VISION 360

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

JULY 2022

EDITION 22

TCA TAXCRAFT ADVISORS

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EDITORIAL

Vision 360: Fifth Anniversary of GST and way forward!

July 01, 2022 marks the fifth anniversary of Goods and Services Tax. Introduced with a motto of 'One Nation – One Tax', GST aimed to reduce compliance burden on taxpayers by bringing uniformity amongst tax laws across the nation. Implementation of GST required the unison between Central Government and all the State Governments followed by amendment in Constitution. The efforts taken in this regard are worth appreciating.

The reform of this scale required enormous efforts and Lawmakers ought to be commended on this achievement. GST ended erstwhile regime of multiple taxes and brought in uniform tax code across all states. Undoubtedly, GST addresses most of the issues faced in erstwhile regime *viz* cascading Tax effect, classification disputes of goods or services, manual compliance requirements and so on.

With the implementation of GST, the Government sought to digitalize the procedures and make the system work seamlessly to reduce litigation and bring ease in doing business. The GST in a way did achieve all this on paper. However, the technical glitches and half-baked implementation of GST has been a spoil sport. It took Government more than 3 years to make the GST portal work fine while few returns like GSTR-2 and GSTR-3 could still not be implemented and had to be scrapped.

Technical glitches haven't been only implementation issue with the Good and Simple Tax – GST. In recent times, the taxpayers were troubled by cancellation of GST registrations on non-filing or nil reporting of GST returns, multiplicity of GST assessments for each year, confusion over jurisdictions. Further, irreconcilable views of AARs in different states have also been a cause of concern. It is high time that taxpayer's demand to set-up GST Tribunal is met, which will not only reduce the pressure from High Court but will also help in restoring taxpayers' trust.

An objective assessment to figure the benefits of GST would be comparing GDP, tax revenue, etc. from pre-GST era to present would paint exact picture for us decide level of success of GST. No matter what, GST has been a boon to the Government during the COVID times where the tax collections have reached record highs. This can be attributed to increase in taxpayer base.

It is now to be seen when this council decides to cover petroleum products that are so far kept out of GST net. This in true sense will erase cascading effect of taxes., not to mention it will ease the inflation but is also aligned with Government's resolve of ensuring ease of doing businesses!

Apart from GST, there have been quite some noise in Direct Tax Domain where the Department has issued a new Section (Section 194R) under TDS. This Section extends the scope of TDS to perquisites/ benefits/goodies received in cash or kind. This is likely to affect the social media influencers who earn most of their income as perquisites like free trips, branded products for promotional purposes. Government has issued Clarifications in this regard which has brought in more doubts in the mind of assessees.

Steering through these phases, we all keep facing ups and downs, yet what matters the most is we keep going on. With yet another issue of VISION 360, we, the entire team of TIOL, in association with Taxcraft Advisors LLP, GST Legal Services LLP and VMGG & Associates, look forward to aid you with key tax and regulatory updates!

Happy Reading!

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

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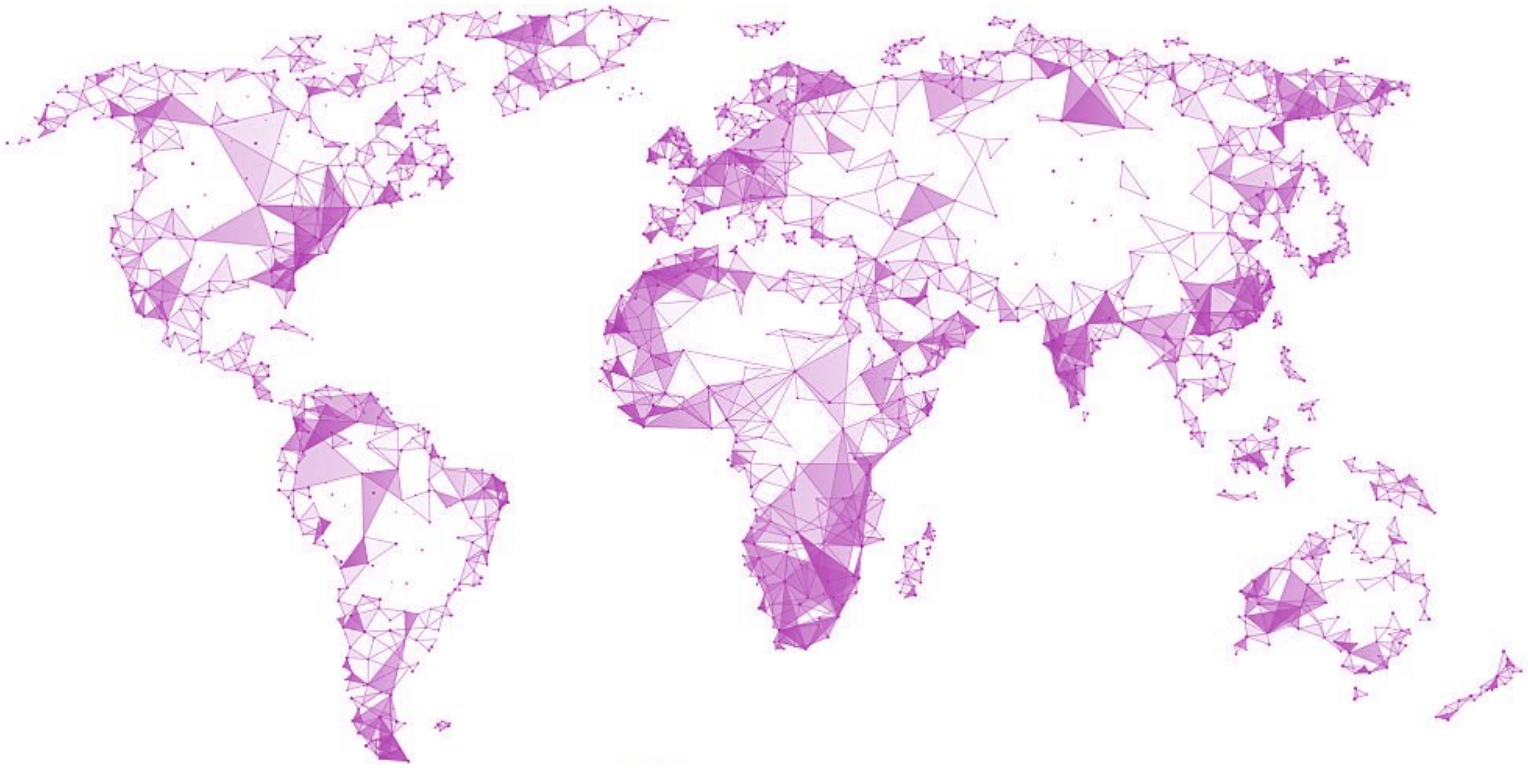
REGULATORY



ARTICLE

CONUNDRUM OF GST COUNCIL'S RECOMMENDATORY POWERS!

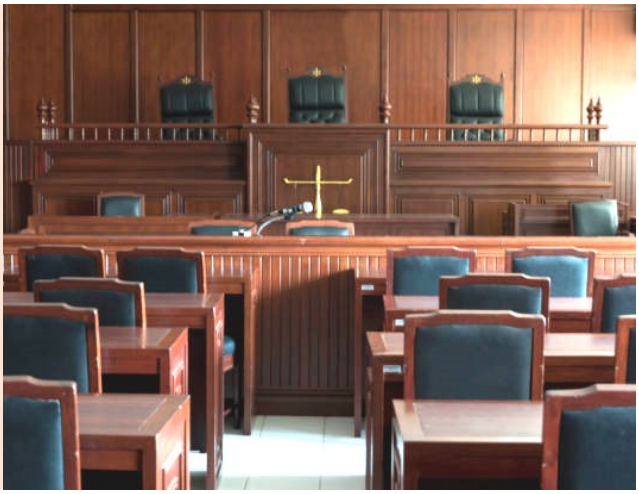
Supreme Court's decision in the case of Mohit Minerals brought the aspect of co-operative federalism and scope of GST council's recommendation to the surface.

Given that GST finds its roots directly in Article 246A of the Constitution of India, it is not being regulated by Union List, State List or Concurrent List. It thus becomes very pertinent that sufficient clarity is brought about on the Constitutional status of the GST Council and its effect on the powers of the Central and State Government to make laws independently but uniformly. This balance of independence and uniformity plays important role and is at the very heart of the GST Council's acceptance in the long run – independent of changing political horizons.

The Supreme Court's noting that the role of GST Council is a recommendatory body aiding the Government in enacting the legislation on GST and cannot be said to have a binding power on the Union and States, has unsettled the stature of GST Councils recommendations. The conclusion was arrived on the reasoning that the provisions of Article 246A does not contain force which would convert the recommendations of GST Council into legislation. Supreme Court at the instant was analysing the argument canvassed by the Union of India that "the recommendations of the GST Council are binding on Union and States" – the court eventually held it to be a far-fetched argument.

