complex, Delhi (ICRAF) (PAN:-AATI4803K) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5D of the Income-tax Rules, 1962 (said Rules), from Assessment year 2019-2020 onwards in the category of 'Scientific Research Association'.

Notification No. 100/2019, dated 27th Nov., 2019

Central Government hereby notifies M/s National Stock Exchange of India Limited (NSE) as a 'recognised association' for the purpose Section 43(5)(e)(iii) and consequently Trading in commodity derivatives on NSE shall not be deemed as speculative business.

Notification No. 101/2019, dated 29th Nov., 2019

In exercise of the powers conferred by section 46 read with section 68 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988), the Central Government hereby makes the rules further to amend the Prohibition of Benami Property Transactions Rules, 2016

▪ In rule 10, –

(a) for sub-rules (1) and (2), the following rules shall be substituted, namely:-

“(1) An appeal under sub-section (1) and sub-section (1A) of section 46 of the Act shall be made to the Appellate Tribunal in Form 3.

(2) An appeal filed under, -

(i) sub-section (1) of section 46 of the Act shall be accompanied by a fee of ten thousand rupees; and
(ii) sub-section (1A) of section 46 of the Act shall be accompanied by a fee of two thousand rupees.”

(b) in sub-rule (4), for the words, brackets and figure “sub-section (1)”, the words, brackets, figures and letter “sub-section (1) or sub-section (1A), as the case may be” shall be substituted.

▪ In the said rules, in Form 3,

(a) in the opening portion before the heading “FACTS” for the words and brackets “passed by the Adjudicating Authority (address of Adjudicating Authority)”, the words and brackets “passed by the authority (address of the authority)” shall be substituted;

(b) under the heading “FACTS” for the words “passed by the or Adjudicating Authority”, the

words “ passed by the authority” shall be substituted.

Case Law

Ritualistic giving of hearing and reproducing submissions made without understanding party's case would not satisfy test of natural justice and will amount to breach of natural justice. Short deduction of Tax does not make assessee in default

TLG India (P.) Ltd. v/s Deputy Commissioner of Income Tax

[2019] 111 taxmann.com 376 (Bombay)

An advertising agency, enabled its clients to place/display their advertisement on various media and deducted tax at source under section 194C while making payment to the media owners. However, the petitioner was declared as an assessee in default under section 201(1) and 201(1A) for short deduction of tax at source, namely, for failure to deduct tax on payments made to media owners for the services the media owners provided to the petitioner under section 194J. It filed writ petition on the ground of breach of principles of natural justice.

Court held that the object of natural justice is to ensure that parties views/objections are taken on board and considered before it is rejected. At times, the reply filed by the respondent may require certain clarifications. This, clarification the authority must seek before taking any decision adverse to the party. The requirement of natural justice is only to ensure that the party's stand is effectively dealt with by the authorities under the Act. Mere ritualistic giving of hearing and reproducing the submissions made without understanding the party's case would not satisfy the test of natural justice. It is not open to the Authority to ignore the evidence /submissions made by the party as it is not the object of quasi judicial authority to confirm their prima facie view, but the object is to find the correct facts and thereafter apply the law to those facts and take a decision in terms thereof.

When a particular receipt is exempt from tax under Income tax law, then same cannot be considered for purpose of computation of book profit under section 115JB of the Income-tax Act 1961

Assistant Commissioner of Income-tax v/s JSW Steel Ltd

[2019] 112 taxmann.com 55 (Mumbai - Trib.)

Tribunal held that when a particular receipt is exempt from tax under the Income tax law, then the same cannot be considered for the purpose of computation of book profit u/s 115JB of the I.T.Act 1961. Hence, directed the Ld. AO to exclude sales tax subsidy received by the assessee amounting to Rs. 36,15,49,828/- from book profits computed u/s 115JB of the I.T. Act, 1961.

Mere non compliance of a procedural requirement under section 54(2) itself cannot stand in way of assessee in getting benefit under section 54, if he is, otherwise, in a

position to satisfy that mandatory requirement under section 54(1) is fully complied with within time limit prescribed therein

Venkata Dilip Kumar v/s Commissioner of Income-tax, Chennai

[2019] 111 taxmann.com 180 (Madras)

The claim of the assessee for deduction of the disputed sum towards the additional construction cost was rejected only on the ground that the said sum was not deposited in the capital gain account. Court held that the Revenue is not justified in making such objection. On the other hand, it has to verify as to whether the said sum was utilised by the petitioner within the time stipulated under Section 54(1) for the purpose of construction. If it is found that such utilisation was made within such time, the Revenue is bound to grant deduction. Therefore, this Court is of the view that the matter needs to go back to the first respondent for considering the issue as to whether the disputed amount, claimed by the assessee as deduction, has been utilised by the petitioner towards the additional construction within the time limit prescribing under Section 54(1) and thereafter, to pass fresh order accordingly in the light of the findings and observations rendered

Levy of penalty u/s 271(1)(c) is not valid if (i) there is no record of satisfaction by the AO that there was any concealment of income or that any inaccurate particulars were furnished by the assessee or (ii) If the notice is issued in the printed form and the inapplicable portions are not struck off

PCIT vs. Goa Coastal Resorts & Recreation Pvt. Ltd (Bombay High Court)

The notice which is issued to the assessee must indicate whether the Assessing Officer is satisfied that the case of the assessee involves concealment of particulars of income or furnishing of inaccurate particulars of income or both, with clarity. If the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck off, so as to indicate with clarity the nature of the satisfaction recorded.

