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A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS

VISION 360

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tiol ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

EDITORIAL

Vision 360: The penultimate developments in 2022!

Coming to the end of the calendar year 2022, it would be safe to say that this year has been massive for the tax sphere. Especially coming out of the COVID times, the trade and industry had to certainly gear-up to rejuvenate the force of pre-COVID business. The State and the Judiciary in this regard has also been rather helpful in providing various schemes, relaxations, simplifying and clarifying various burning issues in tax compliances.

Speaking in respect of the month of October 2022, the Bombay HC, in a major judgement has held that interest and penalty provisions are not applicable to additional duties of Customs. This judgement has a major impact, even for those, who had earlier succumbed to such demands.

Moreover, with the current open window for re-filing/revising TRAN-1, the assesses have been making the best out of this scheme. In a Tribunal judgement by the Mumbai CESTAT, has allowed cash refund of CENVAT credit along with interest not transitioned into GST, which was paid to regularize the imports. This comes as a major relief for those who had discharged pre-GST duties post the cut-off date.

Further, the CBIC has recently clarified that the amendments in the various provision under the CGST Act along with corresponding amendments in the GST Rules and the time limit for GST compliances applicable from FY 2021-22. These changes would be implemented prospectively and be operational on the portal.

On the Customs front, the CBIC has clarified that the judgement of the Supreme Court in Westinghouse Saxby case regarding the classification of “relays” have no wide application. The CBIC has also increased the import duties on certain items to provide a level-playing field to the Indian manufacturers.

On the Direct Tax front, in major news, the Apex Court has laid down law on charitable trusts' exemption, interprets GPU and discards 'predominant object' test. This judgement has set a precedent for all similar matters in the future. Further, the CBDT has extended the due date for filing TDS Statement for second quarter of FY 2022-23 by a month.

In the Regulatory news, in a major judgement, the NCLAT has held that the Company’s liability cannot be automatically fastened on Directors. Thus, the Companies themselves, are required to pay the dues wherever applicable. Further, the RBI has notified the RBI (Credit Information Companies- Internal Ombudsman) Directions, 2022, with a view to strengthen and improve the efficiency of the internal grievance redressal mechanisms of Credit Information Companies.

In International news, the OECD has released the Annual Progress Report on BEPS, invites comments on Administration and Tax Certainty in Amount A. Further, the Oman Tax Authorities have amended the VAT Executive Regulations.

We have also penned down articles on the perpetual immovability issues surrounding the indirect tax laws for decades now. The authors have inferred it best for the Revenue itself to analyse the issues, provisions and precedents, in this regard and issue a clarification, which will go a long way in avoiding litigations. We have also written an insightful piece on the impact of the discounted incentives on Indian renewable energy sector.

EDITORIAL

Compiling all such developments, we at TIOL, in association with **Taxcraft Advisors LLP, GST Legal Services LLP and VMGG & Associates**, are glad to publish the 26th edition of its exclusive monthly magazine 'VISION 360'. We hope that, as always, you will find it an informative and interesting read. We look forward to receiving your inputs, thoughts and feedback, in order to help us improve and serve you better!

Happy Reading!

P.S.: This document is designed to begin with an article peeking into recent tax/regulatory issues allowed by stimulating perspective of leading industry professionals. It then goes on to bring to you latest key developments, judicial and legislative, in 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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IMMOVABILITY: A CONTINUOUSLY BURNING ISSUE

'Relevant facts' are inherently linked with interpretation of statute. Any statutory inference drawn without taking these into account is highly vulnerable to fail the legislative intent. This phenomenon is applicable to all statute and 'taxation' is not an exception.

'Immovability' of a structure has been a root cause of many tax disputes across different regimes viz. Value Added Tax, Central Sales Tax, Excise, Service Tax or even the most recently implemented Goods and Services Tax. There exists a catena of contradicting ruling that determine immovability over the period through numerous debates. And across all these developments one fact has remained constant that determination of immovability changed with the relevant facts.

Despite a long-chequered history it still remains a cause of concern for many taxpayers. Even though, 'immovable' requires no explanation for a common man to infer 'that which cannot be moved'; its usage in statute books seems to have never enjoyed that simplicity. This perhaps is the reason as to why immovability has remained a frequently debated issue even in the GST regime.

Presently, the Indian Judiciary over the period *vide* its umpteen judicial precedents have developed three tests to calibrate immovability *viz.,* (i) test of permanency, (ii) intent test, and (iii) functional utility test. The concept of immovability was expounded by the Hon'ble Supreme Court in the case of **Municipal Corporation of Greater Bombay vs. Indian Oil Co. Ltd. [AIR 1991 SC 686]** which laid down the principle of 'permanency'. Accordingly, if a structure is unable to be moved in 'as is' form, the same is to be treated as an immovable structure.

This principle of permanency was yet again upheld by the Hon'ble Supreme Court in **T. T. G. Industries Ltd. vs. Collector of Central Excise [(2004) 4 SCC 751]**. In addition to being law of the land, the ratio laid down by the Hon'ble Supreme Court has been referred and relied upon in countless cases which has further increased its binding nature *qua* the given subject of immovability. As a matter of fact, the CBIC (formerly CBEC) had also *vide* its Circular No. 58/1/2002-CX dated January 15, 2002 settled an identical analogy.

In another case *viz.,* **Solid and Correct Engineering Works [2010 (252) ELT 481]**, the Hon'ble Supreme Court evaluated the nexus of 'intent' with the immovability of a structure. The ratio of this ruling provides that if the intent is to affix a structure permanently, then it assumes the character of

immovability.

In another catena of decisions, recent being **Kone Elevator India Private Limited vs. State of Tamil Nadu [2014 (304) ELT 161 (SC)],** the Apex Court also analyzed immovability of a structure with its intended functionality. If a structure is necessarily required to be installed or erected or embedded to earth to attain its intended functional utility, then it is to be treated as an immovable structure.

By far, it is not anew that the very idea of immovability itself has struggled to find any conclusive end. It is in these circumstances that the machinery of advance ruling was expected to provide clarity and certainty, but this system itself has struggled with inconsistent views across its various benches, rendering itself infructuous (to say the least).

If one has to seek solace in this question, it appears that it would only be if the revenue itself analyses the subject carefully to re-align all the policies, precedents and law together to issue a comprehensive clarification to settle the underlying issues-after all a tax policy can only succeed and win the trust of relevant stake-holders if it embodies the principles and spirit of 'Transparency-Certainty-Consistency'!

ARTICLE

Is Indian Renewable Energy Sector's growth going to be bearish with Discounted Incentives?

India being 7th largest country by land and having advantage of climate has provided tremendously great opportunity to **shift from conventional energy to renewable energy sources**. India being the world's third largest producer of electricity, has built a huge market for such sector which allows investors to develop the efficient energy sources. In this way, the country will have a rapid and global transition to renewable energy technologies to achieve sustainable growth and avoid catastrophic climate change. The primary renewable energy sources are solar energy, wind energy, hydropower, bio-energy etc.

India, with its initiatives in the field of Renewable Energy is trying hard to secure the future of its coming generations to fulfill its energy needs. Our Government has also taken the various initiatives for growth of renewable energy from time to time. In 1992, India was the first country to establish an independent ministry for growth and development of renewable energy sector i.e. Ministry of New and Renewable Energy. The Ministry has vision to develop new and renewable energy technologies, processes, materials, components, sub-systems, products & services at par with international specifications, standards and performance parameters in order to make the country a net foreign exchange earner in the sector and deploy such indigenously developed and/or manufactured products and services in furtherance of the national goal of energy security. India aims to achieve an installation of 500 gigawatts (GW) of renewable energy capacity by 2030 to decarbonize its energy sector while pursuing its commitment to becoming a net-zero country by 2070.

Further the Government has also taken various steps towards growth of renewable energy sector viz. :

- Capital subsidies scheme
- Permitting FDI up to 100 percent
- Conducting skill development programs to create a pool of skilled manpower for implementation,
- Generation Based Incentives (GBI) is being provided to the wind projects commissioned on or before 31 March 2017,
- Concessional custom duty exemptions on certain components required for manufacturing of wind electric generators,
- Income tax rate has been lowered down to 15% from 30% for companies who are registered on or after October 1, 2019 and commenced production till March, 2023
- Concessional 7.5% import duty under the Project Imports Scheme valid till October, 2022.

Considering the above benefits, on one hand Government is expecting growth by incentivizing the sector and industry whereas on the other hand, it has also increased the tax base that may pose various challenges in achieving the target. For instance, till March, 2017 depreciation was allowed at higher rate 80% on renewable energy devices with additional depreciation for 20% (effectively 100%), however post that depreciation rate has fallen down to 40% with additional depreciation continuing at same rate (effectively 60%).

Further, moving on to deduction prescribed under section 80IA of Income Tax Act, 1961 which provides 100% tax benefit for 10 consecutive years out of 15 years was allowed to only those enterprises which was set up till March 31, 2017. In our view, this benefit should be extended, that will assist the Government to

boost in renewable energy.

Furthermore, China accounts for more than 80% of solar module supplies to the country and the Indian module manufacturers are finding it hard to compete with competitive Chinese prices. To curb this, in July 2018, the Government of India imposed a two-year safeguard duty on solar cells and modules, in an attempt to protect domestic manufacturer against imports from China, Thailand and Vietnam. But this duty is set to end on July 29, 2021. Recently government has come up with PLI scheme for solar cells module manufacturing, which gives some impetus to the sector, however with Chinese imports pouring in the country, it would be a daunting task for Indian manufactures to rapidly set up their facilities and compete with low cost Chinese products.

Recently in October, 2022 the Government has excluded solar power projects from the list of goods that can avail benefits of concessional import duty of 7.5% under the Project Imports Scheme. This has emerged as a big setback to the Renewable Energy industry as corresponding tariff rates for import duties are in the range of 25-40%. It is interesting to note that this change doesn't fit into the realm of custom laws and judicial precedents, it seems that such decisions are purely motivated keeping in view the fiscal targets. In addition, pursuant to recommendation of the GST Council in its 45th meeting the Government had hiked the rate of tax on solar components from 5 per cent to 12 per cent, it has worrying effects on many project developers including EPC contractors as this further adds to increasing project costs.

It is important to note here that prior to the GST rate change in case of supply for solar power generating systems, 70 per cent of the gross value of the contract was considered for the supply of goods, attracting a 5 per cent rate that had been raised to 12 per cent. The remaining 30 per cent considered as related to supply of taxable services still continues to attract GST rate of 18 per cent. Thus, the rate hike is a significant increase and undoubtedly has an impact on both existing and upcoming projects and may have negative effect on growth and development in the renewable energy sector.

