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EDITION 8

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Gearing up for the second wave of COVID-19…

As the economy appeared to be in revival mode and operations were normalizing, the horrors of the COVID-19 pandemic have re-surfaced to hound us in the same fashion, like it did precisely a year back. However, as we all have faced this crisis before, the Government, Judiciary, Departmental authorities and we all seems to be better prepared this time to overcome the challenges of this partial lockdown.

The judiciary has well adjusted with the virtual mode of adjudication. Even the Tax authorities have been communicating and adjudicating matters in virtual mode, which has been pivotal in clearing the pending assessments and adjudication of notices. This practice is expected to continue this year as well and indeed seems to be new way of working. Although the virtual mode of life is the new normal in every sphere of life, barring few viz. the Customs trade cannot resort to virtual mode. Recently, the Evergreen Ship was stuck right in the middle of Suez Canal which disrupted the entire international trade. Luckily, the crews had been able to move the stuck ship and the seamless flow of trade internationally was resumed.

On the Customs front, the Apex Court in a landmark decision has nullified the jurisdiction of the DRI to hold investigations into Customs matters. Pursuant to the SC's decision, all matters where the Show Cause Notices had been issued by the DRI have been kept at bay until the CBIC decides the final consequence of this decision. This decision has been covered in the Sparkle Zone of this Newsletter edition with some interesting insights.

In case of erstwhile Excise law, the SC has given its view on the perpetual issue of railway parts classification. The SC has inter alia ruled to classify the parts of railways under its parent Chapter in the Tariff Act. Although the SC had earlier given a similar ruling earlier as well, in case of automotive parts, the Revenue authorities do not seem to be taking such decision in cognizance while adjudicating the classification matters. In the reference and context of erstwhile law only, it would be pertinent to note that the even today, after more than three years of introducing GST, there are umpteen number of cases wherein the cash refund of accumulated CENVAT Credit availed in the erstwhile laws are pending. In this regard, we have penned down an articulated piece which discusses the matter in detail.

As far as Income tax is concerned, recently, the Mumbai ITAT has ruled that Uber India is not 'person responsible for making payments' and therefore, not liable for TDS deduction u/s 194C. However, this decision seems to have a huge impact on the industry and therefore, is likely to be challenged before the higher judicial forums.

In the Regulatory front, the HC has recently held that interference in commercial wisdom of the CoC by NCLAT is ultra vires. This judgement has a far-reaching impact as it affirms the intent of the law that the CoC has final authority qua commercial matters.

With the expectation that the ongoing second wave of the COVID-19 is nothing but a minor impediment, we hope that the economy and businesses would be recovering and running smoothly as witnessed in recent months. We, the entire team of TIOL, in association with Taxcraft Advisors LLP, GST Legal Services LLP and VMG & Associates, are glad to present to you this comprehensive coverage on all the key tax and regulatory updates!

Happy Reading!

P.S.: This document is designed to begin with couple of articles peeking into recent tax/regulatory issues followed by stimulating perspective of leading industry professionals. It then goes on to bring to you latest key developments, judicial and legislative, from Direct tax, Indirect tax and Regulatory space. Don't forget to check out our international desk and sparkle zone for some global and local trivia.

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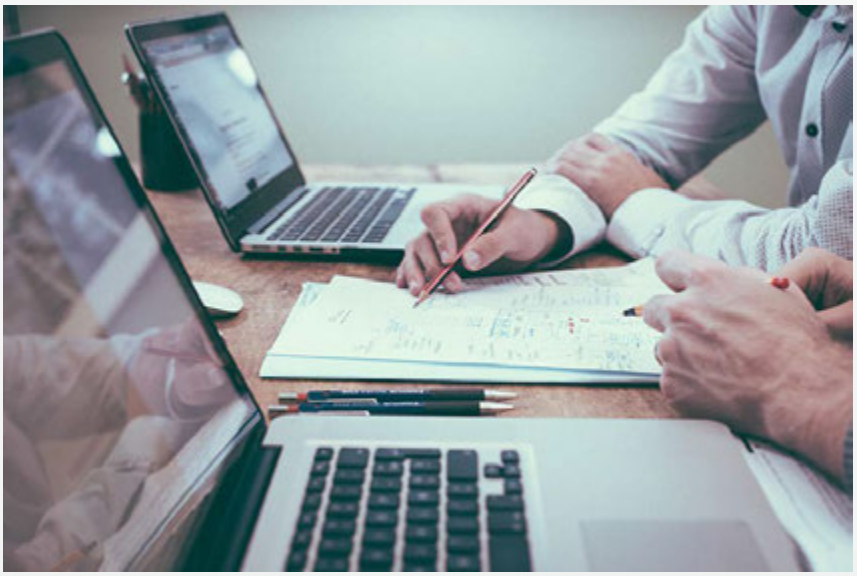
'Auditor is a watchdog and not a blood hound' - Does this assertion still hold good?

We all have read this proverb or the famous case of Kingston cotton mills co. wherein this principle was invented and judge summed up the auditor's duty by stating that auditor is a watchdog and not a blood hound.

Ever since, this perception is being practiced across globe and auditors always assumes the role of a watchdog who is appointed by shareholders of the company to exercise a reasonable care in performing his duties and to carry out independent verification of company's records. The auditor is not only obligated to carry out any fraud detection exercise. They are expected to use their judgement and professional wisdom for relying on records and information produced before them for verification. The auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.



However this conception has been questioned several times, whether it was Enron conundrum or Satyam scandal, regulator and stakeholders have raised serious questions on auditor's skills, integrity and approach. People believed that auditors in such cases showed a complete lack of initiative in controlling or reporting the illegal activities by companies and were simply doing tick in the box activity. Some even alleged that auditors were complicit with management in these companies else accounting misstatements of such volumes couldn't go unnoticed.

Interestingly, very recently the NFRA chairman also stated a different view wherein he believes that this phenomenon "Auditor is a watchdog and not blood hound" is a serious misconception and needs to be revisited with changes in regulatory framework and reporting environment.

If we consider the changes brought in by Companies Act, 2013 and CARO 2020, the responsibility casted upon auditor goes beyond the textbook definition of sample checking, only verification or obtaining reasonable assurance. Few of the examples are that now auditors are required to comment on camouflaged lending and investments, benami holding transections and accuracy of information submitted to banks. Moreover they are also required to comment or any transection which may fall in the ambit of non-banking financial company or housing finance company. On the other hand, they are expected to comment on audit trail of any changes made to transections recorded in accounting system of the company.

Considering such changes, it is really difficult to say that auditor's duty is to do only sample checking and to obtain reasonable assurance on the true and fair presentation of financial statements. These responsibilities

take it way beyond the auditor's current role and it appears that auditor really needs to wear hat of a detective to deliver upon such expectations of regulators.

If we carefully examine the practical implementation of all such additional requirements, it may be on uphill task for auditor to give comfort to stakeholders on all such aspects. The regulators really need to think optically before casting such additional duties on auditors. We really need to strike a balance between management responsibilities and auditor's duties. While auditor is responsible for maintaining professional skepticism throughout the audit and considering the potential for management override of controls, still they can't be overburdened with the duties of detection of fraud. The question still remains that whether an auditor is a watchdog or a blood hound and this shall evolve with time when we would see how auditors, regulators and corporate cope up with above changes.

Cash Refund of unutilized CENVAT Credit – A Herculean challenge

GST was introduced in 2017 with the objective of simplifying the existing tax regime, widening the tax base and eliminating the double taxation due to lack of seamless flow of credit. In order to seamlessly transition the CENVAT Credit to GST's ITC, the lawmakers had drafted the transition provisions [Sec. 139 to 142 of the CGST Act]. The law inter alia required the migrators to submit Form TRAN-1 declaring the details of CENVAT credit under the erstwhile regime, which would be available to the taxpayers in GST as well. However, on account of several difficulties, technical or otherwise, many taxpayers have not file their Transitional Returns or missed out availing a substantial part of CENVAT Credit, which has now become redundant.

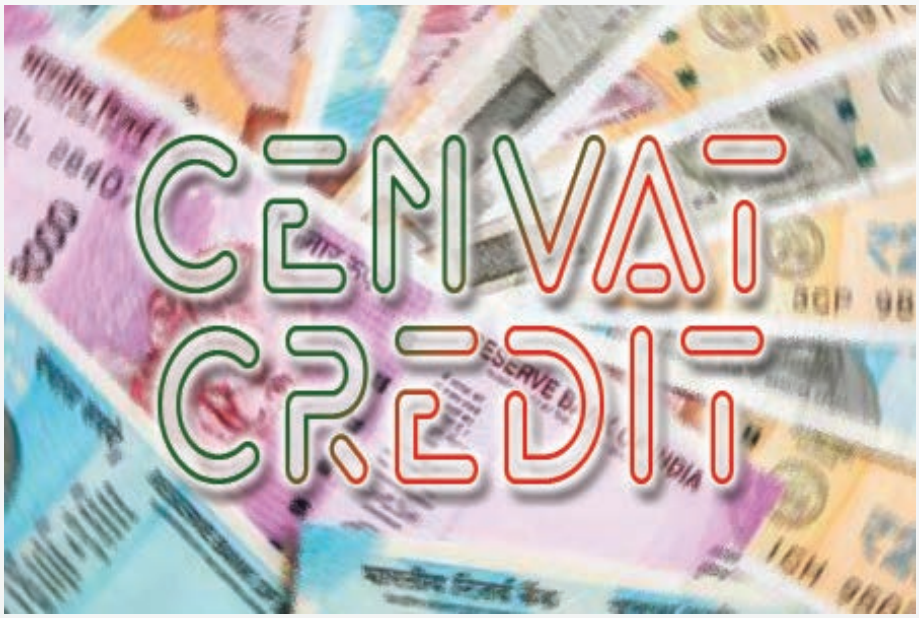
GST Provisions qua refund of tax paid under erstwhile regime

In this article, the author wishes to throw light on the existing position of law and the intent of the legislature regarding the refund of unutilized CENVAT credit. First and foremost, it would be pertinent to note the transitioning provision u/s. 142 of the CGST Act. Clause (3) of the said provision provides that in case of any claim filed under the GST regime for refund of the erstwhile credits, the same shall be disposed off in accordance with the erstwhile law, and the refund if granted, shall be paid in cash.

Similarly, Section 142(6) of the CGST Act, provides that every reference to a refund of CENVAT Credit under the erstwhile law is eligible to be refunded in terms of Section 11(B)(2) of the Excise Act. As the CGST Act provides for settlement of erstwhile refund claim in accordance with the respective provisions, Section 11B of the Excise Act would come into picture. It would be pertinent to note that clause (c) of Section 11B of the Excise Act allows the refund of duty paid on excisable goods in specified scenario such as exports. However, due to a change in the applicable law, many taxpayers wo could not carry

forward such duty paid in the pre-GST Era vide Form GST TRAN-1 are left with only two options in hand – either file for refund or write-off such tax amounts in the books of accounts.

However, where refund applications are being filed by the taxpayers as there is no other alternatives available in such cases, the Revenue authorities have been rejecting such refund claims citing that the GST does not expressly provide for refund of CENVAT credit. Such denial of CENVAT credit adversely affects various businesses as huge sums of their CENVAT credit has been stuck over the fence between the erstwhile regime and GST.



Judicial Precedents

However, recently there have been a few instances wherein the Appellate Authorities have been taking a more pragmatic view when it comes to refund of accumulated CENVAT balance which was not carried forward to GST. In the recent case of Sudarshan Chemicals Industries Limited [Order-In-Appeal No. MKK/397-398/RGD APP/2018-19 dated 21 December 2018], the Appellant had imported raw material under various advance authorizations, however, failing to fulfil the export obligation, the goods were clear by paying the applicable CVD and SAD. Subsequently, the refund application was rejected. Aggrieved, the Appellant preferred an appeal before the Commissioner (A) who allowed the refund application by stating the Appellant were eligible to avail the CENVAT Credit under the erstwhile regime and the refund application was filed in order u/s. 11B of the Act r/w Section 142(3) of the CGST Act. It was further observed that Section 174(2)(c) of the GST Act states that the repeal of the Excise Act shall not affect any right of the Appellant under the said law.

Similarly, in the case of Panasonic Energy India Limited [Order-In-Original No. DIV-V/CGST/AC/Ref-Panasonic/44/2018-19 dated 09 January 2019] the Asst. Commissioner had allowed the cash refund of Service Tax and Krishi Kalyan Cess. In this case, the Appellant had claimed refund of Service Tax and Krishi Kalyan Cess paid on ocean freight under the erstwhile Finance Act, 1994. It was observed that the Appellant was eligible to avail the CENVAT Credit of the said taxes paid under the erstwhile regime, however, the Appellant could not avail the transitional credit of the same. Accordingly, the refund application was eligible to be granted u/s. 11B of the Excise Act read with Section 142(3) of the CGST Act.

On similar lines, the Hon'ble Gujarat HC in the case of Thermax Limited vs. Union of India [2019 (31) G.S.T.L. 60] also allowed refund of duty erroneously paid in excess. In this case, such excess duty was made available to the Appellant in the form of CENVAT Credit after the introduction of GST. As the CENVAT Credit has now become redundant, the Appellant preferred a Special Civil Application before the Hon'ble HC seeking cash refund of the credit. The Hon'ble HC held that amount of duty so paid refundable to the petitioner in cash in terms of Section 142(3) of Central Goods and Services Tax Act, 2017 instead of credit in CENVAT

account, which has become redundant after advent of GST regime.