As the Act provides for sanction by the JCIT, the sanction by the CIT does not meet the requirement of the Act and the reopening notice is without jurisdiction. The fact that the sanction is granted by a superior officer is not relevant

PCIT vs. Khushbu Industries (Bombay High Court)

The Court held that where the Act provides for sanction by the Joint Commissioner of Income Tax in terms of section 151, then the sanction by the Commissioner of Income Tax would not meet the requirement of the Act and the reopening notice will be without jurisdiction. In the above view, the question as proposed does not give rise to any substantial question of law as the said issue has already been concluded against the Revenue. Appeal is, therefore, dismissed.

S. 147 Reopening of Bogus share capital/premium: If the PCIT, while granting approval for issue of notice u/s. 148, has only mentioned "YES", it establishes that the approving authority has given approval to the reopening of assessment in a mechanical manner without due application of mind. On this count the reassessment is not sustainable in the eyes of law and needs to be quashed (All imp judgements referred)

Blue Chip Developers (P) Ltd vs. ITO (ITAT Delhi)

Tribunal held that the approving authority has given approval to the reopening of assessment in a mechanical manner without due application of mind by only mentioning in Column No. 12 "YES", in the Reasons for Initiating Proceedings u/s. 147 and For obtaining the Approval of the Addl. Commissioner of Income Tax, Delhi-2, New Delhi, a copy of which is placed at page no. 103 of the Paper Book No. 2, and therefore, the legal issue in dispute is squarely covered by the aforesaid finding of the Tribunal, hence, the reassessment is hereby quashed and accordingly the ground no. 2 is allowed. Since the assessee succeeds on this legal ground challenging the validity of reassessment proceedings, the addition on merit is not being adjudicated being academic in nature. The appeal filed by the assessee is accordingly allowed.

GST
News

Rs 440 crore GST fraud busted in TN, man arrested

A racket of issuing fake invoices, without actual supply of goods to the tune of around Rs 440 crore resulting in fraudulent Input Tax Credit utilization of about Rs 79 crore was busted. Investigation so far revealed that the conspiracy was hatched by three people, where one had the role of creating fictitious entities and issuing fake invoices without actual supply of goods.



[Source-Indian today]

Government sets timeline for GST e-invoicing, trial to start January 1, 2020

The e-invoicing system will be rolled out in a phased manner from January 1 on a voluntary and trial basis, beginning with firms with a turnover of Rs 500 crore, while businesses with a turnover of Rs 100 crore or more will be required to do it from February 1.

[Source-Business Standard]

Govt. extends due dates of filing GST Annual Return/Reconciliation Statement for FY 2017-18 & 2018-19

Extends the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for FY 2017-18 till 31st December, 2019 and for FY 2018-19 till 31st March, 2020. [Source—the Economics Times]

100 firms get notices for not paying interest fee on GST

If anyone pays the GST after the deadline, the late fee is automatically added to the amount in the computer. So, whenever a businessman comes to pay the GST after missing the deadline, he has to pay the late fee by default but that is not the case with the interest fee so Department issue Notice to pay interest within 15 days.

[Source-The Times of India]

Customers' non-billed purchases biggest source of GST leak.

Customers often make cash purchases without receiving a bill for it, and the leakage is especially 'massive' in certain products. Officials fear a parallel system from raw material to finished goods is in place to evade taxes. If properly addressed, 15-20 percent revenue could be added to government coffers. [Source- the Money control]

Notifications

Notification No. 52/2019-Central Tax,dt. 14-11-2019

Registered persons whose principal place of business is in the State of Jammu and Kashmir, shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 under the Central Goods and Services Tax Rules, 2017 effected during The quarter July-September, 2019 till 30th November, 2019.”

Notification No. 53/2019-Central Tax,dt. 14-11-2019

Registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in FORM GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for each of the months from July, 2019 to September, 2019 till 15th November, 2019.”

Notification No. 54/2019-Central Tax ,dt. 14-11-2019

The return in FORM GSTR-3B of the said rules for the months of July to September, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 20th November, 2019.”

Notification No. 55/2019-Central Tax,dt. 14-11-2019

Registered person, required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of

section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2019 to September, 2019, whose principal place of business is in the State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 15th November, 2019.”.