At last, the renewable sector suffers notable obstacles. Some of them are inherent in every renewable technology; others are the outcome of an irregular legal structure, the absence of comprehensive policies and regulation frameworks. In past many solar power producers had been taking the tax benefit as well as capital subsidy which encouraged them towards this sector but as of now due to increased custom duties, higher GST tax rate, removal of safeguard duty resulting to increases in cost of project and such incremental costs poses an adverse impact on the perception of the renewable energy industry. Further, attractive benefits such as accelerated depreciation which provides 100% tax benefit (Sec 80IA) is also not available for new projects. Hence, to meet the energy needs of the future, there is an urgent need for the formulation of effective policies and tax incentives that will result in social benefits above and beyond the economic advantages.

INDUSTRY PERSPECTIVE

Mr. Fulesh Bansal

Finance Controller,
Sigma Byte Computers Private Limited

01 India is the fifth largest economy now. What do you think of India's tax system? Is it in line with its peers?

Aligning Income tax in India with global taxation is a significant step for attracting global investment as well as supporting Indian business. The effective tax rate for domestic companies is now ~25% which was brought down from ~33 - 35% in 2019. Although, it is still on higher side compared to many other jurisdictions, nonetheless it's a welcome move that aids Indian business houses to gain competitive advantage globally as well as locally.

About Indirect tax, introduction of GST was a mammoth task. The pace at which the GST issues are getting settled at regulatory level is certainly faster than erstwhile law. It is now important to see how the litigation pans out. Hopefully it serves one of the key purposes of introducing GST - 'to reduce litigation'.

It is however pleasing to note increasing use of technology in many facets of tax administration, litigation, compliance, data processing, communication, etc. Use of technology will bring great efficiency, transparency as well as accountability in tax administration.

Mr. Fulesh Bansal
Finance Controller, Sigma Byte Computers Private Limited

02 There have been various technology related amendments in tax space. How you think such changes will impact the economy? Do you believe that such changes are aligned with overall long-term growth objectives?

India like most of the progressive economies have shifted to digitalization when it comes to tax compliances. The transparency that these procedures will bring about will ultimately lead to reduced tax evasion and smooth economy. There was a big call for digital technology in almost all industries and job functions during the pandemic. We see digitization as a key pillar to improve governance and compliance, by driving greater security, transparency and efficiency in processes – and tax operations are no exception! Government's continuous efforts in digitizing the tax space are a welcome move in the right direction.

Amendments such as the e-way bill, e-invoicing, IT return defaulters tagging, etc. will bring in more transparency in the market and eventually lead to an equal distribution of wealth and reduction in Black Money too. While we welcome the changes introduced in tax space and recognize its role in maintaining India's economic growth in the long term, these also bring in many practical challenges to the taxpayer in terms of IT systems preparedness, educating and aligning the on-ground team, ensuring timely and correct fling of monthly/annual tax returns. In a way, it also reiterates the very law of nature – 'Adapt to survive'.

03 GST Portal have been opened to allow taxpayers to rectify/ file TRAN-1 which were to be filed and amended prior to December 27, 2017. What are your views on this?

The Taxpayers have welcomed the judgments since it will benefit them in utilising their untilised credit. It was the only means for taxpayers to carry forward its transitional ITC into GST regime. Initially, since the GST law was new there were calculation errors from taxpayers, which resulted in making bonafide mistakes and short availment of credit. Further, there were technical glitches in GST portal initially and the GSTN portal was not functioning as desired. This had resulted in delay and difficulties to the taxpayers in filing the TRANS-1 form. However, with the help of the recent judgements wherein HCs have allowed the taxpayers to revise their TRAN-1, will largely benefit the taxpayers in availing and utilising their unutilised credit.

Further, given the fact that, the transitional ITC will be allowed only after scrutiny by the jurisdictional officers, fellow taxpayers should collate relevant documents and information to ensure ITC claim is not rejected.

Mr. Fulesh Bansal
Finance Controller, Sigma Byte Computers Private Limited

04 Do companies face any compliance issues, and are any changes expected to be taken up by Government?

Well, the matching requirement of invoices to avoid restriction u/r. 36(4) of the CGST Rules, is the one which pains the most on monthly basis. The burden to ensure that the supplier files his returns on time and reports the invoices correctly, are a bit too much to take. Although the GST Council had recommended reducing the compliance burden, it still remains an unachieved target!

However, while critiquing the Government on the compliance front, it would be relevant to mention that the Government had considerably relaxed the compliance burden during the COVID-19 pandemic. All in all, it can be said that the Government is cognizant of the implications of their tax administrative policies on taxpayer compliance and is taking steps to improve overall compliance as well as to reduce the administrative and procedural difficulties faced by taxpayers. I believe they have been able to deliver quiet well on this front, though there are certain areas still to be addressed.

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DIRECT TAX
From the Judiciary

ITAT holds MFN Clause in Protocol integral to DTAA, effective even without specific notification

Converteam Group

2022-TII-206-ITAT-DEL

The Assessee was a France based company that had received management support service charge of INR 5.57 Crores from Indian entities. The Assessee had not offered the said management charges to tax in India and submitted that by virtue of Article 13 of India-France DTAA read with the Protocol and Article 13 of India-UK DTAA that prescribed the MFN clause which restricted the scope of taxation of FTS, consequently FTS was not taxable in India. Not convinced, the Revenue observed that the support services provided by the Assessee to the Indian entities were in the nature of FTS and should be taxable in India . Aggrieved, the Assessee approached the CIT(A) who held that the amount received by the Assessee during the year for provision of management support services would not be taxable as FTS under the DTAA since the make available test imported from India-UK DTAA into the India-France DTAA had not been satisfied.

Aggrieved, the Revenue preferred an appeal before the ITAT. Placing reliance on the jurisdictional HC ruling in **Steria (India)[2014-TIOL-10-ARA-IT]** wherein it was held that MFN clause of the Protocol to India-France DTAA forms an integral part of the DTAA and applies automatically without any further notification, the ITAT noted that the Protocol to a DTAA was an indispensable part of a DTAA with the same binding force as the main clauses of the DTAA. The ITAT further observed that the provisions of the tax treaty were required to be read with the Protocol and were subject to the provisions contained in such protocol without there being a need of a separate notification for enforcing the provisions of the protocol. Thus, dismissing the Revenue's appeal, the ITAT further held that the DTAA provisions were subject to the Protocol without a separate notification for enforcing the provisions of the protocol.

ITAT holds stipulating conditions beyond statutory provisions while granting Section 12AB Section 80G registration, untenable

Chamber of Indian Charitable Trusts

2022-TIOL-1287-ITAT-MUM

The Assessee was a public charitable trust, registered under Section 12AA of the IT Act that had applied for fresh registration under Section 12AB of the IT Act. The CIT(E) granted the registration under Section 12AB to the Assessee subject to several conditions against which the Assessee preferred an appeal to the ITAT challenging the imposition of conditions while granting registration under Section 12AB.

The ITAT placed reliance on co-ordinate bench ruling in **Saifee Burhani Upliftment Trust [2022-TIOL-1286-ITAT-MUM],** wherein it was held that if a Trust was already registered under Section 12AA of the IT Act, such a Trust

would be entitled to a regular registration instead of a provisional registration. Section 12AB of the IT Act did not authorise the CIT(E) to impose any additional condition while granting registration. The ITAT observed that the CIT(E) could not have stipulated conditions on his own, other than those stipulated in the IT Act and held that the CIT(E) cannot stipulate conditions while granting registration in Form 10AC, which was otherwise not expressly provided in provisions Section 12AB of the IT Act. Moreover, observing that the CIT (E) also lacked jurisdiction to impose any additional condition while granting the approval under Section 80G of the IT Act as well the ITAT allowed the Assessee's appeal.

ITAT holds underreporting not misreporting as facts manifest no tax-evasion, deletes penalty

Bagaria Trade Impex

2022-TIOL-1288-ITAT-JAIPUR

The Assessee filed its return of income of INR 95.48 Lakhs which included interest income of over INR 16 Lakhs whereas the Revenue made addition of INR 1.84 Lakhs being difference between the interest income declared in return of income and Form 26AS and held that the Assessee declared lesser income. Accordingly, the Revenue imposed a penalty of INR 1.14 Lakhs under Section 270A of the IT Act which was confirmed by CIT(A). Aggrieved, the Assessee approached the ITAT contending that a letter was filed during the assessment proceedings and Revenue was requested to adjust the interest income not declared in return of income with the TDS reflected in Form 26AS against such income for adjustment of refund and there was no intention to evade tax.

The ITAT observed that the Assessee did not claim TDS and also made self-declaration during assessment proceedings and accordingly, the allegation made by Revenue could not be termed as misrepresentation or suppression of facts to levy penalty. Therefore, holding that, the mere underreporting of interest income against which TDS was also not claimed could not be considered as wilful misreporting to levy Section 270A penalty, the ITAT allowed the Assessee's appeal against penalty under Section 270A of the IT Act.

SC lays down law on charitable trusts' exemption, interprets GPU and discards 'predominant object' test

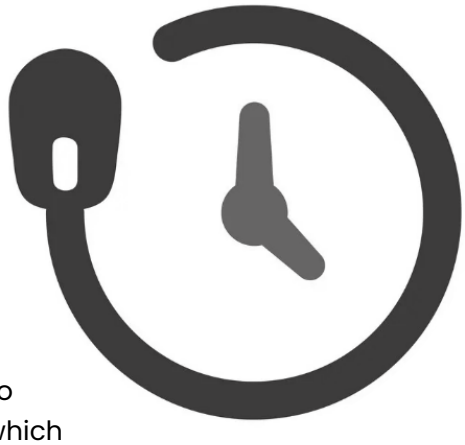
Ahmedabad Urban Development Authority

2022-TIOL-88-SC-IT-LB

A three-judge bench of the Supreme Court dealt with the concept of "advancement of any other object of general public utility" under Section 2(15) of the IT Act. Placing reliance on a catena of decisions and a special emphasis on the Constitution Bench judgment in **Surat Art Silk** [2002-TIOL-839-SC-IT-CB] which

propounded 'predominant object' principle, the SC observed that the decision in Surat Art Silk needed careful scrutiny.