Supreme Court's finding was also based on the framework of Constitution which at its Article 254 provides that in case of repugnancy between a law enacted by Parliament and State legislature, the provisions of law enacted by Parliament shall prevail. It also provides for exception thereto when provisions made by the Legislature of such State shall prevail in that state. Article 246A however is expressly excluded from such repugnancy, meaning, in case of conflict between law made by Parliament and Legislature of State, both shall remain operative simultaneously. The Article has a twofold interpretation, in that, it first contemplates powers of Legislature of State to simultaneously form laws without having a compulsion of it being in tandem with the law enacted by the Parliament, and second the even in case of such deviation both laws shall subsist simultaneously.

This structure presently is vulnerable to diverse implications. If Legislature of State exercises its autonomy and deviates from recommendation of the GST council, it practically defines the 'One Nation One Tax' ideology that has been the single most important ideology behind introduction of GST.



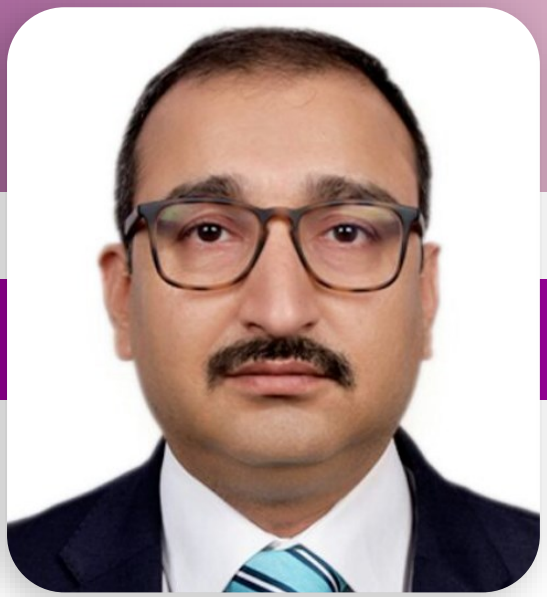
At this juncture, it also becomes pertinent to analyse the very composition of GST council and its decision-making process. The Council consists of Union Finance minister as its Chairman, Union Minister of State in charge of Revenue or Finance as member and one Minister from

each State as Member. The Council can make a decision upon having reached 75% majority of the weighted votes of the members who are present and voting at the meeting. Article 279A further provides weightage to the votes. Accordingly, the vote of the Central Government shall have a weightage of one third of the total votes cast, and the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

With the mechanism devised to make decisions, it would be a rare circumstance that Majority of States have their opinion in contrast with the Central Government. In other words, all things being equal, the decision of GST council may only be arrived at when Central Government and Majority of the State Government concur on issue at hand. Albeit a relief, yet it does not completely eliminate the possibility of having a fall out where one of the State deviated from the GST Councils decision, and if that be that case, its repercussions would open a pandora's box.

In all this, the silver lining is that despite five years of introduction of GST which has also seen changing political horizons in various States, the GST council's decision has so far been accepted unanimously.

INDUSTRY PERSPECTIVE



BHAVESH JOSHI

Head of Tax & Finance

Cipla Limited

01 The GST Council concluded its 47th Meeting recently in Chandigarh. Your views on the recommendation of the Council?

Well, the GST Council has indeed made some key recommendation especially in respect of rate rationalization of goods and services. In the interests of the industries having inverted duty structures such as printing, LED Lamps, etc., the Council, in a welcome move, has recommended to increase the rates of their goods, which will ensure utilization of credit. This will save them time and efforts required for refund claims.

In another key move, the Council has once again recommended to notify the proposed amendment to the interest provision which provides for levy of interest only on the portion of wrongly utilized ITC. However, the same recommendation had been made in the 45th Meeting as well, which was never notified. Hope this recommendation will see the day of light, as the Revenue authorities often issue notices for interest on wrong availment of ITC even though the same was never utilized. A decision is only as fruitful as effectively it is implemented. If the decision is not implemented, it is of no use no matter how welcome the decision is!

02 With the 5th Anniversary of the GST law in India, how well do you think it has replaced the erstwhile state and central tax laws?

No doubt introduction of GST law was revolutionary move by the Government. A single tax, that too entirely digital was the need of the hour. GST has certainly met its primary objectives, however, it is far from being impeccable. The portal issues, automated notices, ITC restrictions, are all causes of major pain to the assessees. There are many issues which require the intervention of the Appellate forums. However, as the GSTAT is yet to be formed and the HCs refusing admit writs at earlier stages, we, the assesses, are left remediless at times.

The recommendation of the Council to constitute a Group of Ministers to address various concerns raised

BHAVESH JOSHI
Head of Tax & Finance - Cipla Limited

by the States in relation to constitution of GST Appellate Tribunal, if acted upon, would hopefully expedite the solving the issues of the assesses. However, I believe that as '*n*' number of cases are to be filed before the GSTAT as soon as it forms, the Tribunal would be under immense pressure to dispose the matters.

Agreed! One such issues, where the assessees want to prefer Appeals before the GSTAT is restriction of ITC. Do you see such provision as a burning issue?

03

Recently introduced Form GSTR 2B specifies list of invoices against which ITC will be available along with list of ITC that shall be restricted due to various reasons such as vendor defaults or failure to file Form GSTR-3B, etc. We understand that these amendments are being introduced to link ITC with payment of GST by the vendor, however, it is very painful for recipient to ensure the adherence to such provisions by its vendors and the supply chain. All these provisions are made with an ideal world in mind and the world is not perfect unless every one therein is brought on the same platform like the e-invoice system. With the e-invoice system, the government itself can monitor the compliance post raising the invoice by the supply chain.

Moreover, the validity of of Rule 36(4) has already been challenged under the courts as it shifts the burden of ensuring compliance from the Department to the recipient taxpayers. Nonetheless, as things stand, the taxpayers may take steps in the direction by ensuring that the vendors are compliant.

04

Cipla, being one of the biggest players in the pharma industry, you must be involved in various imports? Do you face any challenges relating to tariff classification? The Tariff seems to be well detailed for the chemical chapters!

Sure enough the tariff is detailed and covers various goods, chemicals, etc. relating to the pharma industry. However, as the goods involved in the pharma sector are very advanced and there are not much of distinguishing factors for the chemicals involved, the issue relating to tariff classification is ever-present. Moreover, the customs authorities, being custodians of the Customs laws, are not very well versed the technicalities and nuances involved in the pharma sector. Thus, the disputes ensue resulting in long litigations.

It is often seen that even for regular products and chemicals, if the Officials dispute the classification, we, as assessees have to knock the doors of the higher judicial forums to get some relief. This only adds

to the costs and burdens of the Company. If suitable clarifications are issued by the Board in this regard, it would be really helpful for all the industry players.

05 The Government has excluded Pharma Industry from RoDTEP radius. How has the Industry reacted on it?

When the RoDTEP Rate were announced, we were rather disappointed to see that the pharma sector being excluded from the RoDTEP. We were one of the major beneficiaries of the MEIS Scheme and therefore being left out from the RoDTEP Scheme was indeed a major setback for the entire industry. We understand that the decision comes from the Government upon considering the sector has done rather well even without incentives, but it such incentives really help us be more competitive in the international market.

The Industry has collectively submitted its representation before the authorities and results are awaited. However, even if the RoDTEP is extended to the Pharma sector, seeing the current rates, it does not seem to be of much help.

06 True the RoDTEP scheme has disappointed the pharma players. How about the PLI Scheme?

The PLI scheme has indeed been commendable offering 4-10% incentive on incremental sales over the base year of 2019-20. This will certainly benefit the Indian manufacturers' given that the sales targets are achieved. This is the right step toward the 'Make In India' objective of the Government. Here again, we make a request to the administration to act proactively in terms of issuing budgetary allocation for each of the qualifying applicant as per the policy. The Indian economy also seems to be recovering rather well post the COVID-19 pandemic aftermath. Introducing such schemes with appropriate clarifications will really ensure India's mark at the global level as it provides a level playing field to all industry players,

HC sets aside order under Section 148A(d), directs Revenue to open e-portal for non-resident to file SCN Reply

Divij Singh Kadan

2022-TIOL-837-HC-DEL-IT

The Revenue issued a SCN dated March 17, 2022 under Section 148A(b) of the IT Act to the Assessee at his Delhi address, granting eight days' time for filing response. Since the Assessee, was a non-resident based in the US, he was unavailable in India and requested for an extension to furnish response against the said notice *via* an email dated March 27, 2022.

However, the Revenue had closed the e-portal on March 26, 2022 and passed order under Section 148A(d) of the IT Act without considering Assessee's request.

Aggrieved, the Asseessee preferred a writ petition before the HC. The HC observed that the status of the Assessee being a non-resident was duly reflected in Assessee's profile and therefore accessing and collating the records for the same would have required a reasonable time . In these circumstances, the request for extension of time to file SCN reply should have been considered by the AO for granting a reasonable extension. Further, communication through e-mails was an established procedure and a valid means to communicate with the Assessee and the Revenue itself issued the SCN under Section 148A(b) of the IT Act through e-mail. In this backdrop, a submission that if a reply or request was sent to the official e-mail address of the AO, he was not obliged to consider such e-mail could not be accepted.