Notification No. 56/2019-Central Tax,dt. 14-11-2019

Simplification of GSTR-9/GSTR-9C

Taxpayers have potion to provide following:-

- Split of input tax credit availed on inputs, input services and capital goods and
- HSN level information of outputs or inputs, etc. for the financial year 2017-18 and 2018-19
- Option to fill net of credit/debit notes and amendments (4B to 4E; 5A to 5F of GSTR-9)
- Option to fill all (exempt, nil rated and non GST) in exempt category (5D, 5E & 5F)
- 5B to 5N; Make adjustments in 5O of GSTR-9C (Turnover Reconciliation)
- ITC booked in earlier FY but availed in current FY, ITC booked in current FY but not availed) made option
- In Part B- certification words “true and correct” replaced by “true and fair”

Notification No. 57/2019-Central Tax,dt. 26-11-2019

Registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in FORM GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for each of the months from July, 2019 to September, 2019 till 30th November, 2019.”

Notification No. 58/2019-Central Tax,dt. 26-11-2019

Registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in FORM GSTR-1 of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the month of October, 2019 till 30th November, 2019.”

Notification No. 59/2019-Central Tax, dt. 26-11-2019

The return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2019 to October,2019, whose principal place of business is in the State of Jammu and Kashmir shall be furnished electronically through the common portal, on or before the 30th November, 2019.”

Notification No. 60/2019-Central Tax, dt. 26-11-2019

Return in FORM GSTR-3B of the said rules for the months of July to September, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 30th November, 2019.

Notification No. 61/2019-Central Tax, dt. 26-11-2019

Return in FORM GSTR-3B of the said rules for the month of October, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir, shall be furnished electronically through the common portal, on or before the 30th November, 2019.

Notification No. 62/2019-Central Tax, dt. 26-11-2019

On the recommendations of the Council, hereby notifies those persons whose principal place of business or place of business lies in the erstwhile State of Jammu and Kashmir till the 30th day of October, 2019; and lies in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 31st day of October, 2019 onwards, as the class of persons who shall follow the special procedure till the 31st day of December, 2019 (hereinafter referred to as the transition date), as specified in the notification.

Notification No. 26/2019-Central Tax (Rate), dt. 22-11-2019

Seeks to insert explanation regarding Bus Body Building in Notification No. 11/2017-Central Tax (Rate) dt. 28.06.2017. For the purposes of this entry, the term "bus body building" shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975."

Circulars

Circular No. 122/41/2019-GST dated 05.11.2019

- Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the CBIC to tax payers and other concerned persons.
- To begin with, i.e. 8th November, 2019, DIN would be used for any search authorization, summons, arrest memo, inspection notices, and letters issued in the course of any enquiry.
- Recipients would get digital facility (<https://www.cbicddm.gov.in/MIS/Home/DINSearch>) to verify the genuineness of such communication.

Circular No. 123/2019 dated 11.11.2019

Clarification about the new rule 36(4) related to availing input tax credit under the GST. Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in their GSTR-1 under section 37(1), shall not exceed 20 per cent of the eligible credit

available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under section 37(1).

Circular No. 124/43/2019 - GST dated 18.11.2019

It is clarified that the tax payers, may, at their own option file FORM GSTR- 9/GSTR-9A for the said financial years before the due date. After the due date of furnishing the annual return for the year 2017-18 and 2018-19, the common portal shall not permit furnishing of FORM GSTR-9/GSTR-9A for the said period.

Circular No. 125/44/2019 - GST dated 18.11.2019

All refund applications filed by the taxpayers in RFD-01 form shall be processed electronically/ online by the tax-officer and all communications between the tax officers and the taxpayers shall take place electronically. Single authority disbursement has been implemented. GSTN has issued an "Online refund processing and single authority disbursement: Advisory for taxpayers.

Circular No. 126/45/2019 - GST dated 22.11.2019

Clarification on scope of the notification entry at item (id) which covers only job work services by way of treatment or processing undertaken by a person on goods belonging to another registered person attract 12% GST and (iv) which covers "manufacturing services on physical inputs owned by others" and covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered attract GST rate of 18%.

Case law

Decided by National Anti-Profitteering Authority in the case of Abhishekv. Signature Global Developers (P.) Ltd.- Case no. 60/2019 Dated November 21, 2019

Respondent developer post GST implementation has denied benefit of ITC to buyers of flats and shops being constructed by him in his Project 'Synera' in contravention of provisions of section 171(1) and has profiteered an amount from its customers, respondent has committed an offence under section 171(3A) and, therefore, will be liable for imposition of penalty

Decided by High Court of Delhi in the case of Aman Motors v. Union of India - W.P. (C) 2478/2019 Dated November 21, 2019

Assessee was unable to file Form TRAN-1 on GST portal on account of technical glitches and difficulties persisting at common portal, Competent Authority was directed to either open online portal so as to enable assessee to file Form TRAN-1 electronically or to accept same manually.