Recent developments

While some Tribunals have been out-rightly dismissing Appeals in relation to refund claims filed in terms with the CGST Act, such as Chennai CESTAT in the case of Kaleesuwari Refinery Private Limited, the Bangalore Tribunal in the case of Veer-O-Metals Private Limited has allowed the cash refund of CENVAT Credit availed u/r. 5 of the CCR, claimed u/s. 142(6) of the CGST Act. The Tribunal had held that Section 142(6) of the CGST Act, envisaged that very claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash.

It had been further observed by the Tribunal that the assessee had debited the entire amount in their CENVAT account and the said amount was debited under a bona fide belief that the cash refund would be sanctioned to it and the very fact that CENVAT credit was never disallowed, CESTAT hence, held that the CENVAT credit lying in the balance of CENVAT account was liable to be refunded in cash to the Assessee as per Section 142(3) or 142(6)(a) of the CGST Act.

IT WOULD NOT BE OUT OF PLACE TO REFER ARTICLE 265 OF OUR CONSTITUTION WHICH MANDATES THAT NO TAX BE IMPALED / COLLECTED WITHOUT THE AUTHORITY OF LAW, IT IS INCUMBENT UPON THE REVENUE TO JUSTIFY EVEN RETENTION, WHEN THERE IS BONAFIDE PAYMENT/CREDIT.

It would not be out of place to refer Article 265 of our Constitution which mandates that no tax be impaled / collected without the authority of law, it is incumbent upon the Revenue to justify even retention, when there is bonafide payment/credit. In cases of genuine excess payments, there is no allegation about unjust enrichment and it can therefore be argued that both rejection and retention become contrary to the provisions of the statute.

Authors' Note:

In light of the above provisions and judicial precedents, it can be inferred that while the authorities at lower level are reluctant to grant the same due to the narrow interpretation of the law, the Courts have been more than willing to take a more pragmatic view and granting refunds to the taxpayers. In the larger scheme of things, the Judiciary or the Board shall realize that whether specific provision or not, once the genuineness of the CENVAT Credit is not in question, the cash refund of the same shall be allowed. Disallowing of such refunds goes against the very spirit of the law and results in unwarranted litigations adding to the burden of the taxpayer who is already reeling under the after-effects of the pandemic.

Gaurav Gupta

Chief Financial Officer,
Tasty Bite Eatables Limited

Mr. Gupta shares his thoughts and perspective on key tax and regulatory issues affecting the businesses...

How do you perceive recent amendment to Input Tax Credit system ?

Earlier the provisions of Rule 36(4) restricted availability of provisional ITC in lieu of unreported invoices/Debit Note over GSTR 2A and now the Budget 2021 has amended Section 16 to allow ITC entirely based on GSTR-2A and GSTR-2B. No doubt the government is bringing the stringencies in ITC mechanism day by day and although it may cause despair to many, one may optimistically see the disciplined compliance it silently promotes.

This approach is not new, and taxpayers shouldn't be taken by surprise. On previous counts too introduction of TDS mechanism was aimed at forcing the non-compliant taxpayers to file the return and fall in line with the statutory requirement.

Over the years, business have struggled to institute disciplined compliance with vendors and other business partners and statistically a large number of such vendors and business partners, especially SMEs lacked in sufficient compliance.

These recent statutory stringencies are now an effective tool to address such lack of compliance at the hands of those who have been ensuring sufficient compliance. We must always see both sides of the coin and focus on the side that brings positive outlook. The law will keep evolving and taxpayers must adapt for better reasons. In fact, this will act as an competitive advantage for the matured organisations and the ones who consider compliance an integral part of its culture.

NEEDLESS TO SAY, INDIAN REPRESENTATIVES AT WTO CANNOT AFFORD TO BE COMPLACENT ABOUT THE SCHEME AND BE PREPARED FOR A DEBATE, SHOULD IT BE CALLED FOR, AFTER ALL A LOT, INCLUDING SURVIVAL AT STAKE FOR MANY INDIAN EXPORTERS.

What is your opinion about the introduction of RoDTEP in India?

The government seems to have rushed in announcing implementation of the scheme w.e.f. January 01, 2021. Even after three months from this date there is no clarity of statutory as well administrative framework necessary for implementing the scheme.

One may realise that export incentives form an integral part of competitive costing in international market and in absence of any clarity as to scope and quantum of this benefit it would become difficult for Indian exporters to plan the way forward, which at this point is unaffordable. Afterall loss of opportunity is an irrecoverable loss!

The government needs to have a sturdy plan and intent to implement this scheme successfully. Although basic tenets announced by the authorities appear complaint with SCM Agreement, recently USA and some other countries have questioned RoDTEP scheme and its possible

coverage for agricultural produce.

Needless to say, Indian representatives at WTO cannot afford to be complacent about the scheme and be prepared for a debate, should it be called for, after all a lot, including survival is at stake for many Indian exporters. This will go a long way in improving our exports.

How is second wave of COVID impacting business?

Although the cases of infections are rapidly increasing forcing authorities to take lockdown measures, the economic impact might not be as severe as last year. Healthy GST collections and electricity usage in the month of March as declared is very indicative of this fact.

Yet, there is no denying that many industries are still grappling to re-bounce from COVID impact last year and this second wave might just prove fatal. The vulnerability faced by economy persists and may also worsen, but for now it is a silver lining that economy has not dipped as bad as last year. Further I think that corporate as well as government are much better prepared to handle the challenges coming with the second wave.

Any comments on PLI schemes?

The scheme may come short of achieving its intent. If the authorities wish to promote India as a manufacturing hub, it must not limit the scheme only to large scale manufacturing. SME's play an important role in the Indian economy and also account for substantial revenue generation.

By leaving this segment outside the scope of PLI scheme, the policy makers have paralysed the scheme themselves. The Policy Mmakers may think of lowering the current threshold for applicability of this scheme gradually.

Any recent incidence leaving its impact on businesses?

Year 2020 will also be remembered by businesses across the globe for the skyrocketed freight costs. The numbers have risen like never before and as we speak, the freight rate per container from India to USA is about USD 5000. In certain sectors these rates have gone up by 5 to 6 times more than the usual rates.

The problem is only aggravated by the fact that despite such high rates bookings for freight aren't easily available. For many who survived on smaller margins are likely to succumb to such an unprecedented hike of freight costs. For others, margins are rapidly declining. This increase in freight cost has only increased the stress on exporters.

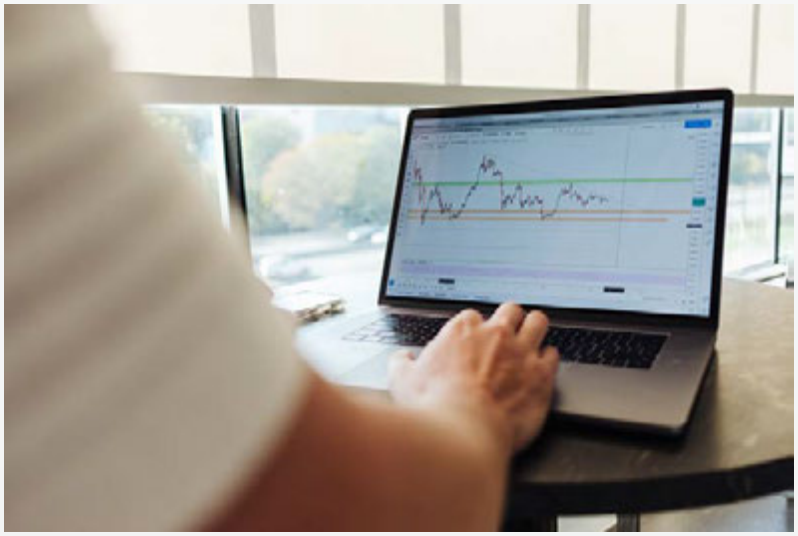
Note: The views/opinions expressed in this section are those of the Author and do not necessarily reflect the views/opinions of the organization and/or the Publishers.

ITAT holds that rejection of share-valuation on differences in projected and actual figures is not justified

Rockland Diagnostics Services Pvt. Ltd 2021-TIOL-655-ITAT-DEL

The Appellant was engaged in the business of setting up, operating and managing diagnostic centres and clinical pathology testing services. The return of income was filed declaring 'Nil' income. However, the return of income was selected for limited scrutiny to examine large share premium received by the Appellant.

The Appellant had issued equity shares to a Company at a premium of INR 33 for the purpose of running the ancillary services like in-house diagnostic center, laboratories, etc. based on DCF method of valuation.



Disregarding the method of valuation used by the Appellant, the AO made an addition of the entire share premium received by the Appellant.

The Appellant submitted a valuation report of a CA which was rejected by the AO on the ground that valuation of equity shares was based on projection of revenue which did not match with the actual revenue.

Aggrieved by the assessment of the AO, the Appellant approached the CIT(A), who upheld AO's findings.

Pursuant to above, the Appellant preferred an appeal before the Hon'ble ITAT., The Tribunal while directing the AO to reconsider the matter, held that it is a settled law that an assessee has an option to value shares under the DCF method or NAV method which cannot be substituted by the Revenue. Rejection of the valuation report merely on assumptions and presumptions cannot be upheld. It was further held that the lower authorities were not justified in rejecting the Appellant's share-valuation report under DCF method merely on the ground that the projected revenue did not match the actual revenue.

Authors' Note:

In the instant case, the lower authorities had failed to appreciate the rationale laid down by Delhi ITAT in the case of Cinestaan Entertainment P. Ltd (I.T.A. No.8113/DEL/2018) which had ruled similar matter in favour of the taxpayers. Further, various ITATs and the Hon'ble Madras HC has ruled the issue in favour of taxpayers. In this background, it can be concluded that DCF Method is an appropriate method for valuation of shares for Income Tax purpose.

Madras HC holds sale proceeds of carbon credits to be non-taxable

Ambika Cotton Mills Ltd
2021-TIOL-763-HC-MAD-IT

The Assessee was engaged in the manufacture and sale of cotton yarn and knitted fabrics. It was a member of a bundled wind power project in coordination with the state association of spinning mills and had thus, received a certain sum towards clean development mechanism. The Assessee contended that the sum received by it, represented entire carbon credit realized in coordination with aforesaid association of spinning mills and therefore considered the amount received from the sale of such credit to be a capital receipt not exigible to tax.

The AO, not convinced with the contention of the assessee, considered the amount to be revenue in nature as it had risen from emission reduction in market, which is liable to be considered in the nature of goods having all attributes thereof and therefore, was exigible to tax.

Aggrieved, the assessee approached the CIT(A), who upheld the findings of the AO. Thereafter, the Assessee approached the ITAT, who held that the proceeds realized by the assessee on sale of carbon credit earned on the clean development mechanism in its wind energy operations, is a capital receipt and is not taxable.

Consequent to above decision, the Revenue approached the HC, who, affirming the findings of the ITAT and referring to a judgment of the AP HC in the case of My Home Power Ltd **[2014-TIOL-978-HC-AP-IT]**, held that carbon credit is not derivative of business but of environmental concerns. It was further held that it is not even directly linked with power generation and so the proceeds received by sale of carbon credits, cannot be business receipt or income and has correctly been held by the Tribunal as a capital receipt.

Authors' Note:

Hon'ble Madras HC had upheld the order of ITAT holding that proceeds received on account of sale of carbon credits is not a 'business income'. The HC dismissed the appeal of revenue citing that there is no substantial question of law.

Previously, Karnataka HC and Andhra Pradesh HC have decided the instant issue in favour of taxpayers. As opposed to the above, Gujarat HC in the case of Kalpataru Power Transmission, has held that transfer of carbon credits is a taxable income.

It is pertinent to note that the Hon'ble SC has admitted Revenue's SLP against the decision of Andhra Pradesh HC in the case of My Home Power Ltd **[2014-TIOL-978-HC-AP-IT]**, which is pending for adjudication.

ITAT holds remittances from abroad used for investment in India to be not liable to tax

Iqbal Ismail Virani
2021-TIOL-660-ITAT-PANAJI

The Appellant, a non-resident Indian who is a resident of USA, had purchased two properties in Mumbai and filed his return of income. The AO called upon the assessee to explain the source of income for his investment in the two properties. The Appellant submitted that the investment was made through the proceeds of sale of gold in Dubai and his Fixed Deposits in Dubai.

Not convinced with the submission of the Appellant, the AO made additions and passed the assessment order holding the appellant liable to tax in India.

Aggrieved by the assessment order, the Appellant approached the CIT(A), who confirmed the order of the AO. Thereafter, the Appellant preferred an appeal before the ITAT, who held that that once the source of money for acquisition of property has been established as remittance from abroad from the Assessee himself, it is beyond the scope of jurisdiction of the AO to go into the source of income earned outside taxable territories of India and deleted the additions made. The money brought in India by Non-Resident for investment or for other purpose is not liable to tax.

ITAT holds Uber India not to be a 'person responsible for making payments'; thus, not liable for TDS deduction u/s 194C

Uber India Systems Private Limited
2021-TIOL-489-ITAT-MUM

The Appellant company, Uber India Systems Private Limited, is a subsidiary of a Dutch company viz. Uber BV which provides lead generation services to the users of an app. The Appellant provides support services to the Dutch Company. Initially, the Dutch company used to collect and disburse the payments to users of its app in India through a bank account in Netherlands. However, in light of RBI Circular requiring all payments to be collected and disbursed through a bank account maintained and operated in India, the Appellant was compelled to provide collection and payment services to Uber BV through an Indian bank account.