Further, by analysing the amendments made by Finance Acts 2008, 2009, 2012 & 2015 to the provisions dealing with charitable trusts, the SC noted that in the absence of any light being thrown by statements or objects and reasons or notes or clauses, the court would have to look at the speeches in Parliament, to discern the rationale of the amendments. In this context, the SC observed that the Parliamentary endeavour, was to alter the regime applicable to taxation of GPU category charities, under the IT Act. The absolute bar imposed on GPU charities from carrying on activities in the nature of trade, commerce or business, or of rendering any service in relation, for a cess or fee or any other consideration, evidenced this intent. Moreover, this substantial change brought about by the amendments from 2008-2012 and 2015 was the prohibition from engaging in any kind of activity in the nature of business, commerce, or trade or rendering of any service in relation thereto, and earning income by the way of cess, fee or consideration and in its opinion, the express deletion of the reference to 'activity for profit' on the one hand, and on the other hand the enactment of an expanded list of what could not be done by GPU charities if they were to retain their characteristic as charities, was an emphatic manner in which Parliament wished to express itself. Further, SC observed that the necessary implication which arose was that income (received as fee, cess, or any other consideration) derived from such 'prohibited activities' was necessarily motivated by profit. Moreover, the term "Fee, cess and any other consideration" ought to have received a 'purposive interpretation'.



SC further observed that if fee or cess or such consideration was collected for the purpose of an activity, by a state department or entity, which was set up by statute, its mandate to collect such amounts could not be treated as consideration towards trade or business. Therefore, regulatory activity, necessitating fee or cess collection in terms of enacted law, or collection of amounts in furtherance of activities such as education, regulation of profession, etc., were per se not business or commercial in nature. Further, discarding the 'predominant object' test, SC expounded that the application of such amounts (received in the course of trade, commerce, or business, or towards services in relation thereto) would be irrelevant, as evidenced by the term "irrespective", in the fourth limb of reading Section 2(15) of the IT Act and the proper way of reading reference to the term "incidental" in Section 11(4A) of the IT Act was to interpret it in the light of the sub-clause (i) of proviso to Section 2(15) of the IT Act i.e., that the activity in the nature of business, trade, commerce or service in relation to such activities should be conducted actually in the course of achieving the GPU object and the income, profit or surplus or gains could then, be logically incidental.

DIRECT TAX
From the Legislature

NOTIFICATIONS

Notification	Key Updates
Notification No. 112/2022 dated October 7, 2022	**CBDT amends definition of 'non-reporting financial institution' for Section 285BA compliance** CBDT amends Rule 114F (5) of the IT Rules i.e.; definition of 'non-reporting financial institution'. The amendment specifies that: (i) a financial institution with a local client base, (ii) a local bank, and (iii) a financial institution with only low-value accounts qualify as a non-reporting financial institution if there is any U.S. reportable account. The Notification also amends the definition of a Treaty Qualified Retirement Fund to mean:- a fund established in India, provided that the fund is entitled to benefits under an agreement between India and the United States of America on income that it derives from sources within the United States of America (or would be entitled to such benefits if it derived any such income) as a resident of India that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits.

Circulars/ Guidelines

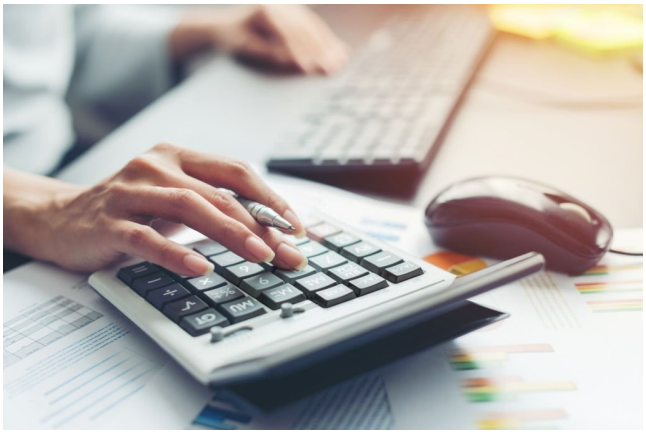
Circulars/ Guidelines	Key Updates
Circular No. 20/2022 dated October 26, 2022	**CBDT had extended due date for furnishing return of income for the AY 2022-23** CBDT had extended the due date of furnishing of Return of Income under sub-section (1) of Section 139 of the IT Act for AY 2022-23, from October 31, 2022 to November 7, 2022.
Circular No. 21/2022 dated October 27, 2022	**CBDT extends due date for filing TDS Statement for second quarter of FY 2022-23 by a month** CBDT extends due date for filing TDS Statement in Form 26Q for second quarter of FY 2022-23 from October 31, 2022 to November 30, 2022.

TRANSFER PRICING
From the Judiciary

ITAT holds slump sale between two Indian AEs not an international transaction, Remits Section 50B valuation

MWH India Pvt Ltd

2022-TII-398-ITAT-MUM-TP



The Assessee was an Indian Company and had entered into a slump sale agreement with its Indian AE. The AO observed that the Assessee had not furnished Form 3CEA to substantiate working of net worth as enshrined in Section 50B of the IT Act. Accordingly, the AO disallowed Assessee's claim to carry forward losses and determined the loss at 'Nil'. The AO also disallowed Assessee's claim of deduction under Section 10A of the IT Act in respect of Pune unit. Aggrieved, the Assessee filed objections before the DRP which rejected Assessee's claim of deduction under Section 10A of the IT Act. Aggrieved, the Assessee approached the ITAT which perusing the definition of international transaction, noted that the precondition for a transaction to qualify as international transaction was that the transaction be between two or more AEs, out of which at least one should be a non-resident.

The ITAT observed that that the transaction of slump sale between the Assessee and the company was not an international transaction as both the companies involved were incorporated under the Companies Act, 1956 having their registered offices in India. A bare reading of Section 92B of the IT Act defining 'international transaction' showed that there was no such condition that the transaction between two resident companies, subsidiary of a Foreign Holding Company shall be deemed as international transaction for the purpose of Section 92C of the Act. Further, acknowledging Assessee's failure to furnish Form 3CEA with return of income and terming it as obligatory for purpose of determining asset value, the ITAT observed that the Assessee furnished it at a belated stage when the draft assessment was passed. Accordingly, remitting the issue back to the file of AO for the limited purpose of substantiating working of net worth as enshrined in Section 50B of the IT Act, the ITAT held that the transaction of slump sale between the Assessee and Indian AE was not an international transaction.

ITAT directs segmental benchmarking for manufacturing, trading segments of Whirlpool India, follows Sony Ericsson ruling

Whirlpool of India Ltd.

2022-TII-397-ITAT-DEL-TP

The Assessee, a subsidiary of Whirlpool USA, was engaged in the business of production, sales and distribution of Whirlpool appliances that had entered into various international transactions with its AEs.

The Assessee had applied TNMM to benchmark its transactions into marketing and trading segments and claimed all of its international transactions to be at arm's length. Not convinced with the segmental analysis performed by the Assessee, the AO relied upon the order for the preceding year and rejected the segmental analysis. Instead, the AO held that the Assessee had international transactions in both the segments and the marketing chain and applied the entity level operating margin for both the segments.

Aggrieved, the Assessee approached the CIT(A) who was convinced that the transfer pricing adjustment was to be made only with reference to the international transactions undertaken by the Assessee and not with reference to the overall turnover. However, the CIT(A) rejected the Assessee's contention with regard to use of segmental profitability on the basis that the trading turnover constituted less than 10% of total sales of the Assessee. Aggrieved, the Assessee approached the ITAT which placed reliance on the jurisdictional HC ruling in **Sony Ericsson Mobile Communications India Pvt Ltd [2015-TII-06-HC-DEL-TP]** wherein TNMM on entity wide basis was held inappropriate for Assessee engaged in manufacturing and trading activities. ITAT proceeded to decide as to whether segmental results were to be taken into consideration or profit margin at entity level was to be considered. And it observed that as per Sections 92 to 94 of the IT Act, segmental results were to be considered given the difference in nature of transactions and risk assumed under both segments.

Further, the ITAT accepted the Assessee's plea to benchmark manufacturing segment and trading segment separately and accordingly, directed the AO/TPO to benchmark international transactions separately segment wise with suitable comparables and decide the issue afresh after affording reasonable and adequate opportunity of being heard to the Assessee.

ITAT holds no penalty on Shell Global as 'base-erosion' debatable & different approach in profit-attribution insufficient basis

Shell Global Solutions International BV

2022-TII-399-ITAT-AHM-TP

The Assessee was a tax resident of Netherlands. The Assessee was taxable in India at the rate of 10% on gross basis as per Article 12 the India Netherlands Tax Treaty. During the year under consideration, the Assessee rendered certain services to Hazira LNG Private Limited (HLPL) and Hazira Port Private Limited (HPPL), which were the AEs of the Assessee in India. With respect to the services to the above AEs, the Assessee invoiced HLPL and HPPL at certain weighted average hourly rates, which were subject to tax at the rate of 10% of gross basis in the hands of the Assessee as per the provisions of Article 12 of the India Netherlands Tax Treaty. The said receipts were benchmarked using CUP method. During assessment proceedings, the AO

observed that the Assessee was charging higher price to third parties as compared to its AEs for the same services. In this regard, it was submitted by the Assessee before the AO that income of the Assessee qualified as FTS under DTAA and the Assessee being non-resident in India, the said receipts were chargeable to tax in India on gross basis at the rate of 10% under India Netherlands Tax Treaty. On the other hand, the Indian AEs being resident in India were chargeable at the rate of 32.66% including applicable surcharge and education cess. In view of the same, if the Assessee would have charged a higher rate to the AEs, they would have claimed deduction of higher expense and there would have been a reduction in the income tax of the AEs and thereby resulting in loss of around 22.66% of tax to the Indian Revenue.

The AO/TPO proposed certain TP adjustments on the international transactions of the Assessee. The AO also initiated proceedings against the Assessee under Section 271(1)(c) of the Act in respect of the proposed adjustments. Aggrieved with the adjustment/addition made in the final assessment order, the Assessee filed an appeal before the ITAT Ahmedabad. In the interim, on a similar issue a special Bench was constituted before the Kolkata ITAT in the case of **M/s Instrumentarium Corporation v. ADIT [2016-TII -372-ITAT-KOL-TP-SB],** to consider this issue and the Assessee also took part in the proceedings in the

capacity of an intervener. However, the Kolkata ITAT Special Bench in the aforementioned case decided the issue of "base erosion" against Instrumentarium and consequently also against the Assessee.

