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NEWSLETTER

INDIRECT TAX NEWS

NOW PAY CONVENIENCE CHARGES, GST ON INCOME TAX PAYMENTS IF YOU CHOOSE THIS PAYMENT MODE

Next time if you pay your income tax via the new income tax portal website, then be aware that you will be liable to pay for convenience charges and Goods and Services Tax (GST) for using certain payment methods. For example, you can get charged Rs 300 for paying income tax of Rs 30,000 using some of the payment modes.

The convenience charges and GST will be applicable if income tax is paid using the 'payment gateway' on the e-filing income tax website. If you pay using 'Payment Gateway' -which is one of the five payment options as shown below then transaction charges will be applicable for certain modes of payment.

To explain how much extra you will be paying on the income tax, here is an example. Suppose you have to pay income tax of Rs 30,000 and you opt to pay it using credit card. A convenience fee of 0.85% will be levied on Rs 30,000. The amount will be Rs 255. The GST will be applicable to convenience fee (Rs 255) as well, i.e., Rs 45.9. Thus, an individual paying income tax via credit card will end up paying Rs 30,000+ Rs 255+ Rs 45.9 = 30,300.9, almost Rs 301 extra.The charges will increase in proportion to the increase in income tax paid using the credit card. However, a flat charge will be applicable on the payment gateway method if income tax is paid using the Net banking option along with GST.

BENAMI PROPERTY DEALS: APEX COURT RULES AGAINST RAKING UP OLD CASES

Several stakeholders in the real estate industry and individuals facing retrospective proceedings for alleged benami transactions were anxiously awaiting the Supreme Court's recent verdict in Union of India vs Ganpati Dealcom Pvt Ltd. The apex court in the Ganpati Dealcom case was posed with the question whether the Prohibition of Benami Property Transactions Act, 1988, as amended by the Benami Transactions (Prohibition) Amendment Act, 2016, has a retrospective or prospective application.

In 2016, the Benami Transactions (Prohibition) Amendment Act was enacted. It introduced detailed provisions and the mechanism relating to the attachment, adjudication, and confiscation of benami property. While defending the retrospectivity of the 2016 Act in the Ganpati Dealcom case, the Union of India argued that the 1988 Act was a valid enactment which lacked the procedure to effectuate proceedings against benami transactions. As such, it is a settled norm that a procedural law can be applied retrospectively, and the bar against retrospective application only holds for law dealing with substantive rights.

It was submitted that to rectify the defect of lack of procedure, the 2016 Act was introduced as an amendment. The Union of India contended that substantive provisions pertaining to benami transactions being a criminal offence were already in place since the enactment of the 1988 Act. The legislative intent for introducing the 2016 Act as an amendment was to ensure that no immunity was granted to individuals who engaged in benami transactions while the 1988 Act was operational.

To counter the submissions of Union of India, the respondent in the Ganpati Dealcom case argued that the 2016 Act could not be treated as retrospective in application as the aspect of retrospective applicability was never dealt with expressly. Further, it was pointed out that the 2016 Act carved out distinct penalties for benami transactions made after the enactment of the 2016 Act. The respondent relied on the decision of the apex court in the Commissioner of Income Tax (Central)-I, New Delhi vs Vatika Township Pvt Ltd case to argue that any enactment which substantially affected the rights of people could not be applied retrospectively. Therefore, as per the respondent in the Ganpati Dealcom case, the 2016 Act could only have prospective application.

Taking the arguments for both sides into consideration, the apex court opined that since certain provisions of the 1988 Act pertaining to criminalisation of benami transactions (Sections 3 and 5) were held to be unconstitutional, the 2016 Act could only have created new provisions and new offences. Therefore, there was no question of retroactive application. It was held that the 1988 Act was "stillborn". By amending a stillborn law and giving it a wider scope, the legislature could not have infused new life into the dead provisions. Therefore, as far as the provisions under the 2016 Act are concerned, they would only have prospective application. The apex court held that the continued presence of an unconstitutional law or the claim that such a law was not challenged did not change the fact that the law was unconstitutional.
As a consequence, all proceedings initiated under the 2016 Act for alleged benami transactions predating October 25, 2016, were quashed by the Supreme Court.

CBIC ISSUES GUIDELINES FOR CLAIMING GST TRANSITIONAL CREDIT

The Central Board of Indirect Taxes and Customs (CBIC) has issued a set of guidelines for businesses to claim credit for the taxes paid in the pre-GST era, which will be processed from 1 October.

An official order from CBIC said that taxpayers can file fresh forms or revised earlier forms for the GST transitional credit on the common portal. Taxpayers will be allowed to download previous copy of transitional forms.

Taxpayers are required to submit self-certified copy of forms within a week of filing the same on the portal. No revision will be allowed post filing of the forms, said the CBIC order.

Tax officers will verify the claims and will pass an order after which credit will be provided in the electronic credit ledger. This is a departure from the earlier procedure where credit used to first transition to electronic credit ledger on self-assessment and later an audit was undertaken.

Where credit was disallowed in the past in transitional form audit, then such taxpayer need not file fresh forms and they should prefer an appeal against such order, said CBIC.