The HC placed strong reliance on the coordinate bench ruling in **Divya Capital One [W.P. (C) No.7406/2022]** wherein it was held that if a request for extension of time was made by the Assessee, the Revenue ought to have duly considered such request keeping in mind relevant provision which did allow Revenue to grant a period of upto 30 days to the Assessee for filing a reply.

The HC thus set aside the order passed under Section 148A(d) of the IT Act and consequent SCN issued under Section 148A(b) of the IT Act passed without considering the Assessee's request for extension of time for filing a response. The Hon'ble Court accordingly granted two weeks' time as a final opportunity to the Assessee to file response against SCN issued under Section 148A(b) of the IT Act and directed the Revenue

to open the e-portal for a period of two weeks to enable the Assessee upload his reply and also pass a fresh reasoned order after considering the reply within eight weeks.

ITAT remits appeal over Revenue's 'colourable device' finding on valuation report & goodwill in business acquisition

TE Connectivity Services India Private Ltd

IT(TP)A No.300/Bang/2021

The Assessee was a wholly owned subsidiary of a Singaporean company, and was engaged in providing ITeS in the nature of shared services in the areas of Information Technology, Finance back-office, Human Resource, customer support, etc. to the TE Group entities across the globe. The Assessee had acquired the shared service business of TE Connectivity Global Shared Services Ltd (TECGSS) for a purchase consideration of INR 68.55 Crores. The purchase consideration was computed on the basis of an independent valuer's report prepared by using weighted average of two internationally accepted methods, i.e., Discounted Cash Flow ('DCF')and Comparable Market Multiple Method.

The Revenue rejected the valuation report stating that said valuation was undertaken using the DCF method which was not acceptable and concluded that purchase consideration was a colourable device at an it was fixed as abnormally high value vis-à-vis net assets taken over (INR 7.64 Crores) and also rejected the depreciation on amortised cost of goodwill claimed during relevant PY (i.e. AY 2016-17).

Aggrieved, the Assessee approached the ITAT contending the following:

- The Revenue merely rejected the valuation report without identifying/recording any errors/deficiencies with said report;
- DCF method of valuation was internationally recognised and accepted by RBI, ICAI as well as under the IT Act;
- Rejection of DCF method of valuation on the ground that it involves assumptions was without any basis;
- Comparison of the projections with the actual revenues could not be a basis for rejecting any valuation;
- The Revenue failed to demonstrate and record any reasons or basis for contending that slumps sale was a colourable device; and
- Amendment by the Finance Act, 2021 inserting provisions qua allowance of depreciation on goodwill was applicable with effect from April 1, 2021 and not applicable to the year under consideration (i.e., AY 2016-17), which was further evident from amendment to Section 55 of the IT Act (meaning of cost of acquisition) which provided for adjustment mechanism for depreciation that may have been claimed and allowed prior to the amendment.

The Hon'ble ITAT relying on Delhi ITAT's judgement on similar issue in **Rockland**

Diagnostics [ITA No.316/Del/2019] held that Revenue was not justified in rejecting the valuation report merely on the ground that projected results did not match with the actual results and directed Revenue to decide the matter afresh.

ITAT rules on allowability of AMC, communication & legal expenses, paid by Honeywell to non-residents, holds them not subjected to TDS

Honeywell Technolgoy Solutions Pvt. Ltd.

ITA No. 2890/Bang/2018

The Assessee was engaged in the business of software development and providing IT enabled services. The Assessee had incurred INR 32.87 Crores on Annual Maintenance Contract of computer licence and purchase of software, against which a payment of INR 11.42 Crores was made to non-residents without deducting any tax therefrom.Thus,the subject expenditure was disallowed by Revenue in terms of Section 40(a)(i) of the IT Act.

The Revenue held that balance of INR 21.45 Crores (purchase of software) was capital expenditure and disallowed it by allowing depreciation at 30%.

The Revenue also disallowed communication and legal expenses to the tune of INR 2.45 Crores (paid to Assessee's parent company) in terms of Section 40(a)(i) of the IT Act.

Aggrieved, the Assessee approached the CIT(A) who upheld the disallowances under Section 40(a)(i) of the IT Act placing reliance on Karnataka HC's ruling in **Samsung Electronics [(2011)(203 Taxman 477)(Kar)]** and in respect of purchase of software, the CIT(A) directed the Revenue to decide Assessee's claim afresh stating that tax was deducted at source on INR 19.85 Crores and the license thereof was for less than two years.

Aggrieved, the Assessee approached the ITAT which observed that the HC ruling in **Samsung Electronics [(2011) (203 Taxman 477)(Kar),]**] was rendered on October 15, 2011 and the year under consideration fell prior to that date, Therefore, deleting the disallowance, the ITAT held that there was no requirement for deduction of tax/ disallowance under Section 40(a)(i) of the IT Act on software payments made prior to said HC ruling.

With regard to disallowance of communication expenses of INR 2.45 Crores paid to its parent company under Section 40(a)(i), the ITAT noted that payment was made for providing point to point connection between two computers or local area networks and the parent company entered into an agreement with

a third-party vendor for providing data link services and the proportionate cost, based on actual usage, was recovered from the affiliates. The purpose of payment was towards utilisation of data link facility and not in connection with the grant of any license/use of equipment belonging to third party vendor and hence, there was no use or right to use equipment.

Accordingly, placing reliance on the Delhi HC ruling in **Asia Satellite Telecommunication Co Ltd [(197 taxmann 263)]** wherein it was held that payment received for providing bandwidth facility was not taxable as equipment royalty or process royalty, the ITAT observed that payment did not fall under the category of royalty within the meaning of Article 12 of DTAA.

With respect to disallowance of legal and professional charges under Section 40(a)(i), the ITAT noted that the Assessee had appointed professional firms for compliance of tax laws in USA in respect of employees sent to USA for undertaking projects. The ITAT placing reliance on the Delhi HC ruling in **Chander Mohan Lal[ITA No.1869/Del/2019]** wherein it was held that professional services would not fall under the category of "Fee for technical services" within the meaning of section 9(1)(vii) of the IT Act, observed that the services were rendered in USA by these non-residents and the payments had been received by them outside India. Further, their services had been used outside India. Thereby, these payments did not constitute income under the IT Act and it was not taxable in India in the hands of non-residents. Consequently, the question of deducting tax at source under Section 195 of the IT Act did not arise. Moreover, in order to bring the impugned payments within the ambit of Article 12 of India-US DTAA, the technical knowledge should have been "made available" to the Assessee. However in the present case, the Assessee had only availed professional services of non-residents in connection with tax compliances and the technical knowledge had not been "made available" thus the payments could not be taxed as "Fee for technical services" under Article 12 of the DTAA.

Thus, finding AMC and software expenses, legal and professional charges and communication charges as allowable expenditure, the ITAT deleted the disallowances made under Section 40(a)(i)/(ia) for non-deduction of tax at source.

ITAT holds that mere cash deposits by Assessee cannot be construed as undisclosed income, quashes reassessment

Sanjay Sadashiv Navale

ITA No.452/PUN/2019

The Assessee was subjected to reassessment proceedings, pursuant to search conducted at Sinhagad Technical Education Society and Shri Maruti Navale Group. It was alleged by the AO that income of INR 5.30 Lakhs for AY 2010-11 escaped assessment, on the ground that the cash deposits could not be explained from the known sources of income evident from the income tax return and other evidence available on record. Aggrieved, the Assessee preferred an appeal before the CIT(A) who upheld the reassessment proceedings which caused the Assessee to approach the ITAT. Before the ITAT, the Revenue contended that cash deposits made at the Assessee's behest could not be explained from the known sources of income and other evidence available on record as the taxpayers in the instant case were non-filers. The ITAT placed reliance on multiple HC rulings, wherein it was held that reopening reasons had to be read on standalone basis without any scope of addition, deletion or substitution therein even if supportive material emerged at a later stage. Accordingly, the ITAT observed that the Revenue proceeded on a fallacious assumption that the bank deposits constituted undisclosed income and held that the reasons for reopening the assessment proceedings were not sufficient, thus, quashed the reassessment proceedings.

DIRECT TAX
From the Legislature

NOTIFICATIONS

CBDT specifies conditions under section 9A(8A) of the IT Act for Investment fund & fund manager located in IFSC

Notification No. 59/2022

June 6, 2022

CBDT *vide* Notification No.59/2022 dated June 6, 2022, notifies the conditions specified by the Central Government under Section 9A(8A) of the IT Act.

The subject amendment intends to grant certain exemptions / modify certain conditions under clauses (a) to (m) of sub-section (3) and clauses (a) to (d) of sub-section (4) of Section 9A of the IT Act to eligible investment funds and its eligible fund manager, located in an International Financial Services Centre.