The Dutch Company therefore entered into an agreement with the Appellant under which the Appellant agreed to act as a payment and collection service facilitator for the Dutch company for a fixed monthly consideration.

During the assessment proceedings, the AO held the Dutch company to be a transportation service provider and the payments made by it to its driver-partners liable to TDS in India. Since the Appellant collected the payments and remitted the same, it was treated as the 'person responsible for making payments', liable to deduct TDS u/s 194C. Accordingly, the AO found the Appellant to be in default of non-deduction of TDS.

Aggrieved the Appellant approached the CIT(A), who affirmed the order of the AO.

The Appellant filed an appeal before the ITAT which held that the Appellant cannot be held as 'person responsible for making payments', as its role is limited to being a payment and collection service provider to the Dutch company. The Appellant collects the ride fare in its bank account on behalf of the Dutch company and makes payments thereafter on the instruction of the Dutch Company. Neither the Dutch Company, nor the Appellant provide any transportation services. Therefore, the question of deducting TDS u/s 194C does not arise

Authors' Note:

The instant decision by the Mumbai ITAT is based on the specific facts and referring to the agreement between Uber BV and Driver-Partner.

The ITAT has held that Uber BV provides only lead generation services to Driver-Partner. Noteably, transportation agreement is between Driver-Partner and the customers. Further, Uber India is just a service provider which provides cash collection and payment services and therefore, is not required to deduct TDS while making payment to its Driver-Partners.

SC dismisses SLP filed against HC's order classifying interest on enhanced compensation as IFOS

Mahender Pal Narang
2021-TIOL-147-SC-IT

The Assessee's land was acquired for which he had received compensation. The Assessee filed its return of income of AY 2016-17 treating the interest received on the compensation as income from other sources and claimed deduction for 50% as per Section 57(iv). Subsequently, an application u/s. 264 of the IT Act was made in relation to taxability of impugned transaction wherein the Assessee claimed that the interest income as part of enhanced compensation and claimed the interest received therefore to be exempt from tax.

The CIT dismissed the revision application. Aggrieved, the Assessee approached the HC who held the interest on enhanced compensation was to be treated as income from other sources and not capital gains.

Aggrieved, the Assessee had approached the SC which dismissed the petition.

Authors' Note:

The Assessee had filed revision on the basis of SC decision in case of Ghanshyam (HUF) wherein, it was held that interest on enhanced compensation is 'deemed income' and should be taxed as 'capital gain'.

It is pertinent to note that the ambiguity in law in relation to taxability of interest on enhanced compensation on land acquisitions has been dealt by the CBDT circular, wherein it is clarified that interest on enhanced compensation is taxable in the year of receipt and not on accrual unlike capital gains. Therefore, the same is in nature of interest and not akin to compensation. Said circular also highlights the provisions of Section 56(2)(viii) and Section 56(iv) of the IT Act

HC holds that TDS proceedings follow determination of chargeability

BT (India) Private Limited
2021-TII-17-HC-DEL-INTL

The Revenue had initiated TDS proceedings u/s. 201(1)/(1A) against the Assessee. Against which, the Assessee had preferred a Writ Petition before the Hon'ble Delhi HC. The Assessee cited the fact that as the Application is pending with AAR and the TDS proceedings should not be initiated before determining chargeability to tax.

The Hon'ble HC retorted by stating that if the statutory authority exercises its powers without determining whether or not it has jurisdiction in the matter, that itself, may in certain cases, call for interference. Observing that the issue of chargeability ought to have been decided at the very threshold by the Revenue, the HC held that proceedings for TDS cannot be initiated without determining the jurisdictional issue as to whether the remittances made were chargeable to tax and directed the Revenue to first pass a speaking order on whether the remittances in issue are chargeable to tax after giving opportunity of personal hearing to the assessee.

The HC also held that if the order so passed by the Revenue is adverse to the interests of the assessee, the same shall not be given effect to for four weeks, commencing from the date the said order is served.

ITAT holds that beneficial treaty provision shall prevail over domestic provision; Allows 10% TDS on remittance to Czech Republic despite absence of PAN

Jyoti Limited
2021-TII-56-ITAT-AHM-INTL

The Assessee was a manufacturer and seller of equipment particularly connected with hydraulic, irrigation, power and heavy engineering industries. During the course of the assessment proceedings, it was found that the Assessee has deducted tax at source on foreign remittance @ 10% to a non-resident Czech company who had not furnished PAN to the Assessee.

The AO issued a SCN to the Assessee requiring him to show cause as to why tax had not been deducted @20% while making payment to the said party. The Assessee submitted that the TDS as per the DTAA was @10%. The AO was of the view that in the absence of PAN, TDS was to be deducted at 20% u/s 206AA of the IT Act and proceeded to make additions which was upheld by the CIT(A).

The Assessee, thus approached the ITAT who held that as per a CBDT circular, recommendations of the Justice Easwar Committee, section 90(2) and observation of the SC, specific treaty provisions would prevail over general provisions of the Act to the extent that they are beneficial to the Assessee.

In light of the above, the ITAT held that TDS was rightly deducted applying the tax rate prescribed under the DTAA which was more beneficial to the Assessee.

Appellant's OP/VAE over TPO's OP/TC accepted by ITAT as PLI for benchmarking freight-receipts and expenses

Agility Logistics Private Limited
2021-TII-121-ITAT-MUM-TP

The Appellant is a logistics service provider providing freight handling services that had filed its return of income for AY 2013-14 which was selected for scrutiny assessment. The AO observing that the Appellant had entered into international transactions, referred the case to the TPO. The Appellant had used TNMM to arrive at ALP adopting PLI of OP/VAE (Value Added Expenses).

The TPO directed the Appellant to provide a single year margin of the comparable companies that were selected in the preceding AY for determining arm length's price and compute the margins of the comparables selected using OP/TC as the PLI with respect to its international transactions of provision of freight handling services.

The Appellant complied with the direction of the TPO and claimed both its transactions to be at ALP. The TPO believing it not to be at ALP made an adjustment. Basis the TP order, the AO passed a draft assessment order.
Aggrieved, by the draft assessment order the Appellant approached the DRP which upheld the adjustment made by the TPO. As per the directions received from DRP, the assessment order was passed by the AO.

Aggrieved by the final assessment order of the AO the Appellant approached the ITAT who accepted the Appellant's contention of considering PLI of OP/VAE over TPO/DRP's PLI of OP/TC for benchmarking international transactions provision of freight handling services.

The ITAT held that the costs pertaining to the services obtained by the Appellant from third parties viz. shippers/airliners, clearing and forwarding agents, transport service provider etc. neither involved any service element by the Appellant, nor the Appellant had carried any risk or employed any of its assets with respect to the same. Thus, inclusion of the freight cost in the total cost base of the Appellant by the TPO is unjust.

Thus, ITAT remanded the matter back to TPO for re-working of the adjustment if any.

Authors' Note:

PLI, also called as Berry Ratio, measures Operating Profit to Value Added Expenses. This PLI appropriately deals with challenges faced by the taxpayers providing intermediary activities wherein pass-through costs of third-party services are excluded from the cost base. Internationally, it is well accepted principle accredited by transfer pricing guidelines of the OECD, UN as well as USA.

In the current fact pattern, ITAT has correctly ruled in favour of the Assessee guiding TPO for reworking based on PLI applied by the Assessee viz. OP/VAE.

ITAT remands Revenue's re-characterisation of the Assessee directing proper verification of documentary evidence submitted

Pangea3 Legal Database Systems Private Limited
2021-TII-76-ITAT-MUM-TP

The Appellant, an STPI unit engaged in providing various IT enabled services to its overseas AEs had benchmarked the international transactions with AEs by applying TNMM as the MAM and selected comparables which were low end ITeS service provider.

However, the TPO did not accept the comparables selected by the Appellant. By re-characterizing the Appellant as high-end ITES/KPO service provider, he selected comparables in KPO category. In order to recharacterize the nature of business, the TPO referred to an order passed by the CESTAT in Appellant's own case.

Considering own comparable from KPO industry, TPO passed its order. Basis the TP order, the AO passed a draft assessment order. Aggrieved, by the draft assessment order, the Appellant approached the DRP which upheld the adjustment made by the TPO. However, learned DRP concluded that the Appellant had been providing high-end ITeS/KPO services.

Aggrieved, the Appellant approached the ITAT which noticed that voluminous documentary evidences had been submitted by the Appellant before the TPO and learned DRP to demonstrate the nature of work/service performed and these documentary evidences had NOT been properly looked into by the Revenue authorities.

Therefore, the ITAT remanded the issue to the AO for considering Appellant's claim that it is a low end ITeS service provider and not a KPO service provider and directed the AO to verify all the documentary evidences furnished by the Appellant to demonstrate the exact nature of services provided to the AE.

ITAT remands matter to TPO outlining his jurisdiction to determination of ALP and not commercial expediency or benefit

Huawei Telecommunications (India) Company Pvt Ltd
2021-TII-84-ITAT-DEL-TP

The Appellant is a telecom service provider into the business of distribution of telecom equipment and provision of technical services, such as, installation, commissioning, integration and other services related to its customers in India and also provides business support services to its AEs abroad.

The Appellant had entered into international transactions qua availing of technical services and availing of project management services and had applied CUP as the MAM for the determination of ALP. The TPO initially sought to apply CUP method but later applied benefit/commercial expediency test and determined NIL ALP for these transactions on the premise that no independent entity would pay for such services without any cost benefit analysis, requiring the Appellant to furnish the same.

Aggrieved, the Appellant approached the DRP contending that the TPO initially proposed to apply CUP but abruptly applied benefit/commercial expediency test. The DRP upheld the application of benefit/commercial expediency test by the TPO without considering the evidence brought on by the Appellant and giving the Appellant a fair hearing.

Aggrieved, the Appellant approached the ITAT, who held that the application of benefit/commercial expediency test by the TPO to determine the benchmarking of technical services and project management services was beyond the jurisdiction of the TPO which was limited to only determining the ALP of transactions with the standpoint of a businessman and not by sitting on the chair of the businessman.

Therefore, remanding the matter back to the TPO, ITAT directed the TPO to consider the evidence advanced by the Appellant and re-determine ALP.

ITAT remits benchmarking of interest on outstanding AE receivables using LIBOR

ISG Novasoft Technologies Ltd
2021-TII-109-ITAT-BANG-TP

The assessee, an IT Support and IT enabled services provider who had filed its return had entered into an international transaction with its AE, wherein the assessee provided IT enabled services. This caused the AO to make a reference to the TPO, who passed an order making adjustment with respect to IT enabled services provided and also in respect of notional interest on outstanding receivables.

The AO, thereafter passed the draft order confirming the findings of the TPO. The assessee approached the DRP, who rejected the comparable selected by the assessee. The TPO had treated the outstanding receivables from the AE as advancement of loan and computed the arm's length interest adopting 6-month LIBOR plus 400 basis points. The DRP directed the TPO to adopt prevailing Short-term Deposit interest rate of SBI as arm's length interest rate. Accordingly, the TPO has adopted the SBI interest rate and TP adjustment has been enhanced.

Aggrieved, the Assessee approached the ITAT, who relying on various judgments on similar matters, remitted the issue to the TPO directing it make TP adjustment only after conducting a proper TP study and to use LIBOR for benchmarking of interest.

ITAT holds AE receivables delayed beyond credit period resulting in indirect funding to AE and thus, a separate international transaction

Doosan Power Systems India Pvt Ltd
2021-TII-122-ITAT-MAD-TP

The Assessee is a STP unit, engaged in the business of providing engineering design and related services to its overseas group companies. During the course of assessment proceedings, a reference was made to TPO to determine ALP of international transactions with its AEs. Subsequently, the TPO made upward adjustment to the EDS segment and a sum as interest on AE receivables. The AO also proposed certain additions and passed the draft assessment order.

Aggrieved, the assessee approached the DRP, who upheld the adjustments causing the AO to pass final assessment order. Aggrieved by the final assessment order, the assessee approached the ITAT contending that the AE receivables is not a separate international transaction by itself and therefore the AO / DRP erred on facts and in law in making an adjustment with respect to such transaction.

Finding no error in the findings of the AO/DRP, the ITAT held the AE receivables being delayed beyond credit period resulted in indirect funding to AE and therefore were a separate international transaction.

Authors' Note:

With the series of favourable rulings from various ITATs refraining TPOs to perform the negative Working Capital adjustment, this issue seems to be settled.

However, the impugned issue is being looked with the other eye of the law wherein the TPOs are making adjustments for interest on receivables and alleging that long outstanding receivables constitute separate international transaction of funding to the AE and the taxpayers are required to charge interest on such delayed payments. Therefore, care must be taken in rightly presenting the facts to avoid unnecessary additions in this regard.

CBDT Notifies Rule 3B Prescribing Computation of Perquisite for Annual Accretion in PF and Other Funds u/s 17(2)(viia) for Excess Contribution by Employer Over INR 750000

Notification No. 11/2021
March 5, 2021

CBDT notifies Rule 3B in Income Tax Rule related to computation of perquisite for the purposes of section 17(2)(viia) of Income Tax Act, 1961 and for determination of annual accretion by way of interest, dividend, etc. on contribution to Provident Fund account, NPS account and Superannuation account in excess of INR 7,50,000 per annum.