Subsequently, the ITAT Ahmedabad in the Assessee's own case, following the decision of Honourable Kolkata ITAT in the case of **M/s Instrumentarium Corporation v. ADIT [2016-TII-372-ITAT-KOL-TP-SB]** rejected the argument of base erosion and dismissed the appeal of the Assessee in quantum proceedings. Subsequently the AO passed an order under Section 271(1)(c) of the IT Act levying penalty on the ground of furnishing inaccurate particulars of income. Aggrieved, the Assessee reappeared before the ITAT contending that while determining the profits attributable, the Assessee placed reliance on profit attribution report prepared by a third-party consultant and were adequately documented and prepared by a third-party consultant. Moreover, only because there was a difference of opinion between the approach adopted by the Assessee and the AO for determining the profits attributable, this would itself not be a sufficient ground to impose penalty under Section 271(1)(c) of the Act.

Thus, allowing Assessee's appeal, the ITAT deleted the penalty imposed under Section 271(1)(c) of the IT Act on the Assessee holding that the issue of base erosion was debatable and thus, could not be basis for imposing penalty. Moreover, accepting the Assessee's contention, observed that the difference of opinion on approach adopted for profit attribution in itself was not sufficient to impose penalty.

GOODS & SERVICES TAX
From the Judiciary

ITC disallowed on Solar Power Panels

VBC Associates [2022-VIL-257-AAR]

The Applicant was engaged in the business of providing services of maintenance of immovable property to tenants. The Applicant sought Advance ruling on whether they are eligible for claiming ITC on solar power panels procured and installed by it.

The AAR observed that electrical energy is 'goods' and exempted. Hence, the Applicant's provision of solar-generated electricity to tenants constitutes a supply of exempted items. Hence, ITC on solar panels is ineligible. Subsequently, the AAR did not discuss coverage of solar plant under Section 17(5) of the CGST Act or on inclusion of value of electricity charges in value of supply.

Authors' Notes:

It would be pertinent to note that in the instant case, the Applicant had been treating supply of electrical energy as part of composite supply of rental services. Accordingly, Solar Panels cannot be said to be used for making exempted supply. It would further be pertinent to note that the Rajasthan AAR in RE: ***Pristine Industries Limited [RAJ/AAR/2021-22/16]****, had held that solar power plant is classifiable as plant and machinery, and therefore, the ITC thereon is not blocked u/s. 17(5) of the CGST Act.*

HC restrains Revenue from recovery proceedings in respect of ISD transitional credit

Hero Motocorp Limited [2022-VIL-719-DEL]

The Petitioner was registered as an ISD under the pre-GST regime and transited CENVAT Credit lying in its Electronic Credit Ledger into GST regime. The Revenue initiated recovery proceedings in respect to such credit. The HC took note of the judgements of Bombay HC, wherein the ISD CENVAT credit has been allowed to be transitioned in absence of a definite procedure. Accordingly, HC restrained the Revenue from proceeding with any recovery.

Author's Notes:

The Bombay HC in RE: ***Unichem Laboratories Limited [Writ Petition No. 109 of 2020],*** *while relying to SC's judgement in RE:* ***Filco Trade [2022-TIOL-57-SC-GST]****, directed the Petitioner to file or revise GST TRAN-1 through their respective units registered under CGST Act. It was further held that the same will be basis the manual ISD invoices issued by the ISD of petitioner subject to aggregate credit. The HC further*

directed the CBIC to issue a clarification, after due deliberation, in relation to the distribution / reporting of ISD credit. However, the CBIC is yet to issue any such clarification.

GST not payable on recovery of Notice Pay, Bond Forfeiture, Canteen Charges, ID Cards Replacement

Rites Limited [2022-TIOL-123-AAR-GST]

The Applicant sought an advance ruling to ascertain the taxability of amount collected or received or forfeited by its employees. The AAR held that transactions with employees entered into by the Applicant, which included recovery of notice pay, recovery of bond or surety amount, deduction from salary of a nominal sum for provision of canteen facilities, and a charge for issue of a duplicate identity card, will not come under the purview of GST as they would not be in the nature of a 'supply'.

Authors' Notes:

Post the issuance of Circular no. 178/10/2022-GST dated August 3, 2022, the issue anyway stands clarified. Moreover, the circulars so issued are binding on the Department. Thus, it AAR has rightly followed the Circular and held that the transactions between the Applicant and employees are beyond the purview of supply.

GST not leviable on Transportation and Canteen Facilities through Third Parties to Employees as per Contract

SRF Limited [2022-Vil-262-AAR]

The Applicant had sought an advance ruling to ascertain the GST applicability on canteen and bus transportation facilities extended to its employees. The AAR held that since this is neither the business of the Petitioner nor they are engaged in providing bus transportation services, the recovery made, does not constitute as a 'supply' under GST law.

AAR rules separate registration mandatory for construction work in state

Konkan Railway Corporation Limited (2022-VIL-263-AAR)

The Applicant, having principal place of business in Maharashtra, was rendering works contract service by way of executing construction works in Odisha. The Applicant sought advance ruling on whether separate registration is required for work contract to be executed in another state other than principal place of business.

The AAR held that GST registration is necessary in the state from which taxable supplies are made.

Therefore, for the purposes of obtaining registration, it is essential to identify the 'origin' of supply, despite the fact that GST is a destination-based tax. The Odisha AAR held that as the as the location of supplier' differs from the place of registration, that Applicant is required to obtain separate GST registration for works contract service.

Authors' Notes:

In terms of Section 2(15) of the IGST Act, location of the supplier of services inter alia mean where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment. Thus, going by the place of supply provisions, the AAR has correctly held that the Applicant is required to obtain registration.

Denial of a refund claims giving no reasons invalidate the Order as Non-Speaking

Aref Abdul Sattar Textiles Private Limited (2022-VIL-708-TEL)

The Petitioner's refund claim was rejected by passing a non-speaking order. Aggrieved, the Petitioner challenged the order. The HC observed that the order did not point out any reason for rejecting the application and is not at all a speaking order. Accordingly, the order was set aside and remanded back to respondent to pass a fresh order, after giving reasonable opportunity of hearing to the Petitioner.

Authors' Notes:

There is an implicit requirement of observance of the principles of natural justice that the order or decision must be expressed in such a manner that reasons can be spelt out from such decision or order. In RE: ***Tata Engineering and Locomotive Company Limited [2006-TIOL-164-SC-CX-LB],*** *the SC had held that it is not sufficient to simply provide conclusions but also necessary to give reasons in support of the conclusions arrived at.*

Penalty and Interest cannot be levied in the absence of mens rea

Green Valley Industries Limited (2022-VIL-712-MEG)

The issue for consideration was whether Assessee was eligible for transitional credit. The HC observed that due to mistake or oversight at the time of claiming refund, the Assessee has been in significantly damage by losing INR. 30 lakhs which was legitimately entitled to receive.

It was further observed that the assessee had not attempted to defraud the Revenue or mislead it or any suppression of material facts incorporating the amount in TRAN-1 so as to prove the mens rea on their part which is an essence of sec 74 of the CGST Act. Accordingly, the HC set aside penalty in absence of 'mens rea.'

Authors' Notes:

It shall be noted that in RE: ***Hindustan Steel Limited [1978 (2) E.L.T. (J159) (S.C.)]****, the SC held that unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation, the penalty is not imposable.*

SC to decide applicability of Service Tax on Secondment of Employees

Komatsu India Pvt Ltd (2022-VIL-79-SC-ST)

The Respondent had entered into secondment agreement with its parent companies, by which the employees of the parent company were deputed to work in the Respondent's factory. Further, for manoeuvre of the employees, the Appellant had incurred expenditure in foreign exchange towards payment of salary to the employees. The Revenue had directed the Respondent to pay the service tax under RCM, as a recipient of taxable service. Currently the SC has issued notice to the Appellant on levy of service tax on the secondment of employees.

Authors' Notes:

In a recent judgement of the Apex Court in RE: ***Norther Operating Systems Private Limited [2022-TIOL-48-SC-ST-LB]****, has held ST to be applicable on secondment of employees as manpower services. In most likelihood, it seems that the Apex Court will follow its own decision.*

Bombay HC directs CBIC to issue guidelines for payment of Pre-deposit method for Service Tax / Excise Matters

Sodexo India Services Private Limited (2022-VIL-686-BOM-CE)

The Petitioner had filed an appeal under Service Tax law by paying pre-deposit through Form GST DRC-03. Thereafter, all the appeals were dismissed without going into the merits of the submissions made by Petitioner due to non-compliance with pre-deposit requirements. Aggrieved, the Petitioner challenged the rejection.

The HC directed CBIC, to issue guidelines so as to resolve the issue of prepayment, and further directed the Commissioner (A), to hold a rehearing on the merits of the case after providing adequate notice.

Authors' Notes:

Post the direction of the HC, the CBIC has issued an Instruction, clarifying that DRC-03 is not the proper medium for payment of pre-deposit in legacy matters. It was further clarified that there exists a dedicated portal for excise and ST payments, which shall be used for pre-deposit.

CESTAT allows cash refund of CENVAT credit along with interest not transitioned into GST

Clariant Chemicals India Limited [Excise Appeal No. 87606/2019 dated 18 October 2022]

The Appellant had imported certain inputs upon which the Appellant paid Custom Duty including CVD and SAD at the time of clearance of such inputs. However, as the Appellant could report the same in their Excise return, nor transitioned the credit, they filed a refund application u/s. 11B of Excise Act, which came to be rejected.

The Tribunal observed that the eligibility to take credit of the duties paid as CENVAT credit is undisputable. Merely because of the procedural infraction occurred during transition to GST period, the Appellant could not take the credits in GST regime and hence it sought for refund for which contingent provision is well enumerated in Section 142(6) of the CGST Act that deals with claim for CENVAT Credit after the appointed date under the existing law. Accordingly, allowed the appeal and directed the Department to grant the cash refund of unutilised CENVAT credit along with applicable interest.