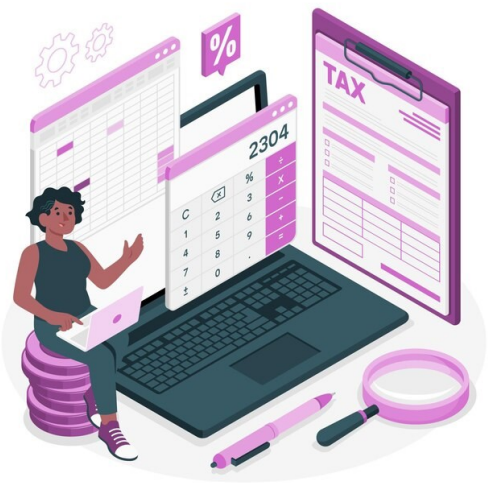
CBDT issues Notification to facilitate Faceless Assessments, effective from June 6, 2022

Notification No. 61/2022

June 10, 2022

CBDT issues Notification to facilitate the conduct of faceless assessment proceedings under Section 144B of the IT Act. The Notification provides for Income Tax Authorities for assessment, review and verification units across the country and is deemed to come into force on June 6, 2022.

Exception to the expanse of the Notification are things done or omitted to be done before the supersession of prior Notifications. The Notification applies in respect of all persons or class of persons, or incomes or class of incomes, or cases or class of cases across the country, excluding the persons or class of persons, or incomes or class of incomes, or cases or class of cases covered by the prior Notifications.



CBDT notifies 331 as Cost Inflation Index for FY 2022-23

Notification No. 62/2022

June 14, 2022

CBDT notifies 331 as cost inflation index for FY 2022-23. The Notification comes into force from April 1, 2023, thus, applies to AY 2023-24 onwards.

CBDT notifies 'other conditions' for Specified Fund claiming Section 10(4D) exemption

Notification No. 64/2022

June 16, 2022

CBDT notifies new Rule 21AIA for prescribing 'other conditions' required to be fulfilled by a specified fund for claiming exemption under Section 10(4D) of the IT Act as per the newly inserted proviso to Explanation (c)(i)(III) to Section 10(4D) of the IT Act.

Substituting Form 10-IG CBDT also amends Rules 21AI, 21AJ, 21AJA and 21AJAA of the IT Rules to provide for filing of Forms 10-IG, 10-IH, 10-IK, 10-IL (as applicable) as a prerequisite for claiming exemption under Section 10(4D) or eligibility for tax rates under Section 115AD of the IT Act.

CBDT extends applicability of Safe Harbour Rules to AY 2022-23

Notification No. 66/2022

June 17, 2022

CBDT extends applicability of Safe Harbour Rules under Rule 10TD of IT Rules to AY 2022-23. The amended rules are deemed to come into force from April 1, 2022.

CBDT notifies TDS compliance for Section 194R, 194S among others

Notification No. 67/2022

June 21, 2022

CBDT notifies amendments in the IT Rules specifying various forms and timelines for furnishing such forms for the purpose of TDS compliance under Section 194B, 194-IA, 194-IB, 194S, 194R and 194M of the IT Act.

Further, CBDT notifies Form 26QE for the purpose of TDS under Section 194S of the IT Act and amends Form 26Q for Sections 194R and 194B of the IT Act, Form 26QB for Section 194-IA of the IT Act, Form 26QC for Section 194-IB of the IT Act and Form 26QD for Section 194M of the IT Act.

In addition to the above, CBDT also notifies Form 16E to be furnished by every specified person referred to in Section 194S of the IT Act and responsible for TDS therein, to the payee within fifteen days from the due date for furnishing Form 26QE.

CBDT also clarifies that Section 206AB is not applicable with respect to TDS under Sections 194-IA, 194-IB and 194M of the IT Act with effect from April 1, 2022.

CBDT issues Guidelines for submission of STT Return

Notification No. 02/2022

June 24, 2022

CBDT issues format, procedure and guidelines for submission of Form No. 1, Form No. 2 and Form No. 2A for STT. The key highlights are captured below:

- Every recognized stock exchange or the prescribed person in the case of every mutual fund or insurance company or the lead merchant banker in the case of an IPO shall after the end of each financial year, prepare and deliver or cause to be delivered a return to the Assessing Office furnishing prescribed details;
- A new class of person i.e., insurance company has been made responsible for collection and payment of securities transaction tax and for such person a new form has been introduced i.e. Form No. 2A;
- All eligible reporting institutions are requested to submit the registration information as required and send the signed copy in pdf format at email id stt.reporting@insight.gov.in. The guidelines for which are provided in STT Rules, 2004;
- Reporting Institutions are required to submit the data files using SFTP Server using the login credential;
- Return of STT shall be furnished on or before the June 30 immediately following the financial year in which the transaction has been registered or recorded; and
- Reporting institution is required to document and implement appropriate information security policies and procedures with clearly defined roles and responsibilities to ensure security of submitted return. jurisdictional HC for filing an appeal.

CIRCULARS

CBDT modifies conditions in Form 10AC issued since April 1, 2021 to align with amended provisions

Circular No. 11/2022

June 3, 2022

CBDT clarifies that conditions contained in Form No. 10AC, issued between April 1, 2021 till June 3, 2022 shall stand substituted to align the conditions with amendments made by Finance Act, 2022 subject to which the registration/approval or provisional registration/ provisional approval was granted to trusts and institutions.

The Circular covers Form No. 10AC issued under:

- Section 12AB(1)(a) of the IT Act.
- Section 12AB(1)(c) of the IT Act.
- Clause (i) of second proviso to Section 10(23C) of the IT Act.

- Clause (iii) of second proviso to Section 10(23C) of the IT Act.
- Clause (i) of second proviso to Section 80G (5) of the IT Act.
- Clause (iii) of second proviso to Section 80G (5) of the IT Act.

Government issues guidelines on new TDS provisions on benefits or perquisites (Section 194R)

Circular No. 12/2022

June 16, 2022

The Finance Act, 2022 inserted a new Section 194R in the Income-tax Act, 1961 with effect from July 1, 2022. This section mandates that, a person, who is responsible for providing any benefit or perquisite to a resident shall deduct TDS @10% of the value of such benefit or perquisite. This benefit or perquisite may or may not be in the form of money; however, it should arise during the course of business or profession.

In the case of individuals or HUF, it is further clarified that said provision shall be applicable if the total sales or gross receipts exceeds INR 1 crore in case of business or INR 50 Lakhs in case of profession. Also, these provisions are applicable to an entity only if overall perquisite value to a resident under this Section exceeds INR 20,000/- during a financial year.

In this regard, the Board has issued certain guidelines in order to give clarity on certain issues. The salient points clarified in these guidelines are reproduced below:

- Tax deductor shall deduct TDS under these provisions irrespective of the fact under which section benefits or perquisites are taxable in the hands of recipient;
- TDS is required to be deducted even if the benefit or perquisite is in the form of capital assets;
- Sales discount, cash discounts and rebates allowed to customers are not benefits or perquisite;
- Free Samples provided would be treated as a benefit or perquisite for deduction of TDS;
- These provisions are not applicable where the recipient is a government entity not carrying on an business or profession;
- Value of Benefits or Perquisite will be the fair market value of such benefits or Perquisite.
- Out of pocket expenses incurred by service provider and reimbursed by service receiver would be treated as benefit or perquisite. However, if the invoice is received in the name of service receiver, then reimbursement will not be considered as benefits or perquisites;
- Expenses incurred by a company for dealer/customer conferences are not benefits or perquisites if such benefit or perquisites is provided to all dealers/Customers;
- If the benefit or perquisites are in kind, the recipient has to pay tax by way of advance tax; and
- For threshold computation of INR 20,000/- value of benefits or perquisites provided during April-June

2022 will also be considered.

Government issues guidelines on new TDS provisions on virtual digital assets (Section 194S)

Circular No. 13/2022

June 22, 2022

The Finance Act, 2022 inserted Section 194S in the Income-tax Act, 1961 effective from July 1, 2022. The subject section mandates the person responsible for paying resident any consideration for transfer of a VDA to deduct TDS @1% of such sum as income tax thereon. The subject provisions apply where the amount of consideration exceeds INR 50,000/- (for specified persons) or INR 10,000/- (for other categories).

The specified person is defined as an individual/HUF who does not have any income under the head "Profits and gains of business or profession" or an individual/HUF having income under the head "Profits and gains of business or profession" if the total sales or gross receipts does not exceed INR 1 crore in case of business or INR 50 Lakhs in case of profession in the preceding FY.

In this backdrop, the Board has issued guidelines. The key points clarified in these guidelines are reproduced below:

- Person responsible for deducting TDS is enumerated in the given table:

Scenarios	Person Involved	Who is liable for TDS deduction
Scenario 1	Where there is no intermediary involved	Buyer should deduct TDS in the name of seller.
Scenario 2	Where transfer takes place through exchange and VDA owned by Seller	Exchange should deduct TDS in the name of seller.
Scenario 3	Where transfer takes place through exchange and VDA owned by broker (broker is the seller)	Exchange should deduct TDS in the name of broker.
Scenario 4	Where transfer takes place through broker (broker is not the seller)	Both broker and exchange (Alternatively, there may be an agreement between broker and exchange that broker will deduct TDS).
Scenario 5	Where transfer takes place through exchange and VDA owned by Exchange	Primarily, buyer or his broker is required to deduct TDS (Alternatively, there may be an agreement between broker/buyer and exchange that exchange will pay tax on or before due date for that quarter along with submission of quarterly return in form 26QF).