Consequently, it is also provided that any annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme may be treated as perquisite to the extent it relates to the employer's contribution which is included in total income.

CBDT amends Form 12BA Statement

Notification No. 15/2021
March 11,2021

CBDT has notified amended Form 12BA Statement showing particulars of perquisites, other fringe benefits or amenities and profits in lieu of salary with value thereof. It is to be noted that Form 12BA is a detailed statement showing particulars of prerequisites, other fringe benefits, amenities, and profits in lieu of salary. Such Form is rendered to the employees along with Form 16 at the end of the Financial Year.

The amended form will be applicable from 1st day of April, 2021.

CBDT notifies reporting of Capital Gain, Dividend, Interest Income in Statement of Financial Transaction

Notification No. 16/2021
March 12,2021

CBDT notifies that for the purposes of pre-filling the return of income, a statement of financial transaction containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income shall be furnished by specified persons at such frequency, and in such manner, as may be specified by the Principal Director General of Income Tax (Systems) or the Director General of Income Tax (Systems).

CBDT clarifies on Residential status & Issues new NR Form

Circular No. 02/2021
March 03,2021

The CBDT had received various representations requesting for relaxation in determination of residential status for previous year 2020-21 from individuals who had come on a visit to India during the previous year 2019-20 and intended to leave India but could not do so due to suspension of international flights. In respect thereto, the CBDT has clarified that if any individual is facing double taxation even after taking into account the relief provided by the relevant DTAA, he/she may furnish the specified information by 31st March, 2021 in the newly notified Form –NR. This form is to be submitted electronically to the Principal Chief Commissioner of Income-tax (International Taxation).

Tamil Nadu AAAR holds that Printing & supply of 'Trade advertisement' material are considerable as 'composite supply'

Macro Media Digital Imaging Private Limited
2021-TIOL-13-AAAR-GST

Affirming the AAR ruling, the Tamil Nadu AAAR ruled that the service of printing of content on PVC banners and supply of such printed trade advertisement was classified under SAC 998912, taxable at the rate of 18% from July 01, 2017 to October 13, 2017 and 12% thereafter, as per Notification No.11/2017 CT (Rate) dated June 28, 2017.

The AAAR has further referred to the decision of the SC in the case of Anandam Viswanathan [1989 AIR 962], in which the term 'goods' was defined and held that such definition should remain the same in the Sales Tax provisions and the GST Law and therefore, the ratio of the above decisions can be applied to the instant case as well.

Interim stay granted on interest recovery on reversal of 'ineligible transitional credit'

Velayudham Rajkumar
W.P. No.7365 of 2021

The Revenue has sought to charge interest under GST on reversal of ineligible transitional credit when the said amount was refundable to assessee under the erstwhile TNVAT Act. The erroneous availment of credit was not in dispute and, in fact, the petitioner had itself reversed the same, once it was brought to its notice by issuance of show cause notice.

Though the credit was availed erroneously, no refund has been issued and consequently, a view can be taken that the amount continues to be available in the Treasury. It was further argued that since the levy of interest is compensatory in nature, it cannot be said that there has been any prejudice or loss caused to the revenue on this ground. Accordingly, an interim stay was granted on recovery of interest on reversal of such ineligible interest.

Madras HC allows transition of accumulated TDS into GST regime

DMR Constructions vs. The Assistant Commissioner
2021-TIOL-831-HC-MAD-GST

The Revenue had denied the transition of accumulated credit of TDS under the VAT regime to the GST regime in order to set-off the same against output tax liabilities. Aggrieved by the said order, the Petitioners had filed a Writ before the Madras HC.

It was argued that TDS is nothing but a tax whose purpose is to ensure advance payment and collection of tax without leakage. The Petitioner relied upon Section 13 of TNVAT Act r/w Rule 9 of TNVAT Rules and the statements of deduction in Form T and R to support their contention. The Petitioners further relied upon several jurisprudence, including under income tax law which have held TDS provisions be simply a machinery provision for the collection of tax.

It was further highlighted that Section 140 of the CGST Act does not restrict itself to Input Tax Credit and in fact states that there shall be a complete transition of Value Added Tax and Entry Tax and given the wider scope, TDS would also be allowed to carry forward to GST.

In response to the above, the revenue contended that Legislature is thus conscious of the distinction between deposit and tax, stating that what is deducted and collected assumes only the character of 'deposit' and it is only on adjustment that the amount deducted will bear the character of 'tax'.

The HC held that the nomenclature of the terms employed may be ignored, since the relevant statutory provisions, rules and forms use terms such as deposit, amount, tax and other similar terms, interchangeably. Accordingly, it was held that TDS amount would stand included for the purpose of transition u/s 140 and also held that since TDS had been captured in returns of turnover filed under erstwhile TNVAT, the same is entitled in the transition credit.

Authors' Note:

The Hon'ble HC rightfully held that the amount of tax deducted under VAT would assume the character of tax and therefore be liable to carry forward to GST, clearly making distinction between the TDS provisions under Income tax and VAT Laws. It was further observed that the excess/short fall available post deduction and determination of tax liability would arise from various situations, such as multiple lines of activity, each with its own tax implications, the quantum of ITC available to be carried forward, to name a few. The ultimate quantification would give rise to a demand if there is a shortfall in the in tax credit, and a refund, if the credit is in excess. This is a matter for computation and can hardly impact a decision on the nature of the amount deducted.

Madras HC directs department to allow amendment in GSTR-1 on bonafide grounds

Pentacle Plant Machineries Pvt. Ltd. Vs Office of the GST Council 2021-TIOL-604-HC-MAD-GST

The Petitioner, while filing the Form GSTR-1 for the month of February 2018, had inadvertently entered the GST registration number of the purchaser as Uttar Pradesh instead of Andhra Pradesh. The Petitioner realized the said error only when the purchaser notified the rejection of the credit, seeking amendment of the return, and threatening legal action. As the Petitioner was not able to revise the return, they preferred a Writ before the Madras HC seeking a direction to the Revenue to rectify the error.

The Madras HC observed that if the requisite statutory Forms such as GSTR-2 and GSTR-1A have been notified, the error would have been captured earlier. The HC further noted that even though the time-limit for modification / amendment of GSTR-3B return was extended till the March 31, 2019, the Petitioner was unaware that a mistake had crept into its original returns. Accordingly, the Petitioner could not avail the benefit of extension of time limit for amendment.

Further, relying upon its own previous judgement in the case of Sun-Dye Chem [2020 VIL 524 (Mad)], the Madras HC held that the Petitioner should not be mulcted with any liability on account of the bona-fide human error and the Petitioner must be permitted to correct the same. Accordingly, the HC allowed the Appeal and directed the Respondents to enable amendment to GSTR-1 return within a period of 8 weeks.

Authors' Note:

In the previous year, the Delhi HC, in the case of Bharti Airtel Limited [2020 (38) GSTL 145] had held that correction mechanism is critical to sustain implementation of GST. The HC had reasoned that there is no cogent reasoning behind logic for restricting rectification only in period in which error is noticed and corrected, and not in period to which it relates. Notably, there is no provision under the CGST Act which would restrict such rectification. Accordingly, it can be seen that the Madras HC has correctly allowed the rectification of bona fide error in filing of Form GSTR-1.

Leasing property for use as residence on bed-room basis along with basic amenities held as not 'renting' but composite supply of 'Accommodation Service'

Bishops Weed Food Crafts Pvt. Ltd.
2021-TIOL-111-AAR-GST

The Applicant is supplying residential dwelling services along with housekeeping, security and maintenance services as a comprehensive bundle which cannot be availed as separate components in the normal course of business. The Applicant leases residential accommodation to commercial concerns who further sublet to tenants for use as residence.

The Hon'ble HC observed that the said services are naturally bundled and classify as composite services with accommodation service as principal supply. It was further observed that the Applicant takes a residential unit having 3/4 BHK accommodations and gives each bed room on lease to the occupants, it amounts to provision of accommodation as "Rooming House" and not renting of immovable property. Pursuant to above, it was held that the Applicant would not be eligible for the exemption of Entry 12 of Notification No. 12/2017 dated June 28, 2017 which exempts services by way of renting of residential dwelling for use as residence. However, the Applicant may be eligible on fulfilment of relevant conditions for the exemption under Entry 14 as Sl. No. 14 of notification exempts services provided by a Hotel, Inn, Guest house, Club or Campsite, by whatever name called, for residential purposes, having value of supply of a unit of accommodation below or equal to Rs. 1000 per day.

With respect to taxability of the transaction of leasing of property for residential sub-letting the AAR held that in such scenarios, two different transactions are involved viz, (a) between applicant & business entity, and (b) between business entity & the actual tenant;

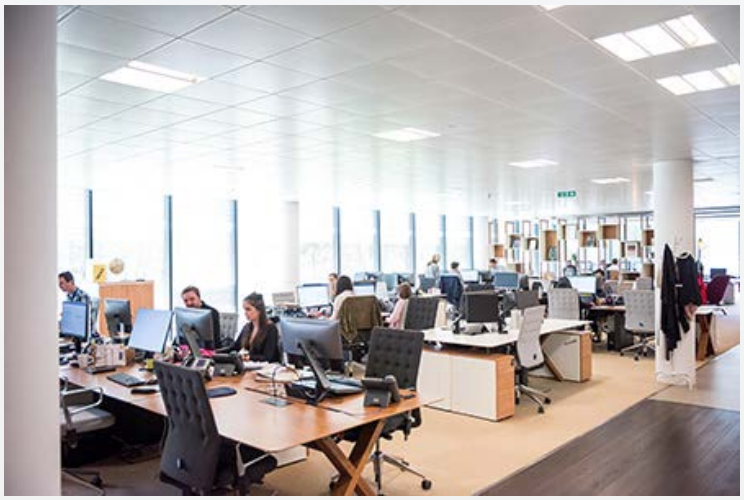
The AAR therefore, held that these 2 transactions are also different for taxability purposes wherein in the former scenario, the renting is not for use as residence by business entity but in course of furthering its business, and in the later, the service provided by the business entity amounts to leasing 'rooming house and therefore not eligible for exemption under Entry 12 of Notification No. 12/2017.

P&H HC issues notice in fresh writ by Genpact against order holding BPO as 'Intermediary'

Genpact India Private Limited
2021-TIOL-855-HC-P&H-CUS

The Petitioner filed writ petition challenging vires of Section 168 on the ground that the CGST Act cannot bind lower authorities by CBIC Circulars when such authorities act in judicial capacity. The petition was filed against rejection of refund claim filed by the Petitioner for 'export of services' treating the Petitioner as an 'intermediary'. It was further contended by the Petitoner that the rejection was done basis Circular No. 107/26/2019 – GST dated July 18, 2019. Which was subsequently withdrawn by CBIC.

P&H HC observed that the impugned orders passed by the Adjudicating Authority/Appellate Authority, were cryptic and non-speaking and the reasons assigned for holding the petitioners to be intermediaries, did not sustain as they do not pass the test of law as has been laid down in several judgments on which reliance was placed by the Petitioner. Without going into the merits of the case, the Hon'ble HC remanded the case back to the Adjudicating / Appellate Authority with a direction to pass an order in accordance with the law, within a period of two weeks from the date of appearance by the Petitioner. The HC further directed for release / grant of consequential benefit within a period of one week thereafter, should the claim of the Petitioner be accepted.



HC holds that mere procedural infirmity is no ground to deny MEIS benefit if other conditions are met

Bombardier Transportation India Pvt Ltd
2021-TIOL-478-HC-AHM-CUS

The petitioner was a manufacturer and exporter of metro coaches for which he had appointed a transport and logistics company for the filling of its shipping bills. The petitioner was receiving MEIS benefit during the period of June 2017 to June 2018. However, thereafter, MEIS benefit was not given to the petitioner even though the shipping bills were filed.

The petitioner found that the ICEGATE system had wrongly marked the shipping bills because of which no MEIS benefit was given. This caused the petitioner to approach the Deputy Commissioner with an amendment certificate requesting MEIS benefit.

The Deputy Commissioner denied MEIS benefit stating that the shipping bills were not marked for MEIS benefit on the portal.

Aggrieved, the applicant filed a writ petition before the HC which granting MEIS benefit to the applicant held that the procedural infirmity of unmarked shipping bills cannot be a ground for denying MEIS benefit where all the other conditions of MEIS were satisfied.

CESTAT allows refund of excess customs duty paid by BMW India basis verified financials

BMW India Private Limited
2021-TIOL-131-CESTAT-MAD

The appellant had imported 78 BMW cars from its parent company in Germany and on internal audit it was found that the supplier had charged a higher price for two of its models in the import invoice which was corrected by the supplier and hence excess customs duties had been paid by the appellant.

When the appellant approached the department for the refund of the excess duty paid, the department rejected the same contending that the appellant had not shown customs duty separately on the sale invoices.

The aggrieved appellant approached the CESTAT contending that the sale was effected much after the goods were cleared for home consumption and therefore the assessee could not have shown customs duty separately on

the sale invoices.

The Department banked on the presumption that the excess custom duty paid was passed on to the buyer.

CESTAT observing that the financial statements had been verified by a CA and not disputed by the department, and allowing refund of excess duty paid by the appellant, dismissed this contention of the department stating that the excess custom duty was reflected in the financial statement of the assessee under 'Customs Refund Receivables' and thus, was not passed on to the buyer.

