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GST FILING (BRIEF OUTLINE, PROCEDURE AND TIME LINES)

BRIEF OUTLINE

On 1st July, 2017, India experienced the onset of the biggest economic reform after 1991 with the abolition of multiple indirect taxes and introduction of a single, composite tax named Goods and Services Tax (*hereinafter referred to as "GST"*). GST is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. It is a single tax on the supply of goods and services, right from the manufacturer to the consumer. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

Keeping in mind the federal structure of India, there will be two components of GST –

- Central Goods & Services Tax (CGST) - It is levied on the **Intra State** movement of goods and services. The revenue collected under Central Goods and Services Tax is for the Central Government. However, **Input Tax Credit** on CGST is given partly to the Centre and partly to the States as it will be utilized against the payment of both CGST and IGST.
- State Goods & Services Tax (SGST) - It is levied on the **Intra State** movement of goods and services. The revenue collected under State Goods and Services Tax is for the State Government. However, **Input Tax Credit** on SGST is given partly to the Centre and partly to the States as it will be utilized against the payment of both SGST and IGST.

In addition to the above, there is an Integrated Goods & Services Tax (IGST) – It is levied on the supply of any goods and/or services in the course of inter-state trade across India. Further, IGST includes any supply of goods and/or services in the course of import into India and export of goods and/or services from India. Thus, IGST would be applicable for all inter-state transactions, import and export of goods and/or services.

A taxpayer with an aggregate turnover in a financial year up to Rs. 20 lakhs would be exempt from obtaining registration and charging GST from customers. For this purpose, aggregate turnover shall be computed on all India basis. Further, for Special Category States, like those in the North-East and the hilly States, the exemption threshold shall be Rs. 10 lakhs. All taxpayers eligible for threshold exemption will have the option of voluntarily getting registered and charging tax on supply of goods and services, with benefit of taking input tax credit (ITC) on inward supplies.

The theoretical part of GST has been discussed widely and extensively by all experts over the past few months, but the actual confusion arises when a person needs to file the returns under the new GST regime. No supplier, manufacturer, trader, service provider could be sure of the process of filing of returns as per the GST rules. Following is an attempt to simplify the process of filing of GST returns:

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**DETAILS OF FORMS**

Please find below the details of different forms that are to be filed for returns –

Types of Returns	Due Date
<p><u>GSTR-1</u> return shall include details of the outward supplies or sales of goods and/or services by the taxpayer. This return form would capture the following information:</p> <ul style="list-style-type: none"> ➤ Basic details like business name along with GSTIN, period for which the return is being filed etc. ➤ Details of invoices issued in the previous month and the corresponding taxes to be paid. ➤ Details of advances received against a supply which has to be made in future. ➤ Details of revision in relation to outward sales invoices pertaining to previous tax periods. <p>The liability to file the return under this form shall lie with the <i>Registered Taxable Supplier</i>.</p>	10 th of the next month
<p><u>GSTR-2</u> return shall include details of the inward supplies or purchases of goods and/or services by the taxpayer.</p> <ul style="list-style-type: none"> ➤ GSTR-2 is prefilled for a buyer based on the GSTR-1 filed by his supplier. You just have to validate this prefilled information and make modifications if required. ➤ For example, if you are buying goods from company B, then the company B would have filed its GSTR-1 and included your name as the buyer. ➤ Now the same information will be reflected in your GSTR-2 as purchases which you need to validate. ➤ GSTR-2 will thus include the details of auto-populated purchases. <p>The liability to file the return under this form shall lie with the <i>Registered Taxable Recipient</i>.</p>	15 th of the next month
<p><u>GSTR-3</u> return shall include the following details:</p> <ul style="list-style-type: none"> ➤ Information about Input Tax Credit ledger, Cash ledger, and Liability ledger ➤ Details of payment of tax under various tax heads of CGST, SGST, and IGST ➤ Taxpayer will have the option of claiming a refund of excess payment or to carry forward the credit. <p>The liability to file the return under this form shall lie with the <i>Registered Taxable Person</i>.</p>	20 th of the next month
<p><u>GSTR-4</u> is a Quarterly return for compounding taxable person which is to be filed by the <i>Composition Supplier</i>.</p>	18 th of the month succeeding quarter
<p><u>GSTR-5</u> is a return for the Non-Resident foreign taxable person which is to be filed by the <i>Non-Resident Taxable Person</i> himself.</p>	20 th of the next month
<p><u>GSTR-6</u> is a return for Input Service Distributor the liability of filing the same lies with the <i>Input Service Distributor</i>.</p>	13 th of the next month
<p><u>GSTR-8</u> contains the details of supplies affected through e-commerce operator and the amount of tax collected which is to be filed by the <i>E-commerce Operator/Tax Collector</i>.</p>	10 th of the next month
<p><u>GSTR-9</u> is the form through which the Annual Return is to be filed by the <i>Registered Taxable Person</i>.</p>	31 st December of next financial year



IMPOSITION OF MINIMUM PENALTY NOT MANDATORY IN COMPOUNDING OF OFFENCES

Ministry of Corporate Affairs (“MCA”), on 1st June, 2016, notified Section 441 of the Companies Act, 2013 (“Act”) related to compounding of certain offences under the Act. Further, MCA constituted National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”) on 1st June, 2016 to handle the corporate civil matters under the Act and for vesting it with various powers including *Compounding of Certain Offences* under Section 441 of the Act.