- Where consideration for transfer of VDA is in kind or in exchange of another VDA:
  - ◊ Where consideration for transfer of VDA is in kind, seller should deposit tax as advance tax and should provide copy of challan to buyer.

- ◊ Where consideration for transfer of VDA is in exchange of another VDA, in this case, both vendors are buyers as well as sellers. Both vendors have to pay tax as an advance tax in capacity of seller and provide the copy of challan to corresponding buyers so that VDA can be exchanged.
- ◊ Where consideration is in kind or in exchange of another VDA, and the transaction is taking place through an exchange, in such a situation, tax may be deducted by exchange on the basis of written agreement with buyer/seller.

- Provisions of section 194Q are not applicable on transfer of VDA.
- TDS has to be deducted on net consideration after excluding GST/commission.
- Where the payment is made through payment gateways, payment gateways are not required to deduct TDS if the buyer has already deducted TDS. To ensure the same, payment gateways may take an undertaking from buyer.
- For computation of threshold of INR 50,000/- or 10,000/- as the case may be, consideration paid during April-June 2022 will also be considered and any sum paid/credited during April-June 2022 will not be subjected to TDS.

CBDT issues Circular for TDS on Virtual Digital Asset transactions other than those taking place on or through an Exchange

Circular No. 14/2022

June 28, 2022

CBDT vide Circular No. 14/2022 dated June 28, 2022 has issued guidelines for deduction of TDS under Section 194S of the Income-tax Act, 1961 for transactions other than those taking place on or through an exchange. The salient features of these guidelines are as under:

- In a peer-to-peer transaction (buyer to seller without going through an exchange), buyer is required to deduct tax under section 194S. After deduction, deductor is required to furnish a quarterly statement in Form 26Q.
- Where consideration for transfer of VDA is in kind or in exchange of another VDA:
  - ◊ Where consideration for transfer of VDA is in kind, seller should deposit tax as advance tax and should provide copy of challan to buyer.
  - ◊ Where consideration for transfer of VDA is in exchange of another VDA, both parties are buyers as well as sellers. Both parties thus have to pay tax as advance tax in capacity of seller and provide the copy of challan to corresponding buyers so that VDA can be exchanged.
  - ◊ Tax so paid is required to be reported in TDS Statement along with challan number by both of the parties. The updated Form 26Q includes provisions for reporting of such transactions.
- Once TDS is deducted under Section 194S, tax deduction would not be required under section 194Q.

ITAT confirms use of customs-data for TP-benchmarking, remits TP adjustment in respect of credit-period

GP Global Energy Pvt Ltd

ITA No.5695/Del/2018

A draft assessment order was passed by the TPO proposing a TP adjustment which was later reduced on account of arithmetical mistakes in the rectified order under Section 154 of the IT Act and the Assessment order was subsequently passed by the AO.

Aggrieved by the TP adjustment, the Assessee approached the CIT(A) contending that the MOPAG prices used as comparables were spot prices, i.e., payment on delivery, whereas the Assessee had availed credit from its AE. Further, the second proviso to Section 92C (2) of the IT Act provided that if the price computed was within 5% range of the price charged by the AE then no adjustment was required to be made.

The Assessee contended before the CIT(A) that -

- The TPO had not considered the transaction where difference between comparable transaction price and international transaction price was negative.
- The TPO could not disallow the aggregation of negative values when the same was allowed in the original order passed by him as the scope of rectification under Section 154 of the IT Act was limited.
- The TPO in the succeeding assessment year had accepted the claim of the Assessee for credit period adjustment and benefit of second proviso to Section 92C (2) was granted to the Assessee.

On the other hand, the Revenue argued that no such claim was accepted by the TPO in the succeeding assessment year and no adjustment was made since the variation was within the prescribed tolerance limit of 5%. The Assessee had increased the MOPAG prices with the financial cost for the credit period enjoyed by the Assessee and the financial cost was computed on the basis of actual credit period availed by the Assessee as multiplied by interest factor of 7% per annum which was certified as cost of funds in the hands of the AE.

The CIT(A) placing reliance on Chennai ITAT ruling in case of **Coastal Energy Pvt Ltd** wherein it was held that valuation was made by custom authorities by assigning values to import goods on the basis of scientifically formulated methods as they were responsible for making fair assessment value of the imported goods according to internationally accepted protocols, directed the TPO to benchmark the international transaction for the purchase of fuel oil/HSD by the Assessee by using customs data and allowed TP-adjustment in respect of credit period by considering Assessee's claim that the TPO had allowed such adjustment in the succeeding assessment year. Further, the CIT(A) directed the AO/TPO to consider the entire set of transactions as against the transactions considered by the TPO in the rectification order passed under Section 154 of the IT Act.

Aggrieved, the Revenue approached the ITAT contending that no claim for credit period adjustment was accepted by the TPO in the succeeding assessment year and no adjustment was made since the variation was within the prescribed tolerance 5% limit and the benefit of second proviso to Section 92C (2) of the IT Act was wrongly granted to the Assessee as they were only applicable from the succeeding assessment year. The Revenue further contended that the CIT(A) had erred in directing the AO/TPO to consider the entire set of transactions as against the transactions considered by the TPO in the rectification order passed under Section 154 of the IT Act, ignoring Section 92(3) of the IT Act and the facts recorded by the TPO in the rectification order passed under Section 154 of the IT Act.

The ITAT observed that the said contentions of the Revenue were not thoroughly examined by the CIT(A) and that the CIT(A) had not called for remand report to appreciate the contentions of the Revenue as well as the Assessee. Accordingly, in the interest of justice, the ITAT remitted the issue back to AO/TPO for de novo adjudication in accordance with law after providing adequate opportunity of being heard to the Assessee. The ITAT finding no infirmity in this direction of the CIT(A), confirmed it and thereby partly allowed the Revenue's appeal.

ITAT holds commercial bank-guarantee distinct from corporate guarantee, directs re-computation of commission

GMR Infrastructure Limited

ITA Nos. 1705, 1622, 1599, 1600, 1741 to 1744/Bang/2017 & ITA Nos. 1643/Bang/2019 & 495/Bang/2020

The Assessee provided a Stand-By Letter of Credit (SBLC) for and on behalf of the AE through its Indian bank, out of non-fund based limits to the foreign lenders of the said AE. The bank charged a commission of at the rate of 0.90% - 0.95% of the amount of SBLC to the Assessee. The Assessee, in turn, recovered a certain amount from its AE.

The Assessee had also advanced corporate guarantee in furtherance to its business of infrastructure development in the field of airports, coal mining, power projects abroad for which the Assessee had set AEs abroad to facilitate in its expanding infrastructure activities overseas. The Assessee instead of borrowing money in India and investing by way of equity capital in its overseas AEs allowed foreign AEs to borrow funds overseas and in order to facilitate borrowing overseas for furtherance of its business it provided a corporate guarantee.

The Assessee only gave a guarantee to the bank of the AE such that in case of a default by the AE, the loan taken by the AE would be repaid by the Assessee. There was no loan given by the Assessee to the AE and there was no

cost to the Assessee as no amount was charged by the bank of the Assessee as the bank which had provided funding to the AE had prohibited charging of any commission by the Assessee from its AE till the repayment of entire loan amount and the Assessee has obtained counter guarantee from AEs to compensate it in case of any default and hence no risk of whatsoever nature was undertaken by the Assessee. The TPO made an adjustment of the entire commission amount, charged by the bank to Assessee, stating that the risk premium to be charged by the Assessee from its AE should be the bank rate of 0.90% - 0.95%. The TPO also made an adjustment towards corporate guarantee extended, considering 50% of differential rate of annualized average yield on 5 years bonds. In doing so, the TPO had assumed Assessee's credit rating as BBB (12.28% /11.51%) while that of AE at BBB- (13.37% / 12.75%).

Aggrieved by the TP adjustments made by the TPO, the Assessee preferred an appeal to the CIT(A) which granted relief to the extent of commission recovered by the Assessee from the AE and upheld the adjustment made by the TPO to the extent of the balance amount that was not recovered by the Assessee from its AE. Aggrieved by the order of the CIT(A), both the Assessee and the Revenue approached the ITAT. With regard to the adjustment made towards SBLC, the ITAT followed the earlier decisions in Assessee's own case in previous years and in the case of its group concern, GMR Energy Ltd and upheld the relief granted by CIT(A) to restrict adjustment to the amount of commission not recovered by the Assessee from its AE (as opposed to entire commission charged by the bank).

With regard to the adjustment towards corporate guarantee, the ITAT placing reliance on Kolkata ITAT's decision in **Instrumentarium Corporation [ITA Nos. 1548 & 1549/Kol/2009 & ITA No. 2058/Kol/2010]** rejected the Assessee's argument that corporate guarantee was not an international transaction, however, noting that considerations for issuance of a corporate guarantee were distinct and separate from that of bank guarantee, refused to approve commission charged by TPO which was based on instances restricted to commercial banks providing guarantees.