SC rules that DRI lacks authority to issue show cause notice and open re-assessment where assessment is not disputed by proper officer

Canon India Private Limited
2021-TIOL-123-SC-CUS-LB

The appellant is a famous photographic equipment maker who had imported Digital Still Image Video Cameras and the dispute is related to applicability of exemption. Though the goods were initially assessed by assessing officer, the Show Cause Notice in this regard was issued by the Additional Director General of the Directorate of Revenue Intelligence.

Based on the arguments advanced by the counsel for the Petitioner, Hon'ble Supreme Court held that the Additional Director General of Directorate of Revenue Intelligence is not a proper officer to issue SCNs under section 28(4) of the Customs Act, 1962 and the entire proceedings arising from such SCNs shall be treated invalid and without any authority of law.

While laying this far-reaching jurisprudence, the court noted that Section 28(4) uses the term 'the proper officer' and not just 'proper officer' or 'any proper officer' and concluded that use of 'the' implies that rights under Section 28(4) to re-assess the subject transition ought to be exercised only by the proper officer who undertook the assessment in the first place or his successor in the office and no other proper officer.

Bombay HC holds limitation of 3 months is different from 90 days

Skoda Auto Volkswagen India Private Limited
2021-TIOL-616-HC-MUM-ST

The Revenue had passed an order against the Petitioner on July 08, 2019, which had been dispatched on August 29, 2019 and received by the Petitioner on July 30, 2019. Aggrieved, the Petitioner had preferred an Appeal against the said Order. The Appeal had been dispatched by the Petitioner on December 02, 2019 by speed post and received by the Department on December 04, 2019. The said Appeal was dismissed by the Department as being time-barred.

Aggrieved, the Petitioner preferred a Writ before the Bombay HC contending that the Appeal had been filed within the prescribed time of three months. It was argued that the last date of extended period to file the Appeal was November 30, 2019, which was a Saturday. Accordingly, the Petitioner was legally within its right to file the Appeal on the immediately following working day i.e., December 02, 2019, with December 01, 2019 being a holiday on account of being a Sunday which would be within the limitation period. It was submitted that in terms of General Clauses Act, if any act or any proceeding is directed to be taken in any court within a prescribed period, then if the court is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court is open. The Petitioner further submitted that as the Appeal had been dispatched on December 02, 2019, it was within the limitation period and therefore, the Appeal ought to have been accepted.

The Bombay HC has observed that in terms of the applicable Service Tax laws, the Appeal shall be presented within 2 months from the date of receipt of the decision or order of the adjudicating authority. Further, it was held that the Department may allow such appeal to be presented within a further period of one month. The HC also observed that as December 01, 2019 was a Sunday, the benefit of public holiday would be available to the Petitioner. It was further observed by the HC that the Appeal provisions of the Service Tax Act provides that the Appeal is to be presented and not filed. Therefore, the date of receipt of the order or decision appealed against becomes very relevant.

In line with the said provisions and various SC judgements, the Bombay HC was of the view that the period prescribed in the law is 3 months, and not 90 days, from a specific date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. Accordingly, it may mean 90 days or 91 days or 89 days. Basis the said observations, the HC held that the word 'presented' the appeal which was dispatched on December 02, 2019 was within 3 months even though it was not within 90 days and as such the condonation of delay has to viewed accordingly.

Authors' Note:

The Bombay HC has very well appreciated and interpreted the law by excluding the date of dispatch and receipt from the meaning of '3 months.' It would be pertinent to note that even under the GST law, the time limit to prefer an Appeal before the appellate forum is provided as 3 months. Therefore, it can be inferred that the instant judgement would be beneficial in the GST regime.

Relays classifiable as 'Railways and Railways signaling equipment', applies sole or principal user test

Westinghouse Saxby Farmer Limited
2021-TIOL-121-SC-CX-LB

The Appellant, engaged in the business of manufacturing railway products, had been inter alia manufacturing 'Relay' i.e., a signalling equipment. The Appellant had been classifying relays under CTH 8608. The Revenue issued various SCNs, and orders, determining the classification of the relays under CTH 8536, which was chargeable to higher rate of duty vis-à-vis 8608.

The SC observed that on application of General Rule 3 of the GIR, the Authorities seem to have omitted to take note of following two things,

(i) that the General Rules of Interpretation will come into play, as mandated in Rule 1 itself, only when no clear picture emerges from the terms of the Headings and the relevant section or chapter notes; and

(ii) that in any case, Rule 3 of the General Rules can be invoked only when a particular good is classifiable under two or more Headings, either by application of Rule 2(b) or for any other reason.

It was further observed that there was a fundamental fallacy in the reasoning of the Authorities, that Rule 3(a) of the General Rules will apply, especially after they had found that 'relays' are not classifiable under Chapter Heading 8608, on account of Note 2(f) of Section XVII.

The SC further observed the exclusion under Note 2(f) may be of goods which are capable of being marketed independently as electrical machinery or equipment, for use otherwise than in or as Railway signalling equipment. However, it also took cognizance of Note 3 which clarified that those parts which are suitable for use solely or principally with an article in Chapter 86 cannot be taken to a different Chapter as the same would negate the very object of group classification.

It was further held that that Revenue ought not to have overlooked the 'predominant use' or 'sole/principal use' test and 'commercial identity' test. Basis the above observations, the SC had set-aside the SCN and orders determining classification of relays under CTH 8536.

Authors' Note:

The issue relating to tariff classification of railway parts and automotive parts can be traced back to the very beginning of HSN in India. While the Revenue authorities always prefer classification outside Section XVII (principal tariff headings for railways and automotive), the taxpayers prefer classification under the said Section as it generally attracts a lower rate of tax.

It would be pertinent to note that there are various judgements, both in favour and against classification of parts under Section XVII. Most notably, the SC in the case of G.S. Auto International Ltd 2003 (152) E.L.T. 3 (S.C.), had held that if the part in question is principally used with the vehicle of Section XVII, it would be classifiable therewith.

However, despite such judgements, the Revenue have always been determining the classification of parts of vehicles under headings outside Section XVII. It is only the higher judicial forums which have allowed the classification under Section XVII. While the instant judgement re-affirms the classification policy, it remains to be seen whether the authorities follow suit or continue to obstruct the classification undertaken by the taxpayers.

CESTAT Delhi allows interest on delayed refund for the amount paid under protest

J.K. Cement Works
2021-TIOL-208-CESTAT-DEL

The Appellant had filed an Appeal against the order in appeal wherein the interest on delayed refund for the amount paid under protest was denied (for the period running from the date of deposit till the realisation of refund) by the Commissioner Appeals.

In regards to above, the CESTAT relying on the provisions of Income Tax and Central Excise, contended that both the Acts are pari-materia and interest on delayed refund is payable after 3months from the date of granting of refund. Further, the CESTAT relying on various judgement allowed the appeal and directed the authority to grant refund @12%.

Authors' Note:

It has been a settled position in law that interest, being compensatory in nature, would be payable to the assessee, when the monies of the assessee are withheld by the department resulting in delay in discharging the refund within the specified time. Further, interest on delayed refund is assessee's right, wherein the CESTAT in the case of BSL Ltd. v. CCE [2019-TIOL-3407-CESTAT-DEL] had even gone ahead to grant interest over delayed payment of interest.

CESTAT Ahmedabad quashes demand on recovery made for poor quality goods

Ratnamani Metals and Tubes Ltd
2021-TIOL-129-CESTAT-AHM

The Appellant had entered into a contract with its supplier for supply of specific materials wherein few of the materials received were of poor quality. The Appellant had then recovered liquidated damages against the poor quality of material supplied. However, the revenue considered the liquidated damages so recovered as consideration and passed an order wherein service tax was demanded u/s 66(E) of the Finance Act, 1994.

Aggrieved by the said order, the Appellant filed an Appeal at CESTAT Ahmedabad, wherein it was held that the amount recovered were in form of liquidated damages and not in the form of consideration and it also the said amount is for supply of lower quality of goods and thus the effect is only reduction in the transaction value of the goods. The order was set-aside and the matter was remanded back to the adjudicating authorities since previously it was not dealt in proper manner.

Authors' Note:

Taxability of liquidated damages continue to remain a topic of litigation even in the GST Era. It is important to refer to the decision of Maharashtra AAR, in the case of Maharashtra State Power Generation Company Ltd. (2018-VIL-33-AAR), which had held that liquidated damages would amount to consideration for an act of tolerance of non-performance, and thus are subject to GST. However, given that there are divergent views of the Courts on the subject matter, it would take some time before the issue attains finality.

Following is the summary of the key circulars and notifications issued in the field of indirect taxes in the month of March 2021;

Notification / Circular	Key Updates
Instructions No. CBEC-20/16/05/2021-GST/359	**CBIC issues guidelines for exercising powers in respect to the provisional attachment of property** i. Grounds for provisional attachment of property: • There must be a pendency of a proceeding against the taxable person; • The property of the taxable person should be attached to protect the interest of the revenue • In order to attach the property, all the facts of the cases must be duly examined and due diligence should be done ii. Procedure for provisional attachment of property • The Commissioner should pass an order in Form GST DRC-22 mentioning proper details of the property; • The order should be sent to the concerned authorities to place encumbrance on the said movable or immovable property • The taxable person can submit an objection, if any, within the prescribed time limit and basis the submission, can either retain the attachment or release the property by issuing an order in FORM GST DRC-23. iii. Attachment Period All the provisional attachment shall cease to have effect after a period of 1 year of date of order;
CBIC Tweet dated 21 March 2021	**CBIC mandates HSN Code for tax invoices w.e.f. April 01, 2021** The CBIC vide its tweet dated March 21, 2021 has provided that HSN Code of 4 digits is mandatory for B2B tax invoices on supplies of goods and services for taxpayers having aggregate turnover up to Rs. 5 crores in the preceding F.Y. As for taxpayers having aggregate turnover of more than Rs. 5 crores in the preceding F.Y., it has been provided that HSN Code of 6 digits is mandatory for all tax invoices viz. B2B and B2C, on supply of goods and services.
Notification No. 06/2021 – CT dated 30 March 2021	**CBIC extends penalty waiver for non-compliance of QR Code provisions till June 30, 2021** The CBIC has extended the waiver of penalty for non-compliance of QR Code provisions between the period December 01, 2020 to June 30, 2021, subject to the condition that the QR Code provisions are complied with w.e.f. July 01, 2021.

Circular No. 147/03/2021-GST dated 15 March 2021	**CBIC issues clarification in respect of refund related issues** **I. Availment of ITC on deemed export supplies** Vide Circular No. 125/44/2019-GST dated November 18, 2019, it had been clarified that recipient was not allowed to avail ITC on deemed export supplies if it intends to claim refund of the same. However, GST portal did not allow recipient to claim refund unless such amount is debited from recipient's Electronic Credit Ledger. The CBIC has now removed the restriction of non-availment of ITC by recipient of deemed export supplies. **II. Extension of relaxation for filing refund claims** Vide Circular No. 125/44/2019-GST dated November 18, 2019, the CBIC had given relaxation to exporter of services, supplying zero-rated supplies to SEZ regarding declarations in GSTR-3B. The CBIC has now extended period of relaxation from July 2019 to March 2021. Accordingly, refund of IGST on zero-rated supplies (except on exported goods) will be available even if zero-rated turnover was not declared in GSTR-3B. **III. Adjusted Total Turnover u/r. 89(4) of the CGST Rules** Earlier, the definition of the term 'Turnover of Zero-Rated Supply of Goods' had been amended to restrict the value to 150% of value of like goods domestically supplied. Vide the instant circular, it has been clarified that this value shall be taken into consideration while calculating value of 'Adjusted Total Turnover' for calculating amount of refund u/r. 89(4) of the CGST Rules.
Notification No F.17(131) CCT/GST/2017/6672 dated 30 March 2021	**Rajasthan Government exempts e-Way Bill requirement for intra-State movement for value not exceeding Rs. 1 lakh for all goods** • Rajasthan Government increases the threshold limit for generation of e-way bill to Rs. 1 lakh for movement of all goods, barring a few. However, such exemption shall be available subject to the condition that such goods shall be accompanied by relevant documents such as tax invoice, delivery challan, bill of supply, voucher or bill of entry, as the case may be.

Notifications	Key Updates
Notification No. 33/2021-Customs (N.T.) dated March 29,2021	**Common Customs Portal notified by CBIC** CBIC has notified 'ICEGATE', a Common Customs Electronic Portal for facilitating registration, filing of BOE, shipping bills, other documents and forms prescribed under the Customs Act, 1962, payment of duty, data exchange with other systems within or outside India and functions to be carried out under the Act or Rules/Regulations.
Notification No. 34/2021-Customs (N.T.) dated March 29, 2021	**Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 amended** Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 have been amended to prescribe different time-limits for filing BOE in respect of goods imported by various modes of transport. Prescribed timelines have been captured below: • Goods imported at port consigned from all countries other than specified countries or goods imported at inland container depot / air freight station - BOE to be filed latest by the end of day preceding the day of arrival of the vessel/aircraft/vehicle; • Goods imported at custom airport or land customs station - BOE to be filed latest by the end of day of arrival of the vessel/aircraft/vehicle.
Notification No. 35/2021-Customs (N.T.) dated March 29, 2021	**Bill of Entry (Forms) Amendment Regulations, 2021 notified by CBIC** CBIC has notified Bill of Entry (Forms) Amendment Regulations, 2021 wherein it has revised the timelines for the filing of BOEs.
Notification No. 36/2021-Customs (N.T.) dated March 29, 2021	**Bill of Lading to be supplemented with Bill of Entry** Section 46(3) of the Customs Act has been amended requiring Bill of Lading to be supplemented with Bill of Entry.
Notification No. 19/2021-Customs dated March 30,2021	**Bill of Lading to be supplemented with Bill of Entry** Section 46(3) of the Customs Act has been amended requiring Bill of Lading to be supplemented with Bill of Entry.