Decided by National Anti-Profitteering Authority in the case of Ms. Santosh Kumariv.Aster Infrahome (P.) Ltd.- Case no. 57/2019 dated November 19, 2019

Respondent in respect of purchase of flats in its project 'Green Court' denied benefit of ITC to buyers of flats by way of commensurate reduction in price of flats and profiteered certain amount from its customers, there is contravention of provisions of section 171(1) of CGST Act, 2017 and, thus, respondent committed an offence as per provisions of section 171(3A).

Decided by National Anti-Profiteering Authority in the case of Rohit Singh v. Friends Land Developers- Case no. 62/2019 dated November 27, 2019

Applicant who had purchased a flat in respondent's project ' Palm Wood Royal Gulmohar Green' filed application before Anti Profiteering Authority alleging that respondent had failed to pass benefit of input tax credit(ITC) to flat purchasers, it was held that ITC was 2.81% during pre GST period while it was 5.90% in post GST period and respondent had benefitted from additional benefit of ITC to tune of 3.09%, which it was required to pass to customers in terms of section 171 but had failed to do so and ,therefore, respondent was guilty of contravening provisions of section 171 and was directed to reduce price of flats commensurate with benefit of ITC.

Decided by HIGH COURT OF PUNJAB & HARYANA in the case of Akhil Krishan Maggu v. Deputy Director, Directorate General of GST Intelligence - CWP NO. 24195 OF 2019 Dated 15TH Nov 2019

Section 69 and section 132 of the CGST Act, 2017 empower Proper Officer to arrest a person who has committed any offence involving evasion of tax more than Rs.5 crore and prescribes maximum sentence of 5 years which falls within purview of section 41A of Cr. P.C. However, power of arrest should not be exercised at whims and caprices of any officer or for sake of recovery or terrorizing any businessman or create an atmosphere of fear, whereas it should be exercised in exceptional circumstances during investigation.

Decided by Authority of Advance Rulings, West Bengal in the case of Shewratn Company (P.) Ltd. - ORDER NO. 32/WBAAR/2019-20 dated 11th Nov. 2019

Applicant's supplies of stores like paint, rope, spare parts, electronic equipment etc. to foreign going vessels shall be treated neither as a supply of goods nor services in terms of paragraph 8(a) of Schedule III under Section 7(2)(a) of the IGST Act, 2017 if such stores are warehoused goods supplied to recipient before clearance for home consumption.

Decided by APPELLATE AUTHORITY FOR ADVANCE RULING, ODISHA in the case of Penguin Trading & Agencies Ltd - ORDER NO. 03/ODISHA-AAAR/2019-20 dated 5th nov. 2019

Licensing services for right to use minerals including its exploration and evaluation received by applicant is taxable at rate of 18

per cent [9 per cent CGST and 9 per cent OGST] during 07/2017 to 12/2018

HELD: The impugned service received by the applicant is appropriately covered under the description 'Licensing services for the right to use minerals including its exploration and evaluation' which is classifiable under SAC 997337 under the Group 99733.

Decided by CESTAT, HYDERABAD BENCH in the case of Adani Power Ltd. V. Commissioner of Central Tax, GST- EXCISE APPEAL NOS. 30603, 30513 AND 30898 OF 2018 dated 5th Nov. 2019

Appellant, a developer of SEZ unit procured goods from DTA unit which were cleared by its suppliers after paying appropriate duty, thereafter it filed refund application under section 11B of Central Excise Act, 1944 since SEZ area is treated as a place outside India for all practical purposes, therefore for this reason, goods which are imported into SEZ are not subject to customs duties and goods from DTA which are supplied to SEZ units are treated at par with exports; however, SEZ Rules have only provided a mechanism for clearance of goods under bond and there is no mechanism under SEZ Rules for claiming rebate/refund on goods procured from the DTA, hence in absence of explicit provisions, appellant is not entitled to refund of duty

RERA

News

UP RERA

UP may re-introduce 'zero period' policy for stuck housing projects

The Uttar Pradesh government is actively considering re-introducing Zero Period policy, which was implemented to compensate developers whose projects got stalled due to farmers' agitation in Greater Noida in 2011-12, resulting in court cases. The compensation was in the form of exemption from interest on land dues. It's "under review" at present.

Zero Period policy stipulates that if a project was stalled due to a stay order from any court or national green tribunal (NGT), or the state RERA delayed possession deed execution, or the land was not acquired by authority at the time of handover or in case actual construction on site could not be started by the developer due to absence of approach road, then the affected period may be declared as a zero period. Developers, in such cases, are exempted from penal interest and dues. UP RERA member Balwinder Kumar told that the Zero Period policy has been recommended by the Uttar Pradesh group of ministers (GoM) in 2017 and also the high level committee under the chairmanship of ministry of housing and urban affairs (MoHUA) secretary, DS Mishra a year later.