The ITAT, further observed that, when a commercial bank issued bank guarantees which being a part of their business activity, in the event of any default, a higher commission was charged. In the instant case, it was the Assessee that was issuing corporate guarantee to the effect that if the foreign AE did not repay loan availed by it, then in such event, the Assessee would make good the amount and repay the loan. Therefore, the comparison had not been drawn between like transactions. Thus, holding commercial bank -guarantee to be distinct from corporate guarantee, the ITAT directing the TPO to recompute guarantee commission rate following principles laid down by the HC and the ITAT in a plethora of judgments, disposed of the appeals of the Assessee and the Revenue.

HC adjudicates on Assessee's writ petition challenging assessment order passed sans jurisdiction

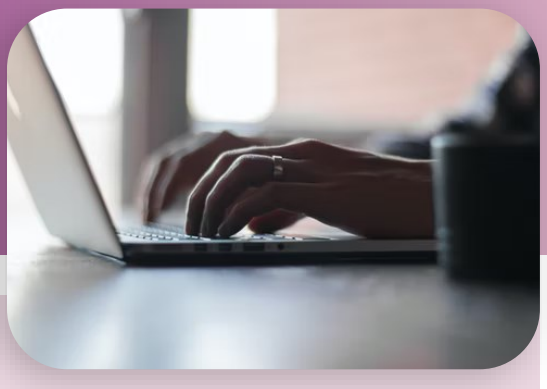
Evalueserve SEZ (Gurgaon) Private Ltd

W.P.(C) 7782/2022

The Petitioner had filed a writ petition before the HC challenging the Assessment Order passed under Section 143(3) of the IT Act read with Section 254 and Section 144B. The Petitioner also sought quashing of demand notice issued under Section 156 of the IT Act and penalty notice issued under Section 274 of the IT Act. Before the HC, the Petitioner submitted that the Impugned Order had been passed without jurisdiction as the TPO had made an addition of INR 1.81 Crores in violation of the order of the ITAT, whereby the issue of capacity under-utilization adjustment had been remanded to the TPO for adjudication and instead of adjudication of the same and without any discussion on capacity under-utilization adjustment, the AO had sustained the addition of INR 1.81 Crores.

The Petitioner further submitted that the AO had erred in not appreciating that it ought to have passed a draft assessment order and not the impugned final assessment order in accordance with Sections 144C and 144B of the Act. The HC issuing a notice, permitting the Revenue to file a counter affidavit within four weeks, clarified that the Rejoinder affidavit, if any, be filed before the next date of hearing and directed a stay of the impugned assessment order as well as penalty and demand notices till further orders, listing the matter for further hearing on September 21, 2022.

ARTICLE



Section 194 R - TDS on Benefit or Perquisite of a Business or Profession

A business or professional is required to make a lot of expenditure for their business growth, business promotion and for maintaining a healthy relationship with various stakeholders. The expenditure may be in the form of gifts, free samples or incentives like sponsorship of trips, free tickets for an event, TV, mobile, Quantity discount etc. Now, all such gifts and incentives as provided to stakeholders are covered under the ambit of section 194R as per definition of benefits or perquisites as provided under section 194R of the Income Tax Act, 1961.

Finance Act 2022 inserted a new section 194R in the Income-tax Act, 1961 with effect from 1st July 2022. This new section mandates a person providing any benefit or perquisite to another person for their business/ profession, to deduct tax at source @ 10% of the aggregate of value of such benefit or perquisite. TDS under this section is to be deducted only if overall perquisite value provided to such resident exceeds INR 20,000/ - during a financial year. It is further clarified that in case of individual or HUF, said provisions shall be applicable if the total sales, turnover or gross receipts exceed INR 1 crore in case of business or INR 50 Lacs in case of profession. For threshold computation of INR 20,000, benefits or perquisites provided during April -June 2022 will also be considered but benefits or perquisites provided during April-June 2022 will not be subjected to TDS. Benefit or perquisites may be in cash or kind.

It is interesting to note that similar nature of transactions have GST implications as well, according to Sec. 17(5)(h) of CGST Act, where the goods are lost, stolen, destroyed, written off or disposed off by way of gifts or free samples, ITC on such goods is not allowed. This implies that on one hand, such benefits or perquisites are taxable as per provisions of section 194R and on the other hand, provider of free samples or gifts is not allowed to avail ITC on these items. Therefore it's clearly an inverted tax structure which results into loss of input tax credit.

There are a lot of practical challenges that India Inc. is likely to face - some of them are enumerated here-in-below:

- Earlier, Industries providing gifts, free samples or incentives are recording all the expenses under the single heading of business promotion expenses. But, due to implementation of Section 194R, Provider has to maintain a detailed record of receiver for the purpose of tax deduction. Further, provider has to maintain the inventory of receipt and distribution of goods.
- This further complicates in case of samples given by pharmaceutical companies to hospitals and doctors as eventually they are either used in hospital or given away to patients, the provisions as they stand currently provide for varied tax treatments and documentation requirements.
- If an entity provides free sample to wholesaler for distribution to retailers, then firstly entity has to deduct TDS under section 194R and maintain a detailed record for deduction of TDS, after that wholesaler has to follow the same process as eventually these free samples would be taxable in the hands of retailer.
- Where the benefit or perquisites provided are in kind, then the receiver has to pay tax as advance tax and provide a copy of challan and declaration of the same to provider. It is practically not feasible for provider to get challan and declaration from all recipients as most of the benefits or perquisites provided are in kind. This also leads to a question that what shall be the tax treatment in cases where the recipient is having carried forward losses or is a loss making entity.
- There are various general business practices (only for illustrative purpose) followed for the purpose of business promotion, Clarity on these practices is still not provided:
    - ◊ Whether complimentary copies of books given to author is covered under benefit or perquisites.
    - ◊ Company arranges a conference for some selected dealers and spent INR 10 lacs on the event. What would be the value of benefit to a dealer attending conference with his family.
    - ◊ A new shampoo manufacturing company gives free sachets to retailers for providing to its customers for free trial. Whether it is covered under benefit or perquisites for retailers.

In nutshell, it appears that section 194R has both pros and cons. On the pros side, Section 194R will bring transparency in the tax eco-system wherein the person providing benefits or perquisites will deduct TDS and file the TDS return which will bring more and more people under the tax net as the tax so deducted will reflect in 26AS of the recipient. Section 194R will curb the non-disclosure of benefits or perquisites income arising in the course of business or profession.

On the cons side, this section will create a huge burden on entities from accounting and taxation point of view. Moreover there are numerous questions which are still not answered, though department has made an attempt to answer some questions by way of a circular which was published on June 16, 2022 but still a lot is yet to be answered.

This may be yet another example of a policy decision where cost benefit analysis is not carried out thoroughly at the time of drafting legislations as in umpteen numbers of cases, the cost of compliance may be far higher than the cost of benefits or perquisites given or underlying benefits expected out of such business/sales promotion activities.

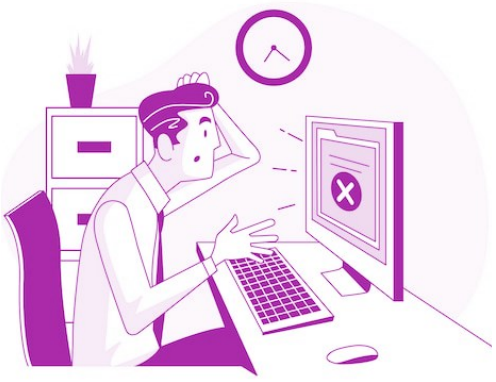
In our view, government should come up with an exhaustive definition of benefits or perquisites so that concept of taxing benefits or perquisites arising from business or profession will become practically feasible and is beneficial for both tax payer as well as exchequer.

GOODS & SERVICES TAX
From the Judiciary

HC condones human error in generating E-Way Bill

Sonal Automation [Writ Petition (M/S) No. 1969 of 2021 dated 27 April 2022]

The Petitioner had preferred a Writ before the Uttarakhand HC challenging the imposition of penalty by the Revenue on account of clerical error in mentioning the Invoice number in the E-Way Bill. The Petitioner argued that, all other details were correctly entered in the EWB, except the invoice number which was mentioned incorrectly owing to human or clerical error and not with the intention to deceive the State with the revenue. The Petitioner further relied upon Circular No. 64/38/2018-GST dated 14 September 2018 wherein it has been clarified that if during the course of investigation of a vehicle carrying the goods, certain minor discrepancies, made in the EWB or the tax invoices, they are to be overlooked, prior to invocation of penal provisions.



The HC observed that the implications of the referred Circular have to be rationally and logically construed. It was further observed that Section 129 of the CGST Act is not to be invoked invariably, under all the circumstances, especially where it does not affect the financial implications or the liabilities under the provisions of the GST Act. The HC further opined that taxpayer was not backed with a clever intent to deceive the revenue, and particularly all the other particulars and entries were correct. Hence, the error which crept in giving the invoice number would fall to be within an exception of the circular.