Circulars & Instructions	Key Updates
Instruction No. 03/2021-Customs dated March 10,2021	**Instruction regarding testing of imported food products at FSSAI notified laboratories and appointment of FSSAI officers as authorized officers** Earlier, the General Notes regarding Import Policy in ITC (HS) 2017 was amended to provide for 150 Food Import Entry Points for safe food imports to India. March 10, 2021 onwards, the FSSAI had notified FSSAI officers as the authorised officers required to handle food imports listed against 1515 HSN codes at these entry points. CBIC, ensuring the implementation of this order of the FSSAI, has issued the subject instruction requiring appropriate action to be taken in this regard.
Instruction No. 04/2021-Customs dated March 17,2021	**Instruction regarding SCNs issued by DRI** CBIC has directed all fresh SCNs under Section 28 of the Customs Act, 1962 in respect of cases presently being investigated by DRI to be issued by Jurisdictional Commissionerates and all SCNs already issued by DRI to be kept pending until further directions. **Authors' Note:** The clarification emanates from Hon'ble Supreme Court's decision in the case of Canon India Private Limited [2021-TIOL-123-SC-CUS-LB], wherein it differentiated 'proper officer' from 'the proper officer' and held that use of 'the' implies that rights under Section 28(4) to re-assess the subject transition ought to be exercised only by the proper officer who undertook the assessment in the first place or his successor in the office and no other proper officer While the instructions referred above apply specifically to matter referred to board for its direction, it is likely that revenue officers all over would take shelter of the same to keep all the proceedings initiated by DRI under Section 28(4) in pendency despite being hit by loss of jurisdiction itself. The situation calls for agile action by the concerned assesses to refer Hon'ble Supreme court's decision and pursue authorities to drop the proceedings hit by such loss of jurisdiction.
Circular No. 08/2021 dated March 29, 2021	**Clarification on legislative changes proposed in section 46(3) of Customs Act, 1962 issued** CBIC issued clarification on the changes proposed in section 46(3) of Customs Act 1962, informing that BOE filed after the prescribed timelines shall attract late charges. Dates for determining late charges remains unchanged. Further, the requirement of submitting Master Bill of Lading (MBL)/Master Airway Bill (MAWB) while filing advance BOE has been done away with and only the reference to House Bill of Lading (HBL)/ House Airway Bill (HAWB) would be sufficient at the time of advance filing.

Notifications/Trade Notices/Public Notices	Key Updates
Trade Notice No. 44/2020-2021 dated March 1, 2021	**Online module for adjudication, appeal, review proceedings under Foreign Trade (Development & Regulation) Act, 1992 & Foreign Trade (Regulation) Rules, 1993** A new online module for adjudication, appeal, review proceedings under Foreign Trade (Development & Regulation) Act, 1992 & Foreign Trade (Regulation) Rules, 1993 has been introduced by DGFT with effect from February 27, 2021. The submissions are required to be made on the DGFT website and all proceedings will be carried out through video conferencing. A transitory period upto March 31, 2021 is being provided to appellants where, if they wish they can file appeals through offline mode.
Public Notice No. 42/2015-2020 dated March 17, 2021	**Enlistment under Appendix 2E of FTP (2015-2020) for issuing Certificate of Origin (Non-Preferential)** The Plastic Export Promotion Council has been enlisted under Appendix 2E of FTP (2015-2020) authorising it to issue Certificate of Origin (Non- Preferential).
Public Notice No. 43/2015-2020 dated March 17, 2021	**DGFT prescribes due date for filing of application under Rebate of State Levies for shipping bills prior to October 1, 2017** The DGFT has notified that the last date for filing of Rebate of State Levies claims under a scrip mechanism for shipping bills prior to October 1, 2017 shall be December 31, 2021.
Trade Notice No. 47/2020-2021 dated March 23, 2021	**Issuance of Import Authorization for 'restricted' items from DGFT HQs w.e.f. March 23, 2021** DGFT has introduced a new online module for filing of electronic, paperless applications for import authorization for 'restricted' items. March 22, 2021 onwards, applicants seeking import authorization for restricted items may apply online on the DGFT website. The pending applications have been migrated to new system and will be processed suitably at DGFT(HQ). In case of request for re-validation/amendment of import authorizations issued prior to the said date, applications may be submitted directly to concerned RA, DGFT for suitable action wherein RA may amend authorizations manually as per erstwhile procedure for re-validation/amendment. Applications for re-validation/amendment of authorizations issued on or after March 22, 2021, would be required to be submitted electronically.

Notifications/Trade Notices/Public Notices	Key Updates
Trade Notice No. 48/2020-2021 dated March 25, 2021	**Electronic filing of Non-Preferential Certificate of Origin through the Common Digital Platform for India's Exports w.e.f. April 15, 2021** With a view to provide a single electronic window, the existing electronic platform for Certificate of Origin is being expanded beyond Preferential Certificate of Origin to facilitate electronic application of Non-Preferential Certificates of Origin. Applications for Non-Preferential Certificate of Origin may also be submitted through e- Certificate of Origin platform w.e.f. April 15, 2021. However, online submission of Certificate of Origin (NP) applications on this online platform is not mandatory till July 31, 2021 or until further orders after which the paper-based system shall be rendered obsolete.
Trade Notice No. 49/2020-2021 dated March 30, 2021	**Authorization holders required to make online submissions for fulfilment of Export Obligation to the DGFT Regional Authority** Authorization holders required to make online submissions for fulfilment of export obligation to the DGFT's Regional Authority in the new revamped IT system introduced by the DGFT. This IT system enables managing of the entire lifecycle of Advance Authorizations including its issuance, amendment and closure. The given facility may be used for redemption, surrender, Duty paid regularisation, bond waiver or clubbing of Advance Authorizations.
Public Notice No. 46/2015-2020 dated March 30, 2021	**Date for implementation of Track and Trace system for export of drug formulations extended** The date for implementation of track and trace system for export of drug formulations with respect to maintaining the parent-child relationship in packaging levels and its uploading on central portal has been extended to April 1, 2022 for both SSI and non-SSI manufactured drugs.
Public Notice No. 48/2015-2020 dated March 31, 2021 Read with Notification No. 60/2015-2020 dated March 31, 2021	**DGFT extends FTP 2015-2020 and HBP 2015-2020 till September 30, 2021 from March 31, 2021** The validity of Foreign Trade Policy 2015-2020 and the existing Handbook of Procedures 2015-2020 has been extended upto September 30, 2021 from March 31, 2021.

HC upholds DRAT's order vindicating bank for taking over guarantor's properties in absence of acknowledgement of stopgap arrangement by bank

Reena Gambhir vs. Central bank of India & Ors 2021-TIOLCORP-56-HC-DEL-MISC

The respondents were luxury train operators who had taken loan from a bank and given a residential flat and a parcel of land as security. The parcel of land required to be perfected and so as an interim measure they offered the petitioner's property as security. The petitioner had also given an unconditional guarantee towards the loan.

The accounts of the respondents turned into NPA's and therefore a demand notice was issued to the respondents and the petitioner by the bank under SARFAESI Act for payments due to it. Since no payments were made, the bank issued a possession notice and initiated steps to take over the possession of the mortgaged properties under SARFAESI Act.

The parcel of land given as security was perfected but after the initiation of the takeover by the bank.

Aggrieved, the petitioner filed a special application to DRT requesting it to quash the demand notice and possession notice and also the sale notice. The DRT found that the securities given by the petitioner were only as a stopgap arrangement till the mortgage on the land was perfected and once the securities had been perfected, the property given as security by the petitioner stood automatically released.

Aggrieved, the Bank approached the DRAT which setting aside the order of the DRT held that the guarantee deed given by the petitioner did not contain any clause stating that the guarantee was only given as a stopgap arrangement. There was nothing on record to show that any sort of assurance was given by the bank to the petitioner that the security given by her was only a stopgap arrangement. When the notices under SARFAESI Act were issued by the bank, the securities given by the respondents had not been perfected. Thus, there was nothing to show that the bank had agreed to replace her properties with any other security.

Aggrieved, the petitioner approached the HC which affirming the decision of the DRAT held that there is nothing in the guarantee agreement entered into between the petitioner and the bank to demonstrate that the said guarantee was only a stopgap arrangement.

The respondents had failed to perfect the title of the property before the bank had initiated steps for symbolic possession under SARFAESI Act and so the bank cannot be faulted for taking further steps to auction the property given by the petitioner as a security. In any event, the petitioner has given an unqualified guarantee to repay the amount taken by the respondents and therefore the order of the DRT is unsustainable.

Authors' Note:

The purpose of the SARFAESI Act was to enable Banks and Financial Institutions to recover the money due to them by exercising the powers to take over possession of securities or sell them to reduce the NPAs by adopting measures for recovery and reconstruction. The Bank cannot be faulted in the absence of a stopgap arrangement for taking over the petitioner's property and selling it to recover what was due.

NCLAT condemns gross delay in initiation of liquidation by the NCLT; Asks NCLT to factor the importance of time in IBC proceedings

Kuldeep Verma (Resolution Professional) vs. State Bank of India & Ors
2021-TIOLCORP-44-NCLAT

The appellant was a resolution professional in the CIRP of a company and had sought liquidation order for the corporate debtor as no resolution plan had been approved by the CoC during the maximum period permitted for the CIRP.

The NCLT had not considered the initiation of liquidation of the corporate debtor despite lapse of 981 days and had dismissed the appellant's application as being infructuous despite his compliance with the inconclusive 31 hearings conducted by NCLT with regards to his application for initiation of liquidation.

Aggrieved, the appellant preferred an appeal before the NCLAT which condemning the delay by the NCLT held that the Code has come into force with the basic objective of resolution in a time bound manner and by taking such a considerable time of 981 days, NCLT has defeated the very purpose of the Code.

Thus, NCLAT highlighting the importance of time in IBC matters, directed the NCLT to initiate liquidation of the corporate debtor.

Authors' Note:

Time is of the essence in IBC proceedings, it has rightly been pointed out by the NCLAT that such a gross delay causes the very purpose of the code to stand defeated. It is unfortunate to observe that even after the lapse of 981 days and repeated compliance by the appellant of the directions of the NCLT it did not consider the initiation of liquidation. NCLT has been incorporated to provide speedy resolution and lower the burden on the already overburdened courts. This judgment will ensure that this very purpose behind the existence of the NCLT will not be disregarded by the NCLT.

SC held promoter of corporate debtor ineligible to file application for compromise and arrangement under Company Law if ineligible to submit resolution plan under IBC

Arun Kumar Jagatramka vs Jindal Steel and Power Ltd. & Anr.
2021-TIOLCORP-14-SC-IBC

The appellant was a promoter of the corporate debtor who had appealed against the order of the NCLT calling for liquidation of the corporate debtor. While the appeal was pending, the appellant filed an application before the NCLT proposing a scheme of compromise and arrangement which was approved by the NCLT.

The respondent, who was an unsecured creditor of the

corporate debtor filed an appeal before the NCLAT against the order of the NCLT which reversed the decision of the NCLT holding that a person ineligible under IBC to submit a resolution plan was also barred from proposing a scheme of compromise and arrangement under Company law.

Aggrieved, the appellant approached the Supreme Court which upholding the judgment of the NCLAT held that IBC and Company law must be read in harmony, it would lead to manifest absurdity if very persons who were ineligible for submitting a resolution plan, participating in sale of assets of company in liquidation or in sale of corporate debtor as a 'going concern' were somehow permitted to propose a compromise or arrangement under Company law.

Authors' Note:

The primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. Company law cannot become an alternative path or a backdoor entry for the defaulting promoters to acquire the corporate debtor after a failed resolution. The promoter was rightly barred by NCLAT as he was a part of the management and therefore could not return in the new avatar of a RP.

SC directs sole arbitrator to decide on existence of arbitration agreement

Pravin Electricals Pvt. Ltd. vs. Galaxy Infra and Engineering Pvt. Ltd 2021-TIOLCORP-14-SC-MISC-LB

The appellant is an electrical supplies provider to key industrial and commercial retail sectors and was awarded an online tender for strengthening, improvement and augmentation of distribution systems capacities of 20 towns in the State by the State Power Distribution Company with the help of the respondent who was a consultancy service provider and had entered into a consultancy agreement with the appellant to provide assistance in the takeover of the project.

In respect of the services provided, the respondent sent an invoice to the appellant followed by a demand-cum-legal notice seeking payment.

The appellant flatly denying the existence of the consultancy agreement claimed it to be a non executed draft agreement & further requested the respondent to provide copy of such agreement. The respondent invoked the arbitration clause in terms of the alleged consultancy agreement. The appellant denying execution of any such agreement stated that the matter could not be referred to arbitration.

Aggrieved, the respondent approached the HC which examined the documents placed on record such as the emails and correspondences between the parties and observed there to be clear evidence of existence of an arbitration agreement as per section 7(4) of the arbitration law. Hence required the matter be referred to arbitration and appointed a former judge of the High Court as sole arbitrator.