Experts said that the guidelines would provide clarity to the industry regarding procedures to be followed and declarations to be provided.

t has been clarified that if any amount of credit has been disputed by the department, then same would be concluded as per the hierarchy of Judicial fora. Given that the guidelines clarify that it is the last opportunity to avail of transitional credit, the industry should be very cautious while filing and submitting the said form. It is important to note that the transitional credit will only be allowed post verification of claim by the department

DUTY ON EXPORT OF NON-BASMATI RICE TO HIT SONA MASOORI EXPORTS: MILLERS

The Union Government's decision to levy duty on the export of non-basmati rice could severely impact the export opportunity for farmers, mills and traders in South India, according to South India Rice Millers Association.

The association has felt that Sona Masoori, predominantly grown in the South, is a top favourite of the diaspora in the Gulf, Europe, Eastern countries and in North America.

"Levying a hefty duty of 20 per cent on export of non-basmati rice could seriously harm the interests of the farmers, millers and traders in the southern States,"said South India Rice Millers Association Tudi Devender Reddy. He said the move could cause a loss of ₹600 on a quintal of rice that was priced at ₹3,000.

"As a result of the move, the price has plummeted by 10 per cent. It is unfortunate that the decision came at a time when the commodity was ripe for sales and promised good returns for farmers and traders," he said.

The association demanded exemption for Sona Masoori on par with basmati rice to help farmers tap the opportunity in the international markets.

Rice consumers like the variety for its fineness and flavour and the rice has been a favourite staple variety for crores of people in India and abroad.

That two-thirds of the 62 lakh acres of paddy grown in Telangana is Sona Masoori shows how important the crop is for farmers. "Actually, the State and Central Governments should take measures to get a Geographical Indicator (GI) tag for this rice variety to tap the huge opportunity in the premium markets of the world," he said.

Apart from the traditional Diaspora markets, the market for Sona Masoori is growing significantly in countries like Bangladesh as the appetite for branded rice has seen an uptick there, he said.

"A hefty of levy on exports at this juncture could seriously harm our interests," he said.

FLAVOURED MILK'S A DRINK, WILL BE TAXED, SAYS AAAR RULING

Flavoured milk is not milk; it is in fact a drink that has milk as an ingredient, the Appellate Authority of Advance Ruling (AAAR) has said. Milk is outside the gamut of goods and services tax but flavoured milk attracts 12% tax.

Vadilal, the ice cream major, had approached the apex appellate authority for clarity on the matter. The company had approached the AAAR after an Authority for Advance Ruling (AAR) had said that GST should be applicable on flavoured milk.

Gujarat AAAR affirmed the AAR ruling on classification and said that flavoured milk is not milk but a beverage containing milk. The AAAR ruled that the flavoured milk is not the natural form of milk but was obtained after application of specific processes on the milk.

"Classification of products under GST requires looking into aspects like common parlance, end-use, technical specifications, constituents of the products etc. In this particular case, the authorities have given precedence to the contents of the product rather than common parlance," said an expert. Interestingly, every other milk-based product from curd to lassi, whether flavoured or not, are treated on a par under the GST framework.

Under the GST framework, both milk as well as the sweet yogurt-based drink lassi are exempted from any tax. But, while flavoured lassi continues to remain outside the GST gamut, flavoured milk attracts 12% tax. Tax experts said the product categorisation under the GST framework is only becoming complicated due to such rulings.

"Even if flavour is added to milk, under common parlance, most would still treat the product as milk and not as a beverage. This plea was not accepted by the authorities," said an expert.

DO NOT INSIST FOR GST FROM NURSING COLLEGES

Telangana High Court on Monday passed an interim direction to the State and Central governments not to insist for payment of Goods and Service Tax (GST) by nine colleges offering courses in nursing.

A bench of Chief Justice Ujjal Bhuyan and Justice C.V. Bhaskara Reddy passed this interim order, after hearing a writ petition filed by 10 colleges of nursing challenging a demand notice issued by Kaloji Narayana Rao University of Health Sciences (KNRUHS) for payment of 18% GST on the affiliation and inspection fee. The bench, passing the interim direction, said the petitioners should not be insisted for payment of GST till next date of hearing.

The direction applies to the first petitioner, Care College of Nursing, Hyderabad, while the nine other colleges of nursing were instructed to file independent petitions to secure similar relief. The first petitioner stated that the Union of India issued a notification in June of 2017 imposing 9% Central GST and 9% State GST (total of 18%) on educational services.

However, an exemption was granted to “certain specified educational services including services provided to an educational institution” by the Central government. As per the Centre’s notification, an educational institution is one “providing services by way of education as part of a curriculum for obtaining a qualification recognised by any law for time being in force.”

Thus, the Care College of Nursing squarely falls under the definition of educational institution, the petitioner’s counsel contended. Subsequently, the GST Council meeting held in January of 2018 decided that services relating to admission to or conduct of examination provided to all educational institution are exempted from GST, the counsel argued.

TODAY'S QUOTE

"It's not the load that breaks you down, it's the way you carry it."

-Lou Holtz

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