Compounding is not defined under the Act, however, in accordance with Black’s Law Dictionary, to “Compound” means “to settle a matter by a money payment, in lieu of other liability”.

CASE SUMMARY

- UW International Training & Education Centre for Health Private Limited, the petitioner company filed a suo-motu application to Delhi NCLT with respect to delay in issue of share certificate to the subscribers of the Company, resulting in non-compliance of the time prescribed under Section 56(4)(a) of the Act i.e. two months.
- The penalty for the aforementioned non-compliance is provided under Section 56(6) of the Act as a fine which shall not be less than twenty- five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine not less than ten thousand rupees but which may extend to one lakh rupees.
- The contention of the petitioner in this case was that the said delay was beyond their control and not on account of any malafide intentions. However, the amount of penalty imposed by NCLT was lesser than that as prescribed under Section 56(6) mentioned above.

ISSUES RAISED

The main issues raised in front of NCLT were:

- Whether NCLT can levy a higher or lower penalty in compounding cases than the penalties as prescribed under the Act?
- What are the guiding principles for imposing penalty in compounding cases?

OBSERVATIONS/CONCLUSION

- NCLT in its order in respect of the application of UW International Training & Education Centre for Health Private Limited held that the sentencing or penalty provisions prescribed under the Act cannot be lowered or altered in cases of prosecution holding the defaulter guilty. **However, principle of imposing minimum fine on compounding matters is not mandatory.** NCLT noted that compounding of offence can be accepted by a Court even by admonishing the defaulter or issuing a warning. NCLT further noted that the procedural delay of issuance of share certificates cannot be discounted and accordingly imposed a penalty of Rs. 10,000/- on company and defaulting officers as opposed to penalty prescribed under section 56(6) of the Act.
- It is pertinent to note that NCLAT in the matter of Viavi Solutions India (P.) Ltd. v. Registrar of Companies, NCT Delhi & Haryana dated 28th February, 2016 laid down that NCLT is required to notice the relevant factors while compounding any offence, such as gravity of offence, malafide intention, maximum punishment prescribed, report of Registrar of Companies (ROC), period of default, suo motu compounding or after ROC notice/imposition of the punishment.
- Thus it can be concluded that, in suo motu compounding cases, NCLT may, based on the aforementioned factors, impose a lower penalty than as prescribed under the penalty provisions of the Act.



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LEX REVISERS

- The Department of Revenue, Central Board of Direct Taxes (CBDT), *vide* notification no. 61/2017 dated 12th July, 2017, has notified Income-tax (20th Amendment), Rules, 2017 for Sections 56(2)(x) and 50CA prescribing 'fair market value' method for valuation of unquoted shares (shares in companies which are not traded on any stock exchange). The final rules state that the fair market value of unquoted equity shares will include the book value of all assets (other than jewellery, artistic works, shares, securities and immovable property) and the open market value of jewellery or artistic trust and shares/ securities, value adopted for payment of stamp duty for immovable properties, excluding any amount paid as income tax and the book value of liabilities.
Source: http://www.incometaxindia.gov.in/communications/notification/notification61_2017.pdf
- The Ministry of Commerce and Industry vide its notification G.S.R 501(E) dated 23rd May, 2017 broadened the definition of a start up for the purpose of government schemes taking into account the long gestation period in establishing start ups. Further, start ups would no longer need a letter of recommendation from an incubator or an Industry Association for either recognition or for claiming tax benefits under the Start up India program. The present notification is in supersession of the earlier notification dated 17th February, 2016.
[Source: <http://www.egazette.nic.in/WriteReadData/2017/176201.pdf>]
- MCA has notified the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 and shall come into force on the 13th July, 2017. Amendments have been carried out to provide more clarity to Rule 3(3)(e), where in any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year. Further, such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.
[Source: http://www.mca.gov.in/Ministry/pdf/CompaniesMeetingBoardPowersSecondRules_14072017.pdf]
- The Ministry of Corporate Affairs has notified a significant amendment on 29th June, 2017 regarding the time-period within which a combination is to be notified to the Competition Commission of India (CCI). Parties to a combination are now exempt from filing a notification within 30 days of the execution of the relevant trigger document (Exemption). The Exemption however, remains subject to gun-jumping provisions of the Competition Act, 2002.
- The Ministry of Corporate Affairs has vide its notification dated 5th July, 2017 exempted joint venture companies, wholly owned subsidiaries and dormant companies from appointing independent directors under Section 149 of the Companies Act, 2013.
[Source: http://www.mca.gov.in/Ministry/pdf/CompaniesApptandQualificationofDirectorsAmdtRules_06072017.pdf]
- The Lok Sabha on 27th July, 2017 passed the Companies (Amendment) Bill, 2016 which proposes to introduce 40 amendments to the Companies Act, 2013. The eye-catcher of the amendments include (i) removal of prohibition to advance loans to companies with common directors by introducing procedural restrictions and (ii) relaxations of procedural restrictions in case of private placement of securities viz. allowing more than one offer to be made at the same time, etc. It is pertinent to note that the Bill is yet to receive the Presidential assent and shall become effective once the same is granted.



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