Aggrieved, the appellant approached the SC which although set aside the HC findings relating to existence of an arbitration agreement between the parties, upheld the appointment of the sole arbitrator requiring him to firstly determine the existence of an arbitration agreement between the parties and accordingly proceed to decide upon the merits of the case.

Authors' Note:

This is an interesting judgment which eminently cries for the truth to be out between the parties through documentary evidence and cross-examination. Large pieces of the jigsaw puzzle, that forms the documentary evidence between the parties in this case remains unfilled causing the sole arbitrator to primarily adjudicate on the existence of an arbitration agreement followed by the merits of the case.

Supreme Court holds NCLAT's interference in commercial wisdom of the CoC to be ultra vires

Kalpraj Dharamshi & Anr. vs. Kotak Investment Advisors Ltd. & Anr. 2021-TIOLCORP-12-SC-IBC-LB

An insolvency application was filed by the corporate debtor before NCLT which was admitted. An RP was appointed by the CoC. The RP invited expression of interest from interested applicants to submit a resolution plan, the last date for which was August 8, 2018. The appellant submitted its plan on January 27, 2019, which was way beyond the prescribed due date.

All the applicants were directed to submit revised plans by the CoC in its meeting and the RP approved the plan of the appellant.

Aggrieved, the respondent approached the NCLT contending that RP was not justified in permitting appellant to submit a plan beyond the prescribed date and that the decision of CoC to approve the plan was not in accordance with IBC. However, this contention was rejected by NCLT.

Aggrieved, the respondent approached the NCLAT which allowing the appeal held that the procedure adopted by RP and CoC was in breach of the provisions of the IBC and also directed the RP to consider the resolution plans afresh.

Aggrieved by the NCLAT order, the appellant approached the Supreme Court which affirmed the decision of the NCLT and also held the interference of the NCLAT with the commercial decision taken by CoC with a thumping majority to be bad in law.

Authors' Note:

The financial creditors in a CIRP act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in CoC meetings through voting is a collective business decision. The legislature, consciously, has not provided any ground to challenge the commercial wisdom of the individual financial creditors or their collective decision before the adjudicating authority and the Supreme Court was right in stopping the NCLAT in its tracks from interfering in the commercial wisdom of the CoC. However, one has to see that while CoC has the final authority, but the overall commercial intent of such decision is fair and is in the best interest of operational creditors as well.

SC holds parties cannot be referred to in arbitration when claims ex facie time-barred

Bharat Sanchar Nigam Ltd. & Anr. vs. Nortel Networks India Pvt. Ltd.
2021-TIOLCORP-15-SC-MISC

The appellant invited bids for planning, engineering, supply, insulation, testing and commissioning of GSM based cellular mobile network. Upon completion of work by successful bidder, the Appellant deducted / withheld an amount towards liquidated damages and other levies.

The respondent, after a period of over 5 ½ years, invoked the arbitration clause, and requested for appointment of an independent arbitrator as per their agreement to settle the dues. The appellant contended that the request for appointment of an arbitrator could not be entertained, since the case had already been closed and the notice invoking arbitration was time barred.

Aggrieved, the respondent filed an application before the High Court and alter to Supreme Court which held that the cause of action arose when the claims made by the respondent were rejected by the appellant, the notice invoking arbitration is thus ex facie time barred and the disputes between the parties cannot be referred to arbitration in the facts of this case.

Authors' Note:

A clear distinction has been made by the SC between the limitation period for filing an application for appointment of an arbitrator and the limitation period of the claims in the underlying matter. An application for appointment of an arbitrator needs to be filed within 3 years from the date of failure of payment. By this judgment, the SC not only protects the appellant from undergoing arbitration proceedings on time barred claims but also ensures minimal judicial interference which is the legislative intent behind the Arbitration law.

Limitation period extension lifted by SC owing to considerable improvement in pandemic scenario

Suo Moto Writ (Civil) No. 3 of 2020
2021-TIOL-122-SC-MISC-LB

Earlier in 2020, the Supreme Court of India took cognizance of practical challenges posed by COVID 19 and difficulties faced by litigants in filing petitions/applications/suits/appeals/all other proceedings, etc. It therefore suo motu issued guidelines to extend the period of limitation prescribed under the general law of limitation or under any special laws.

However, given that situation is returning to normalcy, the Supreme Court has now ordered to end such extensions by March 14, 2021. With these guidelines and their withdrawal, the period of March 15, 2020 to March 14, 2021 shall be

excluded and balance period as on March 15, 2020 shall become available from March 15, 2021. Instances where the actual balance period is less than 90 days, the limitation period of 90 days shall be considered.

Further, in order to assist the litigants, the SC has directed Government of India to amend guidelines for containment zones to allow movement for legal purposes.

Authors' Note:

The Supreme Court may have lifted the extension of limitation period owing to considerable improvement in pandemic scenario however this does not mean the end of the pandemic. As most states report the beginning of the second wave of COVID 19 the restrictions and curbs are bound to be imposed again which might cause the Supreme Court to re-grant the extension.

Introduction of New Annual Return Form for Small Company and OPC

During 2017, MCA had proposed amendments in section 92 (1) of Companies Act, 2013 to give powers to Central Government to issue new and simplified Annual Return form for small companies and OPCs. Accordingly, MCA has vide notification number SO.1066(E) notified the appointed date for such amendment as March 5h, 2021, the summary of these amendments is as follows:

- Empowerment of CG to prescribe abridged annual return form for Small Company and OPC;
- Deletion of requirement of furnish details of indebtedness in the annual return form;
- Deletion of requirement to furnish details indicating names, addresses, countries of incorporation, registration and percentage of shareholding of Foreign Institutional Investors.
- Doing away with the requirement of annexing extract of annual return to the Board's report and mandating companies to place a copy of annual return on their website and provide the link of the same in the Board' report.

Commensurate with aforesaid changes, MCA has also notified changes in Companies (Management and Administration) Rules, 2014 vide notification no. G.S.R. 159(E) dated March 5, 2021. This notification sought to substitute the rule in respect of filing of Annual Return with the Registrar and notifies the new Form MGT-7 and Form MGT-7A. The salient features of this amendment are as follows:

New annual return form for Small Company and OPC

A new annual return form MGT-7A for Small and OPC has been introduced which is a condensed form of Annual return form MGT-7. Earlier, form MGT-7 was required to be filed by every company. Now such form MGT-7 is now required to be filed every company except Small Company and OPC.

Revision of Annual Return form MGT-7

Along with prescribing the New Annual Return form for Small Company and OPC, MCA has revised MGT-7 also.

Revised MGT-7 will now consist of bifurcation of shares held in demat and physical form. Moreover the earlier requirement of disclosure of details of "indebtedness" in annual return has been done away with.

Removal of attachment of annual return in Board Report

Earlier, the extract of annual return was required to be attached with Board's Report along with filing of such annual return form with registrar with prescribed fee. MCA has now done away with the requirement of attaching the extracts of annual return with Board's Report. From the FY 2020-21, companies are only required to file the annual return with registrar.

Restoration of explanations to rule 20

Rule 20 is related to e-voting rights in AGM. Original text of rule 20 included some explanation defining the expressions – Agency, Cut-off date, Cyber Security, Electronic voting system, Remote e-voting, Secured System, Voting by electronic means etc. These explanations were removed in 2016, though keeping in view the importance of e-voting, these are again being restored vide this amendment notification.

Authors' Note:

These amendments were proposed in 2017, and have been notified after four years of delay. These amendments provide clarity on questions relating to annual return and e-voting along with relaxations given to small and OPC companies. It is noteworthy that Government has put in lot of thirst on definition of Small Company and OPC in recent budget as well as it aims to promote the start-up ventures in the form of companies rather than sole proprietor ship or partnership firms.

Enhanced Auditors Reporting and Disclosure in Board's Report

MCA has carried out major amendment related to auditors reporting and disclosures in Board Report. Vide Notification no. G.S.R. 205(E) and G.S.R. 206(E) dated March 24, 2021, MCA has widened the auditors reporting requirement and have mandated use of accounting software with audit trail features. The key changes are summarized as below:

Description	Amendments
Mandatory use of Specified Accounting Software	Accounting Software to have following mandatory features: • It records audit trail of each and every transaction • It creates an edit log of each change and the date of such change • It ensures that the audit trail cannot be disabled Keeping in view the industry representations, this amendment has been deferred until March 31, 2022.

Description	Amendments
Additional Disclosure in Boards Report	Management to make following additional disclosures in board report: • Details of any proceedings under Insolvency and Bankruptcy Code, 2016 • Details of difference in valuation at the time of obtaining borrowings facility from a bank and one time settlement (if any)
Additional Reporting in Auditor's Report [Other Matters as per rule 11]	
Management Representation on Camouflaged Lending and Investments	MCA has mandated company management to make adequate disclosures for any lending or investment arrangement with an entity where ultimate beneficiary is a pre-identified entity. Management also need to provide a representation to auditors of company for existence of any such transactions. Auditor need to specifically comment on following: • Whether the management has provided the representation on existence or non-existence of a transaction involving payment or receipt of any funds where the primary transaction is followed by another pre-defined transaction of lending or investing money with a pre-identified entity or providing any security or guarantee to such entity • Whether there is any misstatement in the management representation.
Compliance with Company Law on declaration or payment of Dividend	Auditor has to report whether the company has complied with section 123 in case of payment or declaration of dividend.
Use of Accounting Software having audit trail	As MCA has mandated the use of specified accounting software having feature of audit trail, auditors has also been mandated to comment specifically on following: • Whether the accounting software used by the company is capable of recording the audit trail; • the same has been operated throughout the year for all transaction recorded in the software; • the audit trail feature has not been tampered with and; • the audit trail has been preserved by the company as per the statutory requirements for record retention.

Authors' Note:

These amendments will increase responsibilities of accountants and auditors to deal with tons of details from FY 2021-22. On other hands, these additional reporting requirements will cover camouflaged transactions which can be looked upon as a way to ensure that the companies do not use masquerades entities to hide the real nature of the transaction and also to check the instances of money laundering and terrorism financing. If responsibility of providing Management representation on these transactions has been cast on management then auditors also have been required to ensure that this representation is free from material misstatement

Remuneration to Non-executive Directors and Independent Directors

Vide notification no. S.O. 1256 (E) dated March 18, 2021, MCA has brought amendments into Schedule V where guidelines are prescribed for maximum remuneration which can be paid to Non- executive director (NEDs) and Independent director (IDs) in case of companies with losses or inadequate profits.

Above amendments were already made vide Companies Amendment Act, 2020 but the implementation was in abeyance since similar changes were required to be institutionalized by corresponding amendment in Schedule V. Hence, vide notification dated 18th March, 2021, sections 32 and 40 of Companies Amendment Act, 2020 have come into force with immediate effect. These sections contain provision for remuneration to Non-Executive Directors and Independent Directors in case of losses or inadequate profit of the company.

Salient features of the amendment are as follows:

Background: Section 149(9) does allow the company to pay remuneration to Independent directors by way of sitting fees and profit related commission. Section 149(9) is silent about remuneration to IDs in case of no profits. While section 197 allows the company to pay remuneration in case of losses or inadequate profits, as per schedule V to managerial persons only. Such unfair situation has now been dealt with these amendment notifications, which allows the company to pay remuneration to NEDs and IDs in case of no profits or inadequate profits subject to ceiling limit provided in schedule V.

Scope of Amendment: Now this amendment notification provides for option to pay maximum remuneration to NEDs and IDs in case of suffering losses or inadequate profit.

Nature of Amendment: This amendment is of enabling nature and not compulsory in nature. This notification does not require the companies to remunerate its NEDs and IDs in case of losses or inadequate profit.

Applicability: This notification does not applicable to private companies. This notification came into effect in FY 2020-21; so, it will be applicable for FY 2020-21 as well.

New Ceiling Limit of Remuneration to NEDs and IDs: Companies are now allowed to pay remuneration subject to following ceiling limits, in case of loss or no profits.

Effective Capital	Ceiling limit of Remuneration (In case of Managerial Person)	Ceiling limit of Remuneration (In case of Other Directors**)
≤ 5 Crores	60 Lakhs	12 Lakhs
5 Crores ≤ and ≤ 100 Crores	84 Lakhs	17 Lakhs
100 Crores ≤ and ≤250 Crores	120 Lakhs	24 Lakhs
250 Crores ≤	120 Lakhs (+) 0.1% * (effective capital – 250 Crores)	120 Lakhs (+) 0.1% * (effective capital – 250 Crores)

*** * "Other Director" means a non-executive director or an independent director.**

Authors' Note:

Independent directors are a key part of the organization and its corporate governance structure; however they have been remunerated by way of sitting fee and profit related commission only. Similarly, non-executive directors are also very crucial to a company. NEDs bring a requisite value to the company using their professional expertise. Hence, considering their role, they need to be remunerated adequately for their efforts.

Due to Covid-19 pandemic, where either the organizations might not be earning adequate profit or incurring losses; this amendment notification was a necessity. Also, this notification is not mandatory to follow hence, it would not create the burden on those company which are already bearing heavy losses and not desirous of taking extra burden of remuneration.

Additional Disclosure Requirement in the Schedule III

Vide notification dated March 24th, 2021, MCA has increased the disclosure requirement while preparing the financial statements as per schedule III. Amendments have been prescribed into all three sections of schedule III. Some of the additional disclosures have been prescribed which are in line with amendments in CARO 2020 which would come into effect from FY 2021-22. Moreover, there are certain amendment which have been brought in to bring more transparency and fairness in financial reporting.