In view of the above, it was held that imposition of penalty on account of human error, is squarely covered under the above-mentioned Circular and therefore, pardonable. Accordingly, the order imposing the penalty was set aside with consequential relief

Author's Notes:

It shall be noted that Section 129 does not differentiate between bona fide or mala fide intentions where provisions of law are contravened. However, this judgment seems to be in line with Circular No.64/38/2018- GST dated 14 September 2018 wherein CBIC enlisted certain minor errors where proceedings under Section 129 may not be initiated if consignment is accompanied by Tax Invoice as well as E-way bill. Though this nature of error is not listed in the Circular, the rationale of the Circular can be applied.

HC quashes detention order for being arbitrary and illegal

Gobind Tobacco Manufacturing Co. [2022-TIOL-740-HC-ALL-GST]

The Petitioner had dispatched a consignment of tobacco products from Panipat to Nepal. Due to the COVID-19 pandemic and Nepal's travel restrictions, the goods were unloaded in Gorakhpur. E-way bill expired by the time the driver and the vehicle were arranged. Hence, the Petitioner generated a second e-way bill to ship the goods to Nepal. The revenue authorities intercepted and seized the goods and vehicle on the grounds that, due to a pandemic, the petitioner should not have exported the goods and should

have extended the validity of the 1st E-Way Bill within 8 hours of its expiration.

The Petitioner filed a Writ before the Allahabad HC, claiming no tax evasion was intended. The HC observed that the goods had valid documents, and accordingly, the proceedings were arbitrary, illegal, and without jurisdiction. It was noted that the Respondents had intercepted and seized goods on hyper-technical grounds and assumptions, without alleging tax evasion. The second e-way bill was legitimate and generated bonafidely in circumstances beyond the petitioner's control. It was also ruled that the Respondents' actions constituted harassment, a breach of the Petitioners' fundamental rights under Article 14 of the Indian Constitution, and a blatant abuse of power. The HC quashed the respondent's orders and ordered the release of goods and vehicle along with INR 1 lakh in costs (INR 50,000 to be paid to exporter and goods transport agency each).

Author's Notes:

The HC, has rightly allowed the release of the vehicle detained, as the goods were accompanied by valid documents. The HC relied upon the Supreme Court's ruling in ***Satyam Shivam Papers Private Limited [2022-TIOL-07-SC-GST]****, wherein it was held that non-extension of the e-way bill's validity does not imply intent to evade tax*

Denial of a refund claims due to cryptic reasons does not invalidate the order as non-speaking

Prism Johnson Limited [2022-TIOL-907-HC-MP-GST]

The Petitioner had challenged the Department's orders rejecting refund of compensation cess credit. The Petitioner argued that the refund was wrongly denied by passing non-speaking orders. The Respondent argued that refund orders included enough explanation to avoid natural justice. It was argued that the refund rejection order contained several reasons such as refund application being time-barred, ITC not claimed in GSTR-3B and the refund is inadmissible on the anvil of Para 43 of Circular No.125/44/2019-GST dated 18.11.2019.

The MP HC dismissed the writ petition, observing that the reasons mentioned in the orders are sufficient to enable the assessee to know the exact cause for rejection of the claim for refund. While the HC agreed that the reasons assigned could have been more elaborate but also concluded that, such brief statements by itself cannot render the impugned orders vitiated.

ITC can be denied if there is 'reason to believe' that fraudulent credit has been availed

Rajnandini Metal Limited [2022-TIOL-810-HC-P&H-GST]

The Respondents had blocked the ITC of the Petitioner lying in Electronic Credit Ledger. Aggrieved, the Petitioner preferred a Writ before the Punjab and Haryana HC. The Petitioner argued that the Respondents had blocked the ITC in pursuance of another investigation, where it was alleged that one of the suppliers' of the Petitioner was non-existent. However, the said proceedings had been withdrawn subsequently and therefore, there was no basis for blocking the ITC of the Petitioner.

The HC observed that the power under Rule 86A of the CGST Rules is exercised where the prescribed officer has reason to believe that ITC available in the Electronic Credit Ledger has been fraudulently availed or the taxpayer is ineligible. The exercise vested is subject to a satisfaction recorded by the Authority and forming

opinion to the effect that the Credit Ledger has been fraudulently availed. In view of the above observations, the HC allowed the Writ Petition.

Authors' Notes:

The conditions u/s. 16 of the CGST Act restrict the availment of credit and warrant reversal in cases where credit has been wrongly availed. The right to avail and utilize ITC for discharging tax liability is a legal right arising from the statute, and it is trite in law that this right can be curtailed only with the specific power of the law and not otherwise. The Act provides for the provisional taking of credit on a self-assessment basis, and the blocking of credit goes against the scheme of the Act.

In a leading case law in relation to powers of the Officers u/r. 86A, the Gujarat HC in RE: ***New Nalbandh Traders [2022-TIOL-360-HC-AHM-GST]*** *had held that the Rule 86A is based on 'reason to believe'. 'Reason to believe' must have a rational connection with or relevant bearing on the formation of the belief. Thus, exercising Rule 86A, without recording the reasons of belief, would be violation of the CGST Rules.*

No cross-charge of ITC in absence of support services

JSW Steel Limited [2022-TIOL-821-HC-ORISSA-GST]

JSW, Odisha, the Petitioner was awarded the lease for undertaking of mining operations for iron ore blocks in the State of Odisha. The Petitioner had paid the GST on RCM basis on the bid premium, royalty, DMF, NMET, NPV etc. towards availing of licensing services for right to use minerals including exploration and evaluation in respect of four mines located inside the State of Odisha. Further, the Petitioner had passed on unutilized ITC to JSW Steel Limited in Maharashtra (which is declared as ISD) tax in shape of IGST as outward supply of 'facilitation services' to. JSW Steel, Maharashtra.

Adjustment of unutilized ITC was objected to by the Revenue on the premise that such a device to facilitate other units of JSW Steel Ltd. located in other States to claim input tax credit arising in the State of Odisha is contrary to the statutory mandate. Proceedings were initiated, which culminated in demand, against, which the Petitioner preferred a Writ before the Odisha HC.

The HC observed that no support service was provided by Odisha unit to Maharashtra unit and cross-charge was, accordingly, held to be prima-facie invalid. The Court refrained from staying recovery of demand. The matter has now been listed for further hearing.

Exempt supplies to be excluded from formula for computing refund of Compensation Cess on export of goods

Electrosteel Castings Limited [2022-TIOL-846-HC-KOL-GST]

The Petitioner had filed a refund claim of ITC of Cess. In computing the refund amount, the Petitioner excluded supply of finished goods not subject to Cess and Non-GST turnover during the relevant period, while arriving at the adjusted total turnover. Net ITC amount was taken after reversal of ITC of Cess. The Revenue sanctioned part refund as they had computed the refund by adding the supply of finished goods not subject to Cess in the adjusted total turnover although the formula prescribed under Rule 89(4) of the CGST Rules categorically provides for exclusion of value of exempt supplies. Aggrieved, the Petitioner had preferred an Appeal before the Commissioner (A), which had been allowed. The Revenue has now filed a Writ before the Kolkata HC.

The HC observed that the CGST Act, the IGST Act and the Rules apply mutatis mutandis to the GST (Compensation to States) Act. The HC further observed that the domestic supply of goods not leviable to Compensation Cess will be considered as non-taxable supply and hence exempt supply for the purpose of Compensation Cess Act. Accordingly, turnover of such supply will be excluded from adjusted Total Turnover while applying formula prescribed under Rule 89(4) of the CGST Rules for computing refund of Compensation Cess.

HC allows refund of IGST on export of goods, subject to satisfaction of 'Test of Unjust Enrichment'

Jar Productions Private Limited [2022-TIOL-850-HC-MUM-GST]

The Petitioner, engaged in providing production services to 'A Suitable Company Limited' ('ASCL') located in London United Kingdom, received and utilised various inputs/ input services on which appropriate GST services were paid as charged by the vendors. In cases, where the services were received from service provider/ vendor located outside India, IGST on such supplies was paid by the Petitioner. The Petitioner had thereafter filed a refund application, which had been sanctioned. Pursuant to the sanction, the Petitioner had been served with a Show Cause Notice, alleging that the incidence of tax has been passed on to the client i.e. ASCL resulting into unjust enrichment of the petitioner. The Notice was converted into demand, against which the Petitioner preferred filing a Writ petition.

The HC observed that value of export of services includes GST paid on inputs used for providing such services reduced by refund of ITC claimed. The Petitioner had issued Credit Notes to its client for amount of refund received by it. Accordingly, it was held that since amount of GST refund was reduced from value of services provided, incidence of GST is not passed on to foreign service recipient. In view of the above submissions, the HC allowed the Writ, holding that refund is to be allowed.

***Authors' Notes**:*

The HC has rightly allowed the refund in the instant case. However, it shall be noted that Section 54(8)(a) of the CGST provides that the test of Unjust Enrichment need not be satisfied for refunds relating to export of goods and services.