[Source: Financial Express]



8 developers with 13 pending housing project to get funds to restart work

UPRERA has found eight developers with 13 pending projects having 50,000 housing units) for getting financial assistance from the government. This will revive hopes of hundreds of buyers who had booked housing units in these projects. These developers can get support from the special corpus fund created to bail out recession-hit real estate sector.

The idea was proposed by a panel of experts led by vice chairman of National Real Estate Development Council Parveen Jain in the UPRERA conclave held in Lucknow in the month of November.

According to UPRERA officials, 52 projects with around 2 lakh housing units are lying incomplete for several years. These projects are being constructed by 38 developers. Parametres for selection say the project should be registered with the regulatory authority and at least 70% complete. All housing units must be for middle income group (MIG) and cost of one unit should not be more than Rs 1.5 crore. Lastly, there should have been no other reason except for lack of funds for the project being stalled. [Source: ET]

UPRERA De-registers Festival City Phase-1

The Uttar Pradesh Real Estate Regulatory Authority (UP-RERA) has ordered de-registration of Festival City phase-I with immediate effect. The project was being developed by Mist Direct Sales, a sister concern of Bhasin Group. The bank



account for the project has been frozen. In March 2019, the authority had issued a show-cause notice to the builder, under section 7 of Real Estate (Regulation and Development) Act 2016 asking it to respond within 30 days as to why the registration of their project-Festival City phase-I be cancelled.

The notice was issued after about 19 home buyers of the project filed complaints against the builder saying that only 15 per cent of the construction is complete till date and the promoter has misused buyers' money. The registration department has also arrested the promoter of Mist Direct Sales as they have not paid stamp duty worth Rs 12 lakh, the buyers said in their complaint.

[Source: UP RERA]

RAJASTHAN RERA

Jaipur Civic Body plans to impose tax on all commercial properties

A proposal has been sent to the state government by Jaipur Municipal Corporation to include commercial buildings smaller than 100 square yards in the taxable category which at present are non taxable. If the proposal



is accepted, then houses using its premises for paying guests, hostels and guesthouses and commercial properties on the shrine complex like shops, barring those selling pooja items, will come under tax.

[Source : The Economic Times]

HARYANA RERA

Haryana RERA has ordered attaching land parcels owned by Three C Shelters to raise funds for Greenopolis project

The Gurugram bench of H-RERA has ordered attaching 10 acres in Gurgaon and four plots in Noida owned by Three C Shelters and putting the same on sale to raise Rs 334 crore for completion of Greenopolis project in Gurgaon which has been



delayed by more than four years. The bench also ordered freezing a bank account of Three C with a Delhi bank and conducting its forensic audit by a

chartered accountant. The builder has been prohibited from withdrawing any money from all other associated accounts as well. The developers Three C and Orris Infrastructure have been given a month to comply with the order and to submit the details of their official and personal moveable and immovable properties failing which the directors and promoters of both the companies may be imprisoned. [Source: ET]

DELHI RERA

Delhi based Real Estate Company moves Delhi HC to know if landowner can be called promoter

Uppal Housing the landowner of a residential project of builder Umang Realtech at Dwarka Mor in Delhi has approached the Delhi High Court against the decision of the Delhi Real Estate Appellate Tribunal imposing liability of a promoter for delay in delivery. Appeal has been filed to ascertain if the 'landowner' can be treated as promoter of a project being developed by another company and be fined for delay. Notice has been issued to Delhi RERA as the issue requires to be determined at length as it is for the first time it has been raised since the introduction of the Act.

[Source : The Economic Times]

The National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Bill, 2019 to regularise over 1,720 unauthorised colonies in Delhi ready

The government would soon introduce the bill that would formally confer the property rights to people in unauthorised colonies. The bill will give a one time reprieve to residents from income tax liability and rebate on stamp duty for registration of properties and penalties. The entire process would be online and will require first self assessment by the resident which will be reviewed by field officers.

After the Bill is passed, the Delhi Development Authority, the nodal agency for implementation of regularisation process, will launch its web portal and then empanel agencies to fix geo coordinates of plots. [Source : The Economic Times]

Uppal Housing moves High Court to know if landowner can be called promoter

Delhi-based real estate company Uppal Housing has approached the Delhi High Court to ascertain if the 'landowner' can be treated as promoter of a project being developed by another company and be fined for delay.

Uppal Housing is the landowner of Winter Hills, a residential project of builder Umang Realtech at Dwarka Mor in Delhi. Now, the Appellate Tribunal of Delhi Real Estate Regulatory Authority (RERA) has imposed liability of a promoter on Uppal Housing after some homebuyers filed a complaint on delay in delivery.

Uppal Housing has filed an appeal under Section 58 of the Real Estate (Regulation and Development) Act, 2016 in the High Court, challenging the move.

Manoj K Singh, legal counsel for Uppal Housing, said the court has issued notice to Delhi RERA and is of the opinion that the issue requires to be determined at length as it is for the first time it has been raised since the introduction of the Act.