These amendments in disclosures have been divided into two categories:

A. Disclosures related to Balance Sheet Items
B. Disclosures related to Profit and Loss Items

Disclosures related to Balance Sheet Items

Following disclosures are to be made in notes on accounts to the Balance Sheet.

Balance Sheet Item Name	Amendments
Statement of change in Equity	Every Company who prepare its financial statement as per IND AS shall has to make following disclosures additionally: • Changes in equity during the year due to prior period errors; • Restated balance at the beginning of the reporting period
Disclosure of Promoter Shareholding	Earlier, details of shareholding holding shares more than 5% were required to be given in notes on accounts. However, the amendment notification requires the company to disclose: • Name and no of share held by each promoter; • Change in shareholding during the year
Trade Payable and Trade Receivable Age Wise Details	• Age-wise details of Trade payable and Trade Receivables (period of less than 1 years, 1 -2 years etc) • Classification into disputed and undisputed shall be made • Classification of Trade Payable shall be made based on dispute and payable to MSME or Others • Classification of disputed Trade Receivables into balance considered good or doubtful.
Revaluation and Reconciliation of Tangible and Intangible Assets	• Reconciliation shall be made between opening and closing balance of each class of assets. • Additions, disposals, acquisition through business combinations, depreciation and impairment loss/reversal shall be disclosed • Change due to revaluation shall separately be shown if change due to revaluation is 10% or above. • Whether the plant, property or equipment has been revalued by a registered valuer as defined under rule 2 of Companies (Registered Valuers and Valuation) Rules, 2017.

Balance Sheet Item Name	Amendments
Disclosure related to borrowings taken from banks and financial institutions	If loan has been taken from bank or FIs on the hypothecation of current asset. Following shall be disclosed: • Quarterly current asset statement submitted to bank are in agreement with books of accounts or not; • Summary and reason of material discrepancy, if found in above by the auditor; • Details of utilization of funds, if funds have been used for other than specified purpose.
Loans and Advances to Promoters, Directors, KMPs & Related Parties	If Loans and Advances granted to to promoter, directors, KMPs and the related parties, repayable on demand or without specifying any terms. Following are need to be disclosed: • Type of Borrower – Promoter, Director, KMPs or related party; • Amount of Loan and % of such loan to total loan and advances.
Disclosures required to Curb Money Laundering Transaction	There are following disclosure requirements which are made mandatory to ease of tracing money laundering transactions: • Details of Benami Property held: If any property is covered under Benami Transaction (Prohibition) Act, 1988, details of such property needs to be disclosed; • Transaction with Struck off Companies: Details of transaction or balance with struck off company shall be disclosed; • Willful Defaulter: If the company is declared as wilful defaulter, information about such declaration shall be disclosed; • Camouflaged Investment and Lending: As MCA has mandated to make disclosure for the transaction of lending or investment to /in a company which will further loan or advance to predefined beneficiary; • Non-availability of title deed held singly or jointly with other: If company does not hold title deed of any property held singly or held jointly with other, disclosure regarding such property or to the extent of company's share shall be made.
Miscellaneous Disclosures	• Various types of ratios such as- current ratio, Debt Equity ratio, Debt service coverage ratio etc. would be required to disclose. In case of non-banking finance companies, Capital to Risk Weighted Assets Ratio shall also be disclosed. • Rounding off is now required to be made on mandatorily basis while earlier it was a voluntary requirement.

Balance Sheet Item Name	Amendments
	• Disclosures related to ageing of capital work in progress (CWIP) and intangible assets and details of projects where activity has been suspended shall be disclosed separately. • Details and reasons of pending registration of creation/ or satisfaction of charge with the Registrar of Companies beyond statutory time period.

Disclosures related to Profit and Loss Items

Profit & Loss Item Name	Amendments
Undisclosed Income	**Following shall be disclosed:** • Details of undisclosed income which has been disclosed under IT Act, shall be given. • Whether the previously unrecorded income have been properly recorded in the books of accounts.
Corporate Social Responsibility(CSR):	**Where the company is required to incur the CSR expenditure, followings shall be disclosed:** • Amount of expenditure to be made and amount of expenditure made; • Nature of CSR activities; • Details of related party transactions etc.
Details of Crypto Currency or Virtual Currency	**Where the company is involved in trading or investment in crypto currency or virtual currency, following disclosures shall be made:** • Profit or loss on transaction involving such currency. • Amount of closing balance of currency held. • Deposit or advance received for the purpose of trading or investing in such currency.

Author's Note:

As discussed above, these amendments will bring more transparency in the financial statements disclosures. It is noteworthy that many of prescribed changes are in line with additional reporting requirements brought in CARO, 2020, the implementation of which is currently deferred by Government until next year. This clearly indicates that MCA is focused on bringing in more responsibility on management of company to ensure fair presentation of financial statement and adequate disclosure of financial and non-financial aspects which have bearing on company.

The inclusion of disclosures related to Benami holdings and crypto currency transactions also re-emphasizes the fact that any potential exposure on company shall be adequately disclosed to shareholders and other stakeholders thru appropriate financial statement disclosures.

Tax Report released by OECD Secretary-General to G20 Finance Ministers and Central Bank Governors

The OECD Secretary-General Tax Report has been released by OECD to G20 Finance Ministers and Central Bank Governors. This report addresses various tax challenges arising from digitalization of economy, G20 tax deliverables such as tax transparency, implementation of BEPS measures and capacity building to support developing countries, and the tax concerns arising out of Covid-19 crisis.

As per the report, global corporate income tax revenues could increase upto USD 50-80 billion per year depending on the implementation of Pillar One and Two and nature of reactions by MNEs and governments.

"The G20/OECD Inclusive Framework continues to build upon this invaluable input to further refine and simplify the Pillar One and Pillar Two proposals, with the objective of reaching a political agreement in mid-2021" the report states.

Underlining the importance of providing reliable tax revenue data for the development of better policies to combat the effect of Covid-19, the report stresses on slight decrease of OECD tax revenues before Covid-19 and warns that countries may face much larger decrease ahead

The report highlights the engagement of over 115 jurisdictions in exchange of information by 2023, following the successful implementation of Automatic Exchange of Information (AEOI) standards.

Reference:http://www.oecd.org/g20/topics/international-taxation/oecd-secretary-general-tax-report-g20-finance-ministers-february-2021.pdf

Final proposal of Article 12B to be presented in 22nd session of the Tax Committee

The UN Tax Committee had voted for inclusion of a treaty taxing right for source jurisdictions on payments for automated digital services by way of an article – Article 12B in the UN Model Tax Convention in its 21st session held in October 2020. Work on the draft of the article and its commentary was continued by the Subcommittee on Tax Issues related to the Digitalization of the Economy via Subcommittee meetings in December 2020 through February 2021. The meetings were successful, Various pending key issues were also addressed by the Subcommittee in its meetings.

The 22nd session of the Tax Committee is expected to be held from 19-28 April 2021 where the final proposal draft for the article is expected to be presented. This proposal would be uploaded to the website of the Tax Committee for perusal before the commencement of the 22nd session.

Reference:https://www.un.org/development/desa/financing/what-we-do/ECOSOC/taxcommittee/tax-committee-home

Nullified Jurisdiction of DRI: Supreme Court's Master Stroke in Canon India

A three-judge bench of the Hon'ble Supreme Court passed a decision in the case of Canon India Private Limited v. Commissioner of Customs that deliberated the concept of 'Jurisdiction' and laid law of the land that'll lead far fetching impact and possibly change the way the authorities initiate the adjudication.

The Supreme Court dealt with a dispute involving availability of exemption benefit to import of Digital camera. While the benefit was initially allowed by the assessing officers based on technical description provided by the importers, SCNs were issued later by the Directorate of Revenue Intelligence ('DRI') challenging availability of said exemption.

It is noteworthy that, exemption benefit was allowed by Deputy Commissioner of Customs, Appraisal Group, Delhi Air Cargo, while the SCN was issued by Additional Director General, DRI under the provisions of Section 28(4) of the Customs Act, 1962.

As the dispute escalated, the question of law posed before Supreme Court was whether, DRI can issue a SCN under Section 28(4) of the Act, with reference to goods which were previously assessed by the Deputy Commissioner of Customs.

The Supreme Court noted that Section 28(4) uses the term 'the proper officer' and not just 'proper officer' or 'any proper officer' and concluded that use of 'the' implies that rights under Section 28(4) to re-assess the subject transaction ought to be exercised only by the proper officer who undertook the assessment in the first place or his successor in the office and no other proper officer.

Consequently, it was held that the Additional Director General of DRI is not a proper officer to issue SCNs under section 28(4) of the Customs Act, 1962 and the entire proceedings arising from such SCNs shall be treated invalid and without any authority of law.

The Sparkle ...

The decision is not only meticulous in its interpretation but may also plug the errant behavior by DRI officers as well as officers of other revenue investigating agencies that seldom comes to notice. These investigating officers earned recognition to initiate unwarranted investigations and inquiries on none or negligible surmise.

The deterrent impact of Hon'ble Supreme Court's decision can also be seen in the fact that CBIC itself recently issued Instruction No. 04/2021-Customs directing that the fresh SCNs under Section 28 of the Customs Act, 1962 where the case is under investigation by DRI to be issued only by the Jurisdictional Commissionerate from where the import has taken place. It also directs specified matters to be kept in pending until the board examines implications of the Supreme Court's decision.

It is also relevant that provisions of GST law, which too refer to the term "the proper officer", is likely to be covered by this decision.

As a matter of fact, the Hon'ble High Court of Karnataka in the case of M/s Waters India Private Limited vs Union of India and Ors., W.P. No. 3942/2021 has passed an interim order for staying the demand of Service Tax under the erstwhile regime raised vide SCN issued by Directorate General of GST Intelligence in view of the Cannon Case.

Similarly, hon'ble Madurai Bench of Madras High Court in the case of Quantum Coal Energy Private Limited and Another vs The Commissioner, Tuticorin, 2021-TIOL-711-HC-MAD-CUS vide its judgement dated 16 March 2021, quashed the show cause notice solely on the ground of being issued by Additional Director General, DRI based on the findings of the Hon'ble Supreme Court in Cannon Case.

Needless to say, the situation calls for agile action by the concerned assesses to refer Hon'ble Supreme court's decision and pursue authorities to drop the proceedings hit by such loss of jurisdiction.

GLOSSARY

Abbreviation	Meaning	Abbreviation	Meaning
AAAR	Appellate Authority of Advanced Ruling	ITA	Interactive Tax Assistant
AAR	Authority of Advance Ruling	ITAT	Hon'ble Income Tax Appellate Tribunal
ACIT	Assistant Commissioner of Income Tax	ITC	Input Tax Credit
AE	Associated Enterprise	ITES	Information Technology Enabled Services
ALP	Arm's Length Price	MAT	Minimum Alternate Tax
AMP	Advertisement Marketing and Promotion	MRP	Maximum Retail Price
AO	Assessing Officer	NAA	National Anti-Profiteering Authority
APA	Advance Pricing Agreement	NCLAT	National Company Law Appallete Tribunal
APU	Authorized Public Undertaking	NCLT	National Company Law Tribunal
AY	Assessment Year	OECD	Organization for Economic Co-operation and Development
BEPS	Base Erosion and Profit Shifting		
CASS	Computer aided selection of cases for Scrutiny	PCIT	Principal Commissioner of Income Tax
CBDT	Central Board of Direct Taxes	PLI	Profit Level Indicator
CBEC	Central Board of Excise and Customs	R&D	Research and Development
CBIC	Central Board of Indirect Taxes and Customs	RFCTLARR Act	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act
CENVAT	Central Value Added Tax		
CESTAT	Custom Excise and Service Tax Appellate Tribunal	RoDTEP	Remission of Duties and Taxes on Export of Products
CGST Act	Central Goods and Services Tax Act, 2017	SC	Hon'ble Supreme Court
CIRP	Corporate Insolvency Resolution Process	SCM	Subsidies and Countervailing Measures
CIT(A)	Commissioner of Income Tax (Appeal)	SCRR	Securities Contracts (Regulation) Rules, 1957
CLU	Changing Land Use	SLP	Special Leave Petition
CSD	Canteen Stores Department	TCS	Tax Collected at Source
CWF	Consumer Welfare Fund	TDS	Tax Deducted at Source
DCIT	Deputy Commissioner of Income Tax	The CP Act	The Consumer Protection Act, 2019
DGAP	Directorate General of Anti-Profiting	The IT Act	The Income-tax Act, 1961
DGFT	Directorate General of Foreign Trade	The IT Rules	The Income-tax Rules, 1962
DRP	Dispute Resolution Panel	TPO	Transfer Pricing Officer
Finance Act	The Finance Act, 1994	UN TP Manual	United Nations Practice Manual on Transfer Pricing
GST	Goods and Services Tax	VAT	Value Added Tax
HC	Hon'ble High Court	VSV	Vivad se Vishwas
IBC	International Business Corporation	NeAC	National e-Assessment Centre
IGST	Integrated Goods and Services Tax	The LT Act	The Limitation Act, 1963
IGST Act	Integrated Goods and Services Tax Act, 2017	CIRP	Corporate Insolvency Resolution Process
IRP	Invoice Registration Portal	MPS	Minimum Public Shareholding

ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

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