Authors' Notes:

In a similar matter in RE: ***New Delhi CESTAT in RE: Flexi Caps and Polymers Private Limited [2022 (58) G.S.T.L. 545 (Tri. - Del.)]****, cash of refund of CENVAT credit of duties paid post GST, had been allowed u/s. 11B of the Excise Act. The instant judgement will help a number of assessees who could not avail their CENVAT credit in Form TRAN-1 and have not availed the benefit of re-opening of the window for filing / revision of TRAN-1, for any reasons.*

GOODS & SERVICES TAX
From the Legislature

<table>
<tr><th>Sr. No</th><th>Notification/ Circular</th><th>Summary</th></tr>
<tr><td>1</td><td>Press release dated 04.10.2022</td><td>
CBIC Issues Clarification On Time Limit for GST Compliances Applicable from FY 2021-22

The CBIC vide Press Release dated 04.10.2022 has issued clarification regarding time limit for certain compliances pursuant to issuance of Notification No. 18/2022 dated 28.09.2022, which came into force from 01.10.2022. The time limit for claiming ITC in respect of a particular FY has been extended and fixed as November 30 of the next FY, or furnishing of the relevant annual return, whichever is earlier. Following are the clarifications provided in the Press Release:

<table>
<tr><th>Relevant section of the Finance Act, 2022</th><th>Corresponding provision of the CGST Act, 2017</th><th>Corresponding compliance requirements</th></tr>
<tr><td>Clause (b) to Section 100</td><td>Section 16(4)</td><td>Claiming of ITC in respect of any invoice or debit note in the return</td></tr>
<tr><td>Section 102</td><td>Section 34(2)</td><td>Claiming of ITC in respect of any invoice or debit note in the return</td></tr>
<tr><td>Clause (c) to Section 103</td><td>Proviso to Section 37(3)</td><td>Claiming of ITC in respect of any invoice or debit note in the return</td></tr>
<tr><td>Clause (c) to Section 105</td><td>Proviso to Section 39(9)</td><td>Claiming of ITC in respect of any invoice or debit note in the return</td></tr>
<tr><td>Section 112</td><td>Proviso to Section 52(6)</td><td>Claiming of ITC in respect of any invoice or debit note in the return</td></tr>
</table>

The CBIC has also clarified that the aforementioned FY compliances can be met in the relevant return or statement filed/ furnished upto 30 November of the subsequent FY, or the date of furnishing annual return for the said FY, whichever is earlier. It is also clarified that no extension shall be granted for filing monthly returns/statements for October (due in November) or quarterly returns/statements for the quarter ending in September.
</td></tr>
<tr><td>2</td><td>GSTN Advisory dated October 21, 2022</td><td>
GSTN: Advisory on sequential filing of GSTR-1

GST portal clarified that these changes would be implemented prospectively and be operational on the portal from 01st November 2022. Accordingly, from October 2022 onwards, the filing of the previous period GSTR-1 will be mandatory before filing the current period GSTR-1.
</td></tr>
</table>

CUSTOMS & FTP
From the Judiciary

CESTAT allows benefit of Deemed conclusion of proceedings

Balkrishna Industries Ltd Vs C.C. Ahmedabad

Customs Appeal No. 11044 of 2017

The Appellant had imported Shell Flavex Oil 595/B Shell Flavex Oil 595H classified under CTH 38122090. The Department alleged the goods to be misdeclared as the goods were allegedly classifiable as "Rubber Processing Oil" having more aromatic components under CTH 2707 which is subjected to a higher rate of duty. Thereafter, the Appellant was subject to SCN proposing to reject the classification and for the demand of differential customs duty along with interest. Aggrieved, the Appellant filed the instant appeal.

The bench held that as the Appellant has complied with the conditions mentioned in the Section 28 of the Customs Act. Resultantly, impugned order was set aside extending the benefit of deemed conclusion of the proceedings along with consequential benefits.

CESTAT confirms Interest on delayed Sanction of Refund Claim, under benefit of section 27A of Customs Act

Commissioner of Customs Vs Pidilite Industries Ltd

Customs Appeal No. 85187 of 2020

The Assesse had requested a refund for the differential 'extra duty' discharged by them on the assessment of eighteen bills of entry due to the assessing officer's use of'retail sale price' rather than 'transaction value' as claimed. The claim was granted by the first appellate authority. Pursuant thereto the assesse sought appropriate interest under section 27A of the Customs Act. Subsequently the claim was rejected initially by the original authority, but later was approved on appeal. Aggrieved, Revenue challenged the order in the instant appeal.

The Tribunal explained that Section 27A of the Customs Act, 1962 provided for the payment on interest on delay in sanction of refund beyond three months from date of claim. Accordingly, the appeal was withheld and the Assesse was entitled to interest on the delayed refunds along with interest.

Interest and Penalty Cannot Be Imposed On Additional Duties Of Customs

Mahindra and Mahindra Limited (Automotive Sector)

2022-VIL-690-BOM-CU

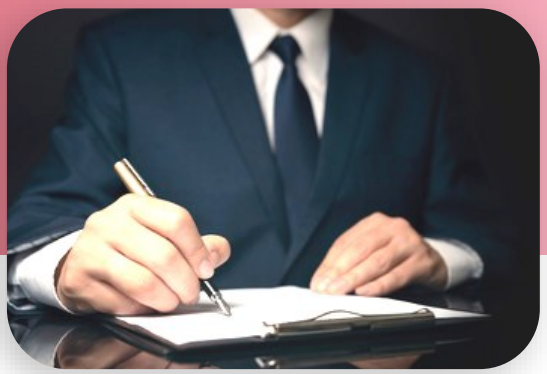
The Petitioner had been subjected to a Show Cause Notice, demanding differential duty on alleged short-payment of duties during the import of goods. It was alleged that the Petitioner did not declare entire amount payable of the imported model with intent to evade payment of customs duty. The Petitioner had unsuccessfully preferred an application before the Settlement Commission, who crystalized the demand along with interest and penalty. Aggrieved, the Petitioner preferred a Writ before the Bombay HC. The Bombay HC observed where there is no substantive provision requiring the payment of interest, the authorities cannot, for the purpose of collecting and enforcing payment of tax, charge interest thereon. It was further observed that interest on delayed payment of duty is applicable only for customs duty leviable u/s. 12 of Customs Act and the charging section for levy of additional duty is the not u/s. 12, but u/s. section 3 of the amended Act. Accordingly, there is no substantive provision requiring the payment of penalty or interest.

In view of the above observations, the HC held that the imposition of interest and penalty on portion of demand pertaining to surcharge or additional duty of customs or special additional duty of customs is incorrect and without jurisdiction.

CUSTOMS & FTP
From the Legislature

Notification/ Circular	Summary
Notification No. 29/2022- Customs ADD, dated October 19, 2022	**Anti-Dumping Duty on import of Electrogalvanized Steel** CBIC has impose Anti-Dumping Duty on import of Electrogalvanized Steel originating in or exported from Korea RP, Japan and Singapore, for a period of 5 years, in pursuance of fresh final findings issued by DGTR.
Notification No. 52/ 2022- Customs, dated the October 3, 2022.	**CBIC increases basic customs duty on imports of platinum** CBIC has increased the rate of Basic custom duty imposed on platinum from 10.75% to 15.40%
Instruction No. 25/2022- Customs dated October 03, 2022	**Supreme Court's Decision on Classification of 'Relay' Not Applicable to All Goods** The CBIC has clarified that the judgement of the Supreme Court in Westinghouse Saxby case regarding the classification of "relays" have no wide application as the classification of various parts of Section XVII is to be decided to take into account all facts, details of individual cases, under the Customs Tariff Act.

REGULATORY
From the Judiciary



SC holds ex-promoters cannot hold stake in insolvent firm, affirms NCLAT order directing stake sale basis approved-plan

Neeraj Singal & Anr. vs. Tata Steel Ltd. & Anr.

Civil Appeal No. 4654 of 2022

In the instant case, the erstwhile Promoters ('Appellants') of Bhushan Steel Ltd. (Corporate Debtor) were aggrieved by the NCLAT order which upheld a NCLT order, which directed the Appellants to sell their promoter group shares to Tata Steel Ltd. (the Successful Resolution Applicant, 'Respondent') at INR 2 per share, for implementation of the approved resolution plan.

Fact of case: M/s Bhushan Steel Ltd. owed a debt of INR. 59 thousand crores to its creditors. Corporate Insolvency Resolution is initiated by State Bank of India in 2017. M/s Tata Steel Limited submitted a Resolution plan proposing upfront payment of INR. 35 thousand crores which was approved by Adjudicating Authority .Tata Steel limited made payment as per resolution plan meanwhile M/s Bamnipal Steel Ltd. which was subsidiary of M/s Tata Steel limited wrote letter to promoter of M/s Bhushan Steel Ltd to transfer all upaid shares at INR. 2 per share. Thereafter M/s Bhushan Steel Ltd requested to National Stock Exchange and Bombay Stock Exchange to Reclassification of promoter and same was approved by them. M/s Tata Steel Limited filled an IA No. 897(PB)/2018 seeking direction them to transfer of equity share as per Resolution Plan. With referencing to Resolution Plan, which deals with the allotment of equity shares to the resolution plan; provides two structures for allotment of equity share to Resolution Applicant. As per 1st structure Resolution Applicant has to subscribe 75% of equity shares and existing promoter group shareholding (2.14%) i.e was to be rest in 25% shareholding whereas as per 2nd structure resolution applicant shall subscribe to 79,44,28,986 (i.e., 72.65%) and existing promoter have to sell all share held by them@ INR. 2, such that resolution applicant holds 75%. As per Rule 19A, The Securities Contracts (Regulation) Rules,1957, Every Listed Company should maintain atleast 25 % public shareholding and as

per said Rule , promoter shareholding of 2.14% can't be counted towards 25% shareholding even though they were treated as public shareholding Therefore while complying this regulation, its clearly prohibits option 1. and second plan is adopted resulting into sale of shares by promoters to M/s Tata Steel Limited. Thus, Applicant Authority (NCLT) as well as NCLAT pass on order in favour of M/s Tata Steel limited.

Accordingly, the Appellants approached the SC against the NCLAT order contending that they could not be compelled to sell their shares at INR 2 per equity share and that they were entitled to keep their shares with them without selling it. The Apex Court also remarked that "if the submission on behalf of the Appellants, as canvassed before the SC was accepted, the Resolution Plan would not be workable at all. Resultantly, the SC observed that there was no reason to interfere with the same and accordingly, dismissing the appeal filed by the Appellants, held that they were in complete agreement with the view taken by the NCLT as well as the NCLAT.