"What needs to be determined by the High Court is whether Uppal Housing, a landowner, can be brought in the category of promoters with respect to imposing liability of giving compensation and refund to the allottees and development of the project," said Singh of Singh & Associates law firm. "It is important to note that RERA has categorically not defined landowner."

Uppal Housing leased the land where the residential project is being executed by Delhi Metro Rail Corporation in 2006.

It then entered into an agreement with Umang Realtech for development of a residential complex on the land and sale of housing units. Uppal Housing was supposed to get share in the revenue. The company has told the regulator that it cannot be made party in the case since sale is being done by Umang Realtech.

Vijay Madan, chairperson of Delhi RERA, said, "The case has been decided on the basis of the argument made by the complainant and facts presented to us. We have treated them as co-promoter." Uppal Housing has 45% shareholding in Umang Realtech.

In different orders, RERA had ordered compensation to homebuyers in this project and refund of amount paid to the builder.

[Source: Economic Times]

KARNATAKA RERA

Guidelines for releasing of advertisement in print and electronic media dated 14.11.2019 published by Karnataka Real Estate Regulatory Authority.

The Authority has issued the following directions relating to advertisements which shall be complied by all promoters and their agents:

1. RERA Registration number of the project in a size **not less than half of the font size used for name of the project** should be mentioned in the **top right corner** of the advertisement in print media, outdoor hoardings or any other visual medium.
2. Karnataka RERA **website address** should be mentioned on the advertisement.
3. **Disclaimer** stating that information is **subject to change** should **not** be mentioned.
4. The **length and breadth** of the "**RERA REGISTERED**" information must not be less than **10% of the length and breadth** (whichever is higher) of the advertisement issued in print media.
5. RERA Registration number should be mentioned prominently in **advertisements on Radio, SMS or through electronic media.**
6. If advertisement pertains to a project for which Completion Certificate was applied before 11.07.2017 and has been obtained, the same should be mentioned in the advertisement.
7. **Display board** installed at site should mention the **RERA Registration number.**

Karnataka RERA plans to establish a conciliation forum to sort out disputes between buyers and promoters

Karnataka RERA is set to establish a conciliation forum to facilitate amicable settlement of disputes between promoters of real estate firms and homebuyers, replicating Maharashtra and Uttar Pradesh. The independent forum consisting of representatives from homebuyer groups, promoters and Real Estate Regulatory Authority (RERA) will sit across to hear complaints from homebuyers and negotiate a mutually acceptable deal. With about 3,394 complaints registered with K-RERA until now and the RERA rules mandating disposal of cases within 60 days from the date of filing them, the initiative is expected to cut down the number of complaints that the real estate regulator gets. Maharashtra was the first state to create the alternative dispute resolution mechanism and has solved about 70% of cases. Litigation will consume a lot of time and energy of complainants. The forum will be a relief to homebuyers as they will have an opportunity for case redressal before getting into legal hassles," MS Shankar, secretary of the Forum for People's Collective Efforts, said welcoming the move. He said homebuyers are hoping that cases can be redressed in two three sittings at the conciliation forum. [Source: Economic Times]



Even if project is not required to register on RERA, promoter is bound by the responsibility assigned to him under the act.

The project was completed way back in 2005 even before RERA come into force exempts a promoter from the operational provisions of the act. But the promoter is bound by the responsibility assigned to him under the act. As per section 11(4)(f) & 17(2) promoter was required to transfer the title of common area to the association of allottees and hand over the necessary documents, sanction plans, permissions, licenses etc. relating to project to association to allottees, which in the instant case promoter failed to do. Respondent argued that as the project is out of the preview of RERA and also the complainant has purchased the flat from the first allottee and not a allottees of promoter, K-RERA has no jurisdiction to decide the case. K-RERA ordered that even if a project is not required to get itself registered, compliance as incubated under the act must followed. On the second argument of complainant for being ineligible to complain, K-RERA states that in case promoter failed to perform his part of the duties **“any aggrieved person”** may file a complaint which shall include subsequent allottee also.

Bengaluru: Owners must pay Rs 134 per metric tonne to dispose-off construction debris

Bruhat Bengaluru Mahanagara Palike (BBMP) issued notification to Construction and demolition (C&D) waste generators to pay service charge Rs 134 per metric tonne to dispose-off the debris.

All the C&D waste generators in the city are directed to incorporate suitable clauses relating to quantity, collection, storage, segregation, transportation and destination for disposal of waste in their tender and contractual documents relating to ongoing as well as upcoming works.

Non-compliance will invite penal action under the Environment Protection Act, 1986 and Karnataka Municipal Corporation Act, 1976.

According to notification 35% of solid waste being thrown into drains, lakes and empty lands is C&D debris. Bangalore Metro Rail Corporation Limited (BMRCL) and Bangalore Water Supply and Sewerage Board (BWSSB) are the largest generators of C&D waste, with close to 2,000-3,000kg of waste per day.

The said rules are applicable to all private and government C&D waste generators, including residential, commercial, industrial, defence establishments, railways, airport and service providers such as BMRCL, NHAI, CPWD, BWSSB, Bescom, BDA, BBMP, PWD and their subordinate organisations.

[Source : Economic Times]

Karnataka government coming up with new changes to support realty sector CNA Narayan, Deputy CM

The real estate sector has been facing a lot of hurdles of late in terms of delayed approvals, delay in facilitation that is creating a lot of inconvenience. To help the developers overcome

such challenges, Karnataka government will extend its complete support required by the real estate sector.

To avoid these challenges, the state government is coming up with new changes to make sure that Karnataka is the best place to do business.

CREDAI Karn-ataka appealed to the government that they must look at abolishing all NOCs for plan sanction, withdraw extra 5% relinquishment for layout sanction by STRR & other LPAs, incorporate Fire NOC and environmental requirements in building bye-laws, discontinue provisional sanction and final sanction for layouts and cut down time loss due to duplication of processes during development plan and building plan sanction.

CREDAI also requested the government to allow substantial concession on plan sanction fees etc. for affordable housing and introduce uniform fee for Khata across the state.

To support the sector, it is important to look at relaxing the rules which will help in the growth of the industry. The government will look into improving the business model which can help in the growth of the sector.

[Source- Economic Times]

Bengaluru: HC rejects

Bruhat Bengaluru Mahanagara Palike (BBMP) report on 980 illegal buildings in Bengaluru.

The chief Justice of division bench of Bengaluru High Court declined to accept a report submitted by the civic agency suggest to BBMP that they must undertake a fresh and systematic survey of unauthorised buildings/constructions in the city.

The BBMP

indicated that it had identified 980 illegal buildings across eight zones in the city.

In the fresh survey to be conducted in a phased manner, BBMP will have to ascertain the approximate years of illegal construction and include buildings which are built without obtaining permission and those that deviated after obtaining approval.

[Source: Economic Times]



TELANGANA RERA

Telangana government will soon be coming out with a layout and building regularisation scheme in gram panchayats

Teams have been formed to study the number of existing illegal layouts and see whether facilities such as internal roads, drainage, streetlights and other amenities have been provided in the layouts and the revenue that can be generated through the regularisation scheme. Land and building regularisation schemes are important as a large

number of people have purchased plots and also constructed houses in layouts assuming they were approved layouts. However, they later found out that they were unauthorised layouts.

[Source: Economics Times]

TAMIL NADU RERA

Tamil Nadu Real Estate Regulatory Authority asks builder to refund booking amount with penalty

Developers failing to transfer the benefits of GST reduction to homebuyers may end up compensating them with penalty in case the homebuyer withdraws from the project.

In a recent order that acts as deterrent for developers, the Tamil Nadu Real Estate Regulatory Authority (TNRERA) directed a promoter to refund the booking amount with fine, after the latter refused to reduce the GST rate from 12% to 5%.

The case relates to a complaint filed by Rajesh over booking a villa developed by Alliance Villa Pvt. Ltd at Thaiyur on Old Mahabalipuram Road (OMR) on the outskirts of the city.

The homebuyer entered an agreement with the developer for land and construction of a row villa in a project named 'Alliance Humming Gardens' by paying Rs 4.18 lakh of the total villa price estimated as Rs 55.67 lakh. While the agreement was entered with a GST rate of 12% at the time, the Centre revised the GST rate from 12% to 5%, two months later.

The complainant submitted to the realty regulator that the developer insisted he pay GST at old rates against the government notification, committing a breach of trust. Following this, the homebuyer withdrew from the project.

As the developer did not refund the amount paid for booking the villa, the homebuyer filed a complaint with the

TNRERA.

G Saravanan, adjudicating officer of TNRERA, said that for the ongoing projects, the promoter has an option to pay GST at old rates (12%), avail permissible input tax credit and pass on the benefit of the availed credit to homebuyers. When the homebuyer questioned the developer, the latter stated that the 12% GST was compulsory, the order added.

As per Section 19(1) of the RERA Act, the allottee has a right to all information regarding the villa intended to be purchased by him.

Taking all this into consideration, the adjudicating officer said the complainant was entitled for refund of entire said the complainant was entitled for refund of entire amount paid with an interest rate of 10.15%, besides Rs 25,000 and Rs 15,000 as compensation and for legal expenses.

[Source: TOI]

KERALA RERA

Despite the long – cherished but much – delayed notification and constitution of the organizational set up for ensuring transparency and protection of consumers interest, the functioning of Real Estate Regulatory Authority – Kerala RERA (RERA – K), coming into place early in October, is getting delayed for want of proper infrastructure and IT support.

As a result, no real estate firm in Kerala has been able to register their names with the authority and no project yet has been announced with the RERA – registered tag in the state.