Authors' Note:

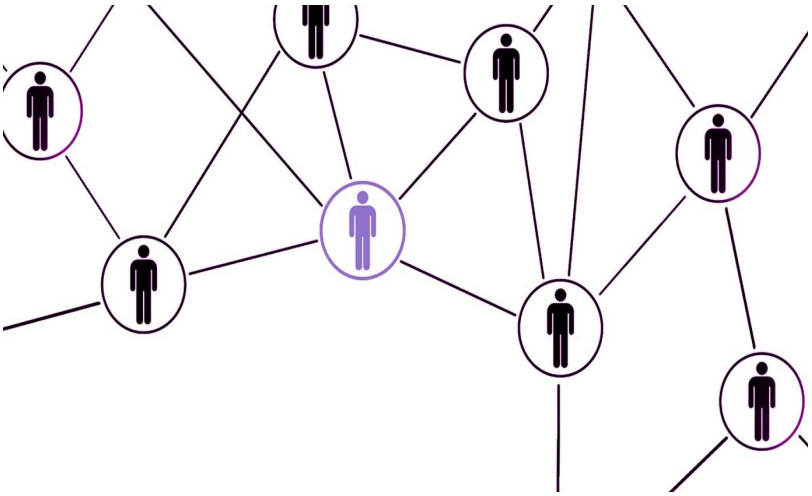
The judgment becomes a precedent and will put an end to unnecessary delay caused by erstwhile promoters in implementing the duly approved insolvency process. It will also give more confidence to new promoters who are taking over the stressed asset and help them turn around the asset by raising the required capital without the trouble caused by the previous promoters. In all, the judgment is another feather in IBC.

IBBI suspends Insolvency Professional (IP's) license for appointing related-party without disclosure, not maintaining confidentiality

In the matter of Mr. Chandra Prakash, Insolvency Professional.

IBBI/DC/132/2022

In the instant case, the NCLT had admitted the application under section 7 of the IBC for initiating CIRP of M/s Granite Gate Properties Private Limited (Corporate Debtor) and the Mr. Chandra Prakash (IP) was appointed as Resolution Professional. The IBBI, in exercise of its powers under Section 218 of the IBC read with the IBBI Regulations, 2017 appointed an Inspecting Authority to conduct the inspection of the IP. In compliance with Regulation 6(1) of Inspection Regulations, IA shared the Draft Inspection Report (DIR) with the IP and after receiving a response from the IP, the IA submitted the Inspection Report in accordance with Regulation 6(4) of the Inspection Regulations to the IBBI which issued an SCN to the Insolvency Professional IP based on the Inspection Report IR and materials available on record.



The Inspection Report revealed that the Insolvency Professional had appointed his brother's firm for support services and that neither did he disclose the said appointment before the CoC, nor made relationship disclosure of engagement of the firm on the website of the Insolvency Professional Agency, thereby concealing the fact that the said entity was a related party. The IBBI observed that the IP was required to disclose his

relationship with, inter alia, other professionals and, hence, the IP had violated various clauses of the Code of Conduct as specified in the First Schedule of IP Regulations and IBBI Circulars.

Further observing that confidential data like minutes of Committee of Creditors meetings, evaluation matrix etc. of the Corporate Debtor were uploaded on the website of the Corporate Debtor, which were accessible for general viewing of the public, IBBI emphasized that an IP was duty bound to maintain confidentiality of the details of the Corporate Debtor. However, since the details of the Corporate Debtor including various confidential information were uploaded on the website without restricted access, the same was a violation of Clause 21 of the Code of Conduct. Thus, suspending the registration of the IP for a period of one year, the IBBI read with regulation 13 of IBBI Regulations,2017.

NCLAT holds Company's liability cannot be automatically fastened on Directors, directs Company to pay dues

Fusebase Eltoro Pvt. Ltd. & Ors. vs. Shalu Khanna.

Company Appeal (AT) (Insolvency) No. 478 of 2022

An application was admitted by the NCLT under IBC against M/s Saubhagya Ornaments Private Ltd. (Corporate Debtor) on an application filed by M/s SRS Ltd (operational creditor) and the Resolution Professional. During course of examining the records of the Corporate Debtor it was found that an amount of INR 50 Lakhs was outstanding for payment from M/s Fusebase Eltoro Pvt Ltd (Appellant) to Corporate Debtor on account of advance extended by the Corporate Debtor. As application was filed by the RP before the NCLT seeking directions qua Appellant and its Directors to jointly and severally make payment of the above outstanding amount along with 18% interest and Adjudicating Authority has passed an order and affirmed that liability should be paid by them jointly and severally. Aggrieved by the said order of the NCLT, the Appellant and its Directors preferred an appeal before the NCLAT contending that the NCLT had erred in fixing personal liability on the Directors as the Corporate Debtor had given the outstanding amount to the Appellant which was a separate and independent body corporate with a distinct legal identity.

The NCLAT agreed that appellant company is legal personality entirely distinct from the directors. Once a Company is incorporated it become an artificial person and must be treated as separately from its members. Although Adjudicating Authority is no doubt entitled to lift the veil of corporate entity but in doing so must delineate the reasons for piercing the corporate veil. Hence the outstanding amount along with interest was recoverable only from the Appellant not jointly and severally from its Directors.

SAT quashes SEBI order penalizing statutory-auditors accused of fraud, absent "deceit or inducement

VCG & Co. & Anr. vs. SEBI & Anr

Appeal No. 496 of 2020

In the instant case, a CA firm and its partners ('Appellants') were the statutory auditors of a Company and had issued an unqualified utilization certificate certifying that the Company had utilized Initial Public Offering ("IPO") proceeds for the proposed objectives of the IPO. On investigation conducted by SEBI to ascertain whether IPO proceeds were utilized for the objects other than those mentioned in the prospectus, SEBI observed that the actual utilization was significantly different from the certificate issued by the Appellants. It also observed that the certificate was misleading and contained information in a distorted

manner which could influence the decision of the investors and the same did not carry any qualifications to this effect. Accordingly, a SCN was issued to the Appellants by SEBI for alleged violation of provisions of the SEBI Act with alleging that as statutory auditors of the Company, the unqualified utilization certificate issued by the Appellants was not true.

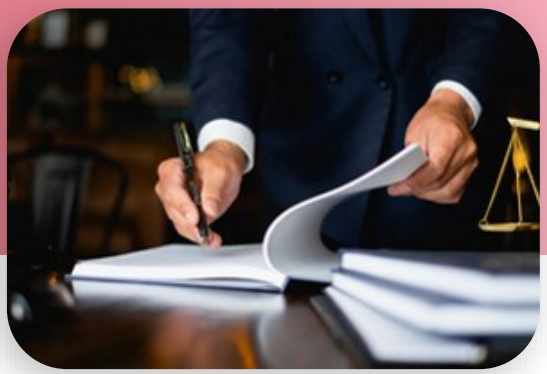
Based on the material on record and the submissions made, it was established that the Appellants had falsely certified the utilisation certificate, which contained distorted information that they did not believe to be true but certified knowing that the same, when published, could be relied upon by the investors to be true and fair. Thereby, the Appellants had aided and abetted the Company in disseminating false information as presented in the utilisation certificate to wrongfully influence the decision of the investors, and therefore their acts and omissions were tantamount to aiding and abetting in fraudulent, unfair, and manipulation acts of the company and were covered within the definition of "fraud" and "fraudulent" under the Regulations, and accordingly, a penalty of INR 15 lakhs was imposed by SEBI on the Appellants.

Aggrieved, the Appellants approached the SAT which observed that SEBI had only established that the Appellants had falsely certified the Certificate, and that there was no finding that the Appellants were party to preparation of false and fabricated accounts, or had manipulated the books of accounts with knowledge and intention. Therefore, opining that, in the absence of aforesaid findings, the Appellants could not be accused of fraud, moreover, there was also no finding by SEBI on collusion with the Company in the absence of which the charge of aiding and abetting the Company could not be sustained. Thus, observing that in the absence of proof of fraud, connivance, deceit or manipulation, the SEBI Act and the other Regulations were not applicable, the SAT, setting aside the order of SEBI, observed that in the absence of a finding that there was deceit or inducement, the Appellants could only be held guilty for professional lapse or negligence for which the appropriate authority to take action was ICAI to which SEBI had already made a complaint and the ICAI was already holding the required inquiry against the Appellants.

Authors' Note:

It would be interesting to note that in the present case, the SAT also placed reliance on the Bombay HC ruling in **Price Waterhouse Co. vs. SEBI [Writ Petition no. 5249/2010]** wherein it was held that while exercising the powers under the SEBI Act, it was not open to SEBI to encroach upon the powers vested with the Institute under the Chartered Accountant Act 1949, however, if there was material against the CA to the effect that he was instrumental in preparing false and fabricated accounts in connivance, then SEBI was entitled to pass appropriate orders under the SEBI Act in the interest of the investors or securities market and was also entitled to take measures as prescribed under the Act.

REGULATORY
From the Legislature



SEBI has extended the timeline for entering existing outstanding non-convertible securities' details

SEBI vide circular no. SEBI/HO/DDHS/RACPOD1/CIR/P/2022/136 dated October 03, 2022 has provided the extension of timeline for entering the details of the existing outstanding non-convertible securities in the 'Security and Covenant Monitoring' system hosted by Depositories. Extension is provided of one month i.e. for existing outstanding non-convertible securities; issuers shall ensure that they enter the details into the Distributed Ledger Technology (DLT) system on or before October 31, 2022 and Debenture Trustees shall verify the same by December 31, 2022.

RBI Issued Threshold Classification in Middle Layer of NBFC for Multiple NBFCs in a Group

RBI vide its notification no. RBI/2022-23/129 dated October 11, 2022 has issued guidelines pertaining to classification in Middle layer for NBFCs in group. NBFCs that are part of a common group or are floated by a common set of promoters shall not be viewed on a standalone basis. Therefore the total assets of all NBFCs in a group shall be consolidated to determine the threshold for their classification in the Middle layer.

Now, RBI has notified that if the consolidated assets size of the group is INR 1000 Crore and above, then each investment and credit company (NBFC-ICC), Micro Finance Institution (NBFC-MFI), NBFC- Factor and Mortgage Guarantee Company (NBFC-MGC) lying in the Group shall be classified as an NBFC in the Middle Layer. Further, Statutory Auditors are required to certify the asset size (as on March 31) of all the NBFCs in the Group every year. The certificate shall be furnished to the Department of Supervision of the RBI under whose jurisdiction the NBFCs are registered.

RBI allows Standalone Primary Dealers to offer all foreign exchange market-making facilities

RBI vide its notification no. RBI/2022-23/126 dated October 11, 2022 has decided to allow SPDs to offer all foreign exchange market-making facilities to users, as currently permitted to Category-I Authorized Dealers, subject to adherence to the prudential regulations and other guidelines to be issued separately in this regard.

Further, with effect from January 01, 2023 all financial transactions involving the Rupee undertaken globally

by related entities of the SPD shall be reported to Clearing Corporation of India Ltd. (CCIL's) Trade Repository before 12:00 noon of the business day following the date of transaction.