After the unprecedented ramification of the Maradu apartment fiasco that would witness the razing down of five apartment complexes soon based on a Supreme Court verdict, the home seekers and the public in general has been much sceptical in investing in the real estate sector, the apartment projects in particular.

And a silver lining in the real estate sector, the establishment of RERA and its prior approval would boost the confidence of the home seekers and would act as a guarantee for money. The sharp and stringent provisions envisaged in RERA give the much – needed protection for the consumers who invest in projects of realty firms.

[Source: UNI India]

ODISHA RERA

L&T Technology to build 150 houses for people affected by cyclone Fani

L&T Technology (LTTS) will build 150 disaster-resilient houses for people affected by cyclone Fani in Odisha's Puri district and will also provide skill development training to them. They will decide to construct dwelling units under project Neelachala.

As a part of the said project, LTTS will also provide skill development programmes for residents in various construction activities. The training provided by LTTS will ensure the affected people have an additional means of livelihood in the longer run.

The people of Odisha have shown immense strength and resilience in recovering from the after-effects of cyclone Fani. This initiative undertaken by L&T Technology Services is a welcome step since rebounding from such a massive natural calamity requires contribution from all including the business community.

[Source: Economic Times]

Approval mandatory for properties built on over 500 sq metres in Odisha villages

People constructing big buildings in rural areas of Odisha will now have to seek approval from competent authority.

A gazette notification has been issued in this regard to regulate construction of multi-storeyed buildings, apartments, group housing projects, commercial buildings in rural areas.

The notification makes building plan approval mandatory for those areas, which do not come under the ambit of development authorities, regional improvement trusts or special planning authorities.

Permission from panchayat samiti is required for construction of houses and commercial establishments in a built-up area exceeding 500 square metres or any G+2 building in rural areas of Odisha. [Source: Economic Times]

CORPORATE LAWS & OTHER COMMERCIAL POLICIES

Disqualified Directors u/s 164(2)(a)

It has been informed to the public at large that the various Registrar of Companies has initiated the process of identification and flagging of Disqualified Directors u/s 164(2)(a) of the Companies Act, 2013 for their default of non-filing of Annual Return & Financial Statement for a continuous period of 3 years i.e. 2015-16, 2016-17 & 2017-18. The DIN's of such directors are not allowed to be used for filing any e-forms on the MCA21 portal. The Disqualified Directors under section 164(2) shall be for the next 5 years up to the year 2023. [Source- MCA]

MCA has issued notifications for reclassifying the J& K and Ladakh as Union Territories.

Accordingly the jurisdiction of Regional Director, New Delhi, Registrar of Companies-cum-Official Liquidator, Jammu for Jurisdiction of Adjudication of Penalties and Registrar of Companies, Jammu the Registrar of Companies shall have jurisdiction in respect of Union territory of Jammu and Kashmir and Union territory of Ladakh, for the purpose of registration of companies and discharging the functions under the aforesaid Act. All these notifications shall come into force with effect from 31st October, 2019. [Source- MCA]

MSME

Small businesses' new weapon against big firms: IBC gives MSMEs this power to collect dues

To help MSMEs tide over their problem of delayed payments by large businesses, the Insolvency and Bankruptcy Board of India (IBBI) has now made it compulsory for the buyers of MSME products to confirm the pending invoices from their operational creditors based on the queries received by information utility (IU) companies.

[Source : Financial Express]

MISCELLANEOUS

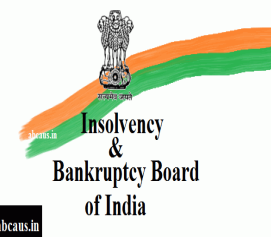
Government suggests nine hour working day in draft labour code

The labour ministry has suggested nine-hour regular working day in its draft wage code as against eight hours now but stayed away from

fixing a national minimum wage, which may draw wrath from trade unions.

"The number of hours which shall constitute a normal working day... shall be of nine hours," said the draft rules, floated for public opinion.

Like the Labour Code on Wages, the draft rule has left a decision on minimum wage to an expert committee. [Source- Economic Times]



NCLT directs to initiate insolvency proceedings against AVP Buildtech

The National Company Law Tribunal (NCLT) has directed to initiate insolvency proceedings against Delhi-based real estate firm AVP Buildtech Ltd by admitting a plea of a flat buyer claiming refund.

A two-member NCLT bench has appointed an interim resolution professional (IRP) to run the affairs of the company and also declared moratorium, prohibiting the lenders from recovering any amount during this period.

[Source- Economics Times]

Niti Aayog asks India Inc to assess CSR impact

Niti Aayog Vice Chairman Rajiv Kumar urged India Inc to assess and review the impact of their CSR initiatives.

"India has excellent examples of CSR. Going forward, the corporate CSR should focus more on two additional areas like nutrition and innovation as a part of their CSR mandate".

[Source- Economic Times]

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