Author's Note:

This will strengthen the role of SPDs as market makers to operate on a par with banks operating primary dealer business. This measure would give forex customers a broader spectrum of market-makers in managing their currency risk, thereby adding breadth to the forex market in India. Further enhanced market presence would improve the ability of SPDs to provide support to the primary issuance and secondary market activities in government securities, which would continue to be the major focus of primary dealer activities.

RBI (Credit Information Companies- Internal Ombudsman) Directions, 2022

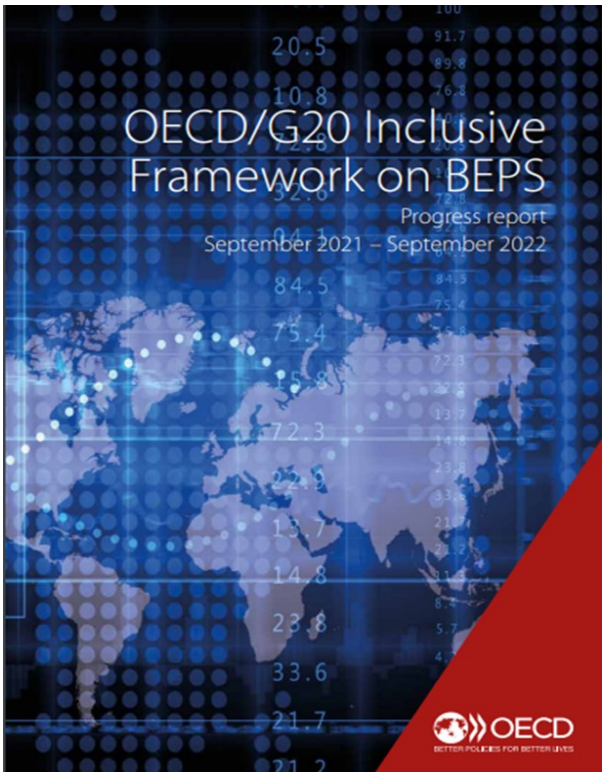
RBI vide its notification no. RBI/2022-23/12 dated October 06, 2022 has introduced RBI (Credit Information Companies) Directions, 2022 with a view to strengthen and improve the efficiency of the internal grievance redressal mechanisms of Credit Information Companies ("CIC").

Brief of such directions are as follows:

Aspect	Particular
Appointment of Internal	Every CIC shall appoint the Internal Ombudsman ("*IO*") for a fixed term of not less than 3 years but not exceeding 5 years, who will not further eligible for re-
Office of IO	The Office of the IO shall function from the Head Office or Corporate Office of the CIC for which CIC shall depute such staff and make available such infrastructure
Internal Audit	The internal audit of the CIC shall cover the implementation of, and compliance with this Direction.
Complaint handling by IO	The IO will deal only with complaints that have already been examined by CIC but have been partly or wholly rejected by the CIC. But shall not handle complaints
Administrative Oversight	The IO shall report to the Managing Director or Chief Executive Officer of the CIC administratively, and to the Board functionally.

INTERNATIONAL DESK

OECD releases Annual Progress Report on BEPS, invites comments on Administration & Tax Certainty in Amount A



- OECD releases the Sixth Annual Progress Report on BEPS implementation for the period September 2021 to September 2022 covering updates on the Two-Pillar Solution, BEPS Minimum Standard and other BEPS Actions. Further, OECD invites public comments on the Progress Report on the 'Administration and Tax Certainty Aspects of Amount A of Pillar One'. As per the Annual Progress Report, since the last progress report 137 jurisdictions have joined the landmark agreement on Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy, representing a major step forward in the reform of the international tax system and the outcome of intensive work carried out under BEPS Action 1.
- The Annual Progress Report further states that although the efforts of the OECD/G20 Inclusive Framework have been mostly focused on the implementation of the Two-Pillar Solution, steady progress has continued on the other BEPS Actions, notably on the implementation of the minimum standards, which remains an important commitment for members. Significant progress has also been made on design of the technical rules for the reallocation of taxing rights under Amount A, which will serve as the substantive basis for negotiating the Multilateral Convention (MLC) through which Amount A will be implemented.
- Based on outcomes of public consultation, OECD/G20 Inclusive Framework seeks to stabilise the rules at its upcoming meeting and the work on detailed provisions of the MLC and its Explanatory Statement are expected to be completed so that a signing ceremony can be held in the first half of 2023, with the objective of entering it into force in 2024, once a critical mass of jurisdictions ratifies it. The GloBE Implementation Framework is scheduled to be released in the second half of 2022 and STTR draft model tax treaty along with its commentary is expected to be released for public comment later in the year.

Oman Tax Authority amends VAT Executive Regulations

The Oman Tax Authority has issued Ministerial Decision No. 456/2022 (MD 456/ 2022) amending certain provisions of the Oman VAT Executive Regulations (issued under MD 53/ 2021). Some of the major amendments to the Oman VAT Executive Regulations are as follows: -

- Telecommunication services: Earlier, the place of supply for telecommunication services was assessed based on the status of the customer i.e., VAT registered or a non-taxable customer. The place of supply for telecommunication services is now assessed based on the following scenarios (irrespective of

whether customer is taxable or non-taxable):

◊ Supply of services through fixed communication tools (requiring the actual presence of the customer) - the place of actual use or enjoyment of the services is the fixed geographical location where the communication tools are located.

◊ Supply of services provided through mobile networks - the place of actual use or enjoyment of the services is in the country code stored on the Subscriber Identity Module ('SIM') card used by the recipient to receive the services.

◊ Any other cases - the place of actual use or enjoyment of the services is the place of residence of the customer. The supplier would be required to define the customer's place of residence based on the information provided by the customer after confirming its correctness.

- Financial services: Earlier, the VAT exemption for financial services (remunerated by way of an implicit margin) was available only to banks and financial institutions licensed by the Central Bank of Oman or any other competent authority which was established to conduct banking businesses. Post the amendment, the VAT exemption is not limited to only regulated bodies and could also be applicable to any businesses providing financial services (such as financing group companies).

- Refund of tax paid by foreign Governments, diplomatic, consular bodies, etc.: The amendment removes specific conditions and procedures from the VAT Executive Regulations. The refund will now be available subject to conditions and controls determined by the Oman Tax Authority, in coordination with the Ministry of Foreign Affairs and after approval of the Ministry of Finance.

- New definition for electronic tax invoice, time limit for issuing tax invoices and outcome of failure to issue tax invoices: A new definition for electronic tax invoice has been introduced through the amendment. The amendment specifies a 15 days period from the date of supply to issue a tax invoice (including full tax invoices, simplified tax invoices and summary tax invoices). The amendment also prescribes a penalty for failure to issue tax invoices.

The amendments to the Oman VAT Executive Regulations are effective from October 17, 2022.

Federal Tax Authority amends VAT Decree Law

The FTA has issued the Federal Decree Law No. (8) of 2017 on Value Added Tax to amend umpteen VAT provisions. The amendments shall be made effective from January 1, 2023. We have captured critical amendments below:

- Article 79 dealing with the statute of limitation inserted wherein the time limit to conduct VAT audits is within 5 years from end of the relevant tax period. However, in following cases, extended period of limitation will apply:

◊ If notice for audit is issued before expiry of 5 years, the FTA can complete the audit or tax assessment within 4 years from the date of notice;

◊ If audit relates to voluntary disclosure submitted in 5th year, the FTA can complete the audit or issue a tax assessment within 1 year from date of submission;

◊ If the audit or tax assessment involves tax evasion, the FTA can conduct within 15 years from the end of relevant tax period; and

◊ If a taxable person fails to obtain VAT registration, the FTA can conduct audit or a tax assessment within 15 years from the date the taxpayer should have registered.

- Voluntary disclosure to be filed within five years from the end of the relevant tax period.
- Scope of domestic Reverse Charge under Article 48(3) restricted to "pure hydrocarbons" instead of "any hydrocarbons".
- Tax credit note should be issued within 14 days from the date of the adjustment event.
- Input VAT on imports can be recovered only on receipt of invoice (in case goods and services) and customs related documents (in case of goods).

FAQs on EMARA TAX - New Integrated Tax Portal issued in UAE

The FTA has scheduled to launch a new integrated platform 'EmaraTax' in November and Frequently Asked Questions - FAQs have been released by FTA in this regard. Key clarification provided vide FAQs are stated below for your ready reference:

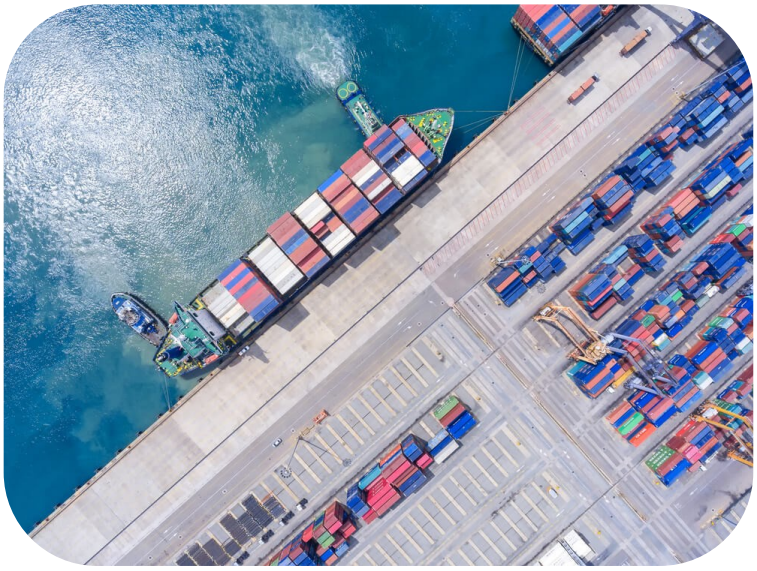
- The current FTA website - https://eservices.tax.gov.ae/ will remain unchanged even after the transition to EmaraTax.
- Existing FTA account details will be migrated to EmaraTax automatically.
- EmaraTax will generate a unique payment reference number to ensure that tax payment is accurately allocated against the selected liabilities (i.e. tax liability or penalty is paid first).
- UAE banks and other financial institutions will be integrated with EmaraTax.
- MagnatiPay is FTA's new payment gateway which will replace eDirham payment. It accepts payments made using any Visa or Mastercard prepaid, debit or credit card.

إمـــارات تـاكـس
EMARATAX

SPARKLE ZONE

No Provision – No interest/Penalty .... A new interpretation!

"The art of interpretation is not to play what is written" is a well-known adage attributed by Aristotle, who believed that the purpose of something is to represent not their external appearance, but their inner significance. This principle/quote is utilised exceptionally well by the bench of the Bombay High Court in their recent ruling in RE: **Mahindra and Mahindra Limited (Automotive Sector) [2022-VIL-690-BOM-CU]**, which shall serve as a precedent for all cases involving interest and penalties wrongfully imposed by the Revenue. Article 265 of the Constitution of India, 1950 ('Constitution') restricts any levy and collection of tax without authority of law. The Constitution' forbids the State from making an unlawful levy or collecting taxes unlawfully. The bar is absolute as it protects the citizens from any unlawful exaction of tax.In the case of **S.S. Ayodhya Distillery [2009 (233) E.L.T. 146 (S.C.)],** it had been rightly said "*One has to look merely at what is clearly stated in the statute*". Even though there have been several crucial cases on the subject, the disagreements don't seem to be going away.



In the instant case, the Petitioner had been subjected to a Show Cause Notice, demanding differential duty on alleged short-payment of duties during the import of goods. It was alleged that the Petitioner did not declare entire amount payable of the imported model with intent to evade payment of customs duty. The Petitioner had unsuccessfully preferred an application before the Settlement Commission, who crystalized the demand along with interest and penalty. Aggrieved, the Petitioner preferred a Writ before the Bombay HC. The HC held that the imposition of interest and penalty on portion of demand pertaining to surcharge or additional duty of customs or special additional duty of customs is incorrect and without jurisdiction. However, upon a closer look, the ruling seems to be unfolding a pandora's box of interpretational issues.

Observations and Ruling

The Bombay HC observed where there is no substantive provision requiring the payment of interest, the authorities cannot, for the purpose of collecting and enforcing payment of tax, charge interest thereon. It was further observed that interest on delayed payment of duty is applicable only for customs duty leviable u/s. 12 of Customs Act and the charging section for levy of additional duty is the not u/s. 12, but u/s. section 3 of the amended Act. Accordingly, there is no substantive provision requiring the payment of penalty or interest.

Our Thoughts

Bombay HC has rightly set-aside the imposition of interest and penalty on additional duties. It would be pertinent to note that as a settled principle of law, must be a charging section to create liability. There is ample precedent that no obligation may be imposed in the absence of a substantive provision, and

provisions in a legislation charging interest and imposing penalties are interpreted as substantive law rather than adjectival law. *In* **RE: Khemka and Co. (Agencies) Private Limited [1975 (2) SCC 22]**, *it had been held that there must be, firstly a liability created by the Act, secondly, the Act must provide for assessment and thirdly, the Act must provide for enforcement of the taxing provisions. Thus, imposing of a liability on an assessee in absence of an express provision, is unsustainable.*

The section 90 of the Finance Act dealt with surcharge, section 3 of the Customs Tariff Act dealt with additional duty of customs equal to excise duty, and section 3A of the Customs Tariff Act dealt with special additional duty of customs. None of these sections dealt with penalties or interest on the chargeable duty. So, according to the law, there was no way to charge a penalty or interest.

When a legislature imposes a tax, it does so by inserting a charging section that creates or fixes a responsibility, followed by provisions for enforcing that liability. Consequently, it provides the machinery for the assessment of the liability previously established by the charge section, as well as the method for the recovery and collection of tax, as well as penal provisions intended to address defaulters. There are other provisions for imposing interest on late payments, etc. Typically, the part that establishes culpability is strictly construed, but this rule does not apply to the machinery provisions, which are considered like any other act. As determined by the Supreme Court in J.K. Synthetics Ltd. v. Commercial Taxes Officer, any provision in a statute for charging or levying interest on late payment of tax shall be interpreted as substantive law and not adjectival law.

Legislative Intent

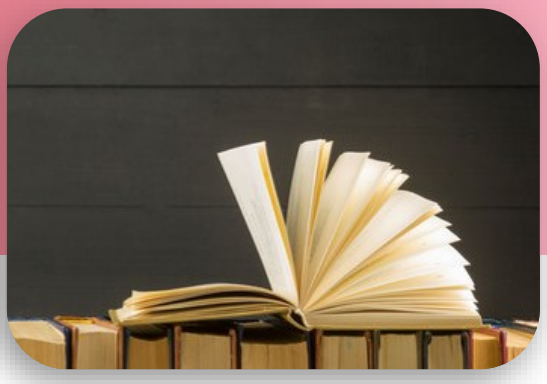
The penalty is not a continuation of the assessment process and has the nature of additional tax. To create liability, a charging section is required. The Customs Tariff Act's Section 3 and Section 3A are charging sections that create liability for CVD and SAD, but do not provide for a penalty. The sheer existence of mechanisms for assessing, collecting, and enforcing tax and penalties under the Customs Act does not imply that the Customs Act's provision for penalty and interest applies to penalty and interest under the Customs Tariff Act.

The Section 28 of the Customs Act provides for recovery of dues and under Section 28AB provides for interest on delayed payment of duty. Both are separate provisions and in our view, the incorporating provisions would apply only to the duty leviable under the Customs Act and not interest on delayed payment of duty or penalty because as time and again. *In RE*: ***Modi Sugar Mills Limited [1961 (2) SCR 189]***, *the Apex Court had held that taxing statutes cannot be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed. Thus, nothing can be implied, which is not expressly provided.*

Conclusion

Basis the above, it appears that the Bombay HC has narrowly observed the various perspective before coming into the conclusion that the department had completely misinterpreted or overlooked the intent and objectives of the law. Further because of the repercussions on tax revenue, a further legal battle may be forthcoming, in the form of a clawback from the Department.

GLOSSARY



Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ADD	Anti-Dumping Duty
AE	Associated Enterprise
AGM	Annual General Meeting
AICD	Agriculture Infrastructure and Development Cess
AIF	Alternative investment Fund
AIFs	Alternative Investment Funds
ALP	Arm's length price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Persons
APA	Advanced Pricing Agreement
ARE	Alternate Reporting Entity
ATO	Australia Taxation Offfice
AU	Assessment Unit
AY	Assessment Year
B2B	Business to Business
B2C	Business to Customer
BBT	Buy-Back Tax
BCD	Basic Customs Duty
BED	Basic Excise Duty
BEPS	Base Erosion and Profit Shift
BOI	Body of Individuals
CAG	Comptroller and Auditor General of India
CAT	Common Aptitude Test
CAROTAR	Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020
CBCR	Country By Country Reporting
CBDT	Central Board of Direct Taxes
CBI	Central Board of Indirect Tax
CBIC	The Central Board of Indirect Taxes and Customs
CG	Central Government
CGST Act	Central Goods and Services Act, 2017
CIRP	Corporate Insolvency Resolution Process
CIT	Commissioners of Income Tax
CTH	Custom Tariff Heading
Cus	Customs Act, 1962
CRPC	Code of Criminal Procedure Act, 1973
CVD	Countervailing Duty
CUP	Comparable Uncontrolled Price
DDT	Dividend Distribution Tax
DRC	Dispute Resolution Committee
DRI	Directorate of Revenue Intelligence
DTAA	Double Taxation Avoidance Agreement
ECL	Electronic Cash Ledger
EOIR	Exchange of Information on Region
FDI	Foreign Direct Investment
Fin	Finance Bill Finance Bill, 2022
FM	Finance Minister
FMV	Fair Market Value
FPI	Foreign Portfolio Investors
FTP	Foreign Trade Policy
FTA	Federal Tax Authorities
FT&TR	Foreign Tax and Tax Research
FTS	Fees for Technical Services

Abbreviation	Meaning
G2B	Government to Business
GST	Goods and Services Tax
GPU	General Public Utility
H&EC	Health and Education Cess
HFC	Housing Finance Company
HNI	High Net Worth Individual
HUF	Hindu Undivided Family
HSN	Harmonized System of Nomenclature
IBBI	Insolvency and Bankruptcy Board of India
IBC	Insolvency and Bankruptcy Code
IFSC	International Financial System Code
IFSCA	International Financial Services Centres Authority Act, 2019
IGST	Integrated Goods and Services Tax
IIM	Indian Institute of Management
IMC	Indian Medical Council Act, 1956
Ind AS	Indian Accounting Standards
INR	Indian Rupees
InvITs	Infrastructure Investment Trusts
IT Act	The Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income-tax Officer
KYC	Know Your Customers
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LR	Liquidation Regulation
LTC	Long-Term Capital Gains
MAM	Most Appropriate Method
MAT	Minimum Alternate Tax
MNEs	Multi National Entities
MFN	Most Favoured Nation
MoF	Ministry of Finance
MSME	Micro Small and Medium Enterprises
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent Duty
NCLT	National Company Law Tribunal
NFT	Non-Fungible Tokens
NELP	New Exploration Licensing Policy
NHB	National Housing Bank
NPA	Non-Performing Assets
NPS	National Pension System
NRI	Non-Resident Indian
OBU	Offshore Banking Unit

GLOSSARY

Abbreviation	Meaning
OECD	Organization for Economic Co-operation and Development
OPC	One Person Company
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
PCIT	Principal Commissioners of Income Tax
PIV	Pooled Investment Vehicle
PMLA	Prevention of Money Laundering Act, 2002
PSU	Public Sector Undertaking
PY	Previous Year
RBI	Reserve Bank of India
REITs	Real Estate Investment Trusts
RE	in the matter of'
REs	Regulated Entities
RIC	Road and Infrastructure Cess
ROC	Registrar of Companies
RTGS	Real Time Gross Settlement
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty
SARFAESI	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest
SCGT	State Goods and Services Tax
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956

Abbreviation	Meaning
SEBI	Securities and Exchange Board of India
SFT	Statement of Financial Transaction
SIAC	Singapore International Arbitration Centre
SPF	Specific Pathogen Free
SWS	Social Welfare Surcharge
TAN	Tax Deduction Account Number
TCS	Tax Collected at Source
TDS	Taxes Deducted at Source
TNMM	Transactional Net Margin Method
TPO	Transfer Pricing Officer
TP	Transfer Pricing
TOL Act	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020
UCB	Urban Co-operative Bank
UK	United Kingdom
USA	United States of America
UTGST	Union Territory Goods and Services Tax
VSV	Vivad se Vishwas
VU	Verification Unit
WTO	World Trade Organization
HC	High Court
SC	Supreme Court
FY	Financial Year
NFT	Non-Fuungible Tokens

FIRM INTRODUCTION

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With a team of experienced and seasoned professionals and multiple offices across India, TCA & VMGG as a combination offer a committed, trusted and long cherished professional relationship through cutting-edge ideas and solutions to its clients, across sectors.

Website: **www.taxcraftadvisors.com**

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