Erstwhile Regime

Ab-initio ineligibility cannot be used to deny refunds, and procedure cannot supersede recovery

Raychem RPG Private Limited [2022-TIOL-528-CESTAT-MUM]

The Appellant was a 100% EOU with a Foreign Trade Policy approval letter and exported most of its manufacture, therefore duty paid on input services accumulated in the CENVAT credit account, with little recourse for utilization. Accordingly, the Appellant had filed a refund application, which had been rejected for two reasons, viz., revision in export turnover as accepted by the Appellant and non-acceptability of some invoices which precluded a plea for revision of turnover at this stage for which the decision of the SC in RE: **ITC Limited [2019-TIOL-418-SC-CUS-LB]** barring refund, except in circumstances of assessment having been successfully challenged, has been cited. Aggrieved, the Appellant preferred an Appeal before the Mumbai Tribunal.

The Tribunal observed that Rule 5 of CENVAT Credit Rules had been specially formulated for neutralizing

tax/duty paid on input service/input used for generating exports. The disposal of claims for refund under this provision is, as already premised, is limited to ascertainment of quantum of exports and the application of the formula prescribed for ascertainment of attribution of such input service/input to exports. It was further observed that any amount not sanctioned is to be re-credited in the CENVAT credit account on the presumption of credit having been correctly availed under Rule 3 of CENVAT Credit Rules, and, in the absence of proceedings initiated under the authority of Rule 14 of CENVAT Credit Rules, availment of credit is not to be revisited. Therefore, the denial of refund on the presumption of ab initio ineligibility will not stand and refund procedure cannot be claimed to be a substitute for recovery. The denial on these grounds is without authority of law. In view of the above observations, the Tribunal allowed the Appeal.

CENVAT Credit not admissible on CSR activities

Power Finance Corporation Limited [FINAL ORDER No. 50502/2022 dated 09 June 2022]

The Appellant, a non-banking finance corporation, engaged in financing projects had been paying service tax on banking and other financial services rendered by it. It also availed the benefit of CENVAT Credit on various inputs and input services that it used in rendering these services. The Appellant had taken CENVAT Credit on the service tax paid on services used for activities related to its corporate social responsibility. The Appellant had been served with a show-cause notice proposing to deny this CENVAT Credit on the ground that it does not qualify as an input service for its output services, viz. 'banking and other financial services.

The Tribunal observed that under Rule 2(l) of the CENVAT Credit Rules as amended w.e.f. April 01, 2011, only services used for providing an output service qualify as an input service. Further, expression 'activities relating to business' was not part of definition of input service during this period. In view of the above observations, the Tribunal held that since there is no direct nexus between CSR expenses and output services provided by the Appellant, credit is not allowable on such expenses.

GOODS & SERVICES TAX
From the Legislature

Sr No	Notification/ Circular	Summary
1	Press Release dated 29 June 2022	**47th GST Council Meeting** The 47th GST Council meeting, held in Chandigarh was concluded on 29 June 2022 under the chairmanship of the Union Finance and Corporate Affairs Minister Smt. Nirmala Sitharaman. Following are the key recommendations of the GST Council: GST Law and Procedure: • Proposal for comprehensive changes in FORM GSTR-3B to be placed in public domain for seeking inputs/suggestions of the stakeholders; • Amendment in formula prescribed u/r. 89(5) of CGST Rules, for calculation of refund of unutilized ITC on account of inverted rated structure; • Amendment in Rule 96 of the CGST Rules for handling of pending IGST refund claims to provide for transmission of such IGST refund claims on the portal in a system generated FORM GST RFD-01 to the jurisdictional GST authorities for faster processing of claims; • Time period from 01 March 2020 to 28 February 2022 to be excluded from calculation of the limitation period for filing refund claim by an applicant as well as for issuance of demand/ order (by proper officer) in respect of erroneous refunds. • Further, limitation under section 73 for FY 2017-18 for issuance of order in respect of other demands linked with due date of annual return, to be extended till 30 September 2023; • Re-credit of amount in electronic credit ledger to be provided in those cases where erroneous refund amount is sanctioned to a taxpayer on account of accumulated ITC or on account of IGST paid on zero rated supply of goods or services, in contravention of rule 96(10) of the CGST Rules; • Retrospective amendment u/s. 50(3) of CGST Act, with effect from 01 July 2017, to provide that interest will be payable on the wrongly availed ITC only when the same is utilized; • Present exemption of IGST on import of goods under AA/EPCG/EOU scheme to be continued and E-wallet scheme not to be pursued further; • Exemption from filing annual return in FORM GSTR-9/9A for FY 2021-22 to be provided to taxpayers having AATO upto INR 2 crores;

<table>
<tr><th>Sr No</th><th>Notification/ Circular</th><th>Summary</th></tr>
<tr><td>1</td><td>Press Release dated 29 June 2022</td><td>

To constitute a Group of Ministers to address various concerns raised by the States in relation to constitution of GST Appellate Tribunal and make recommendations for appropriate amendments in CGST Act;
Additional Help link has been provided on the GST Portal for searching taxpayers assigned with Temporary ID.

<u>Rate Rationalization for industries having inverted duty structure</u>
<table>
<tr><th>Sr No</th><th>Description</th><th>From</th><th>To</th></tr>
<tr><td colspan="4">GOODS</td></tr>
<tr><td>1.</td><td>Printing, writing or drawing ink</td><td>12%</td><td>18%</td></tr>
<tr><td>2.</td><td>Knives with cutting blades, Paper knives, Pencil sharpeners and blades therefor, Spoons, forks, ladles, skimmers, cake-servers etc.</td><td>12%</td><td>18%</td></tr>
<tr><td>3.</td><td>Power driven pumps primarily designed for handling water such as centrifugal pumps, deep tube-well turbinepumps, submersible pumps; Bicycle pumps</td><td>12%</td><td>18%</td></tr>
<tr><td>4.</td><td>Machines for cleaning, sorting or grading, seed, grain pulses; Machinery used in milling industry or for the working of cereals etc., Pawan Chakki that is Air Based Atta Chakki; Wet grinder;</td><td>5%</td><td>18%</td></tr>
<tr><td>5.</td><td>Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce and its parts, Milking machines and dairy machinery</td><td>12%</td><td>18%</td></tr>
<tr><td>6.</td><td>LED Lamps, lights and fixture, their metal printed circuits board;</td><td>12%</td><td>18%</td></tr>
<tr><td>7.</td><td>Drawing and marking out instruments</td><td>12%</td><td>18%</td></tr>
<tr><td>8.</td><td>Solar Water Heater and system;</td><td>5%</td><td>12%</td></tr>
<tr><td>9.</td><td>Prepared/finished leather/chamois leather/ composition leathers;</td><td>5%</td><td>12%</td></tr>
<tr><td>10.</td><td colspan="3">Refund of accumulated ITC not to be allowed on flowing goods:
Edible oils
Coal</td></tr>
<tr><td colspan="4">SERVICES</td></tr>
<tr><td>11.</td><td>Services supplied by foreman to chit fund</td><td>12%</td><td>18%</td></tr>
<tr><td>12.</td><td>Job work in relation to processing of hides, skins and Leather</td><td>5%</td><td>12%</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><th>Sr No</th><th>Notification/ Circular</th><th>Summary</th></tr>
<tr><td>1</td><td>Press Release dated 29 June 2022</td><td>
<u>Withdrawal of exemptions on following goods</u>
<table>
<tr><th>Sr. No.</th><th>Particulars</th><th>Recommended Rationalization</th></tr>
<tr><td>1</td><td>Cheques, lose or in book form from exemption</td><td>18</td></tr>
<tr><td>2</td><td>Parts of goods of aircraft / spacecraft</td><td>18</td></tr>
<tr><td>3</td><td>Petroleum/ Coal bed methane</td><td>12</td></tr>
<tr><td>4</td><td>Scientific and technical instruments supplied to public funded research institutes</td><td>Applicable Rates</td></tr>
<tr><td>5</td><td>E-waste</td><td>18</td></tr>
</table>
<u>Withdrawal of exemptions on following services:</u>

Transportation by rail or a vessel of railway equipment and material;
Services by RBI, IRDA, SEBI, FSSAI;
GSTN;
Renting of residential dwelling to business entities (registered persons);

Further, Common bio-medical waste treatment facilities for treatment or disposal of biomedical waste shall be taxed at 12% so as to allow them ITC;

Hotel accommodation priced up to INR 1000/- day to be taxed at 12%;

Room rent (excluding ICU) exceeding INR 5000/- per day per patient charged by a hospital to be taxed to the extent of amount charged for the room at 5% without ITC.
</td></tr>
<tr><td>2</td><td>Instruction No. 03/2022-GST dated 14 June 2022</td><td>
Instructions relating to sanction, post-audit and review of refund claims

The CBIC has issued the following instructions have been issued:

Proper officer is required to issue detailed speaking order for sanction/ rejection of refund;
Order needs to include all facts relating to refund claim such as period, details of deficiency memo issued, verification of refund calculation etc;
Department needs to conduct post-audit of all refund claims amounting more than INR 1 Lakh and conclude such examination within 3 months from date of issuance of refund sanction/rejection order;
Post-audit shall also be subsequently analyzed by review branch. Such review needs to be completed atleast 30 days before expiry of time period allowed for filing appeal (i.e., 6 months from date of communication of refund order).

</td></tr>
</table>

Classification of parts of motor vehicle

Suzuki Motors Gujarat Private Limited [Customs Appeal No. 10275 of 2020]

The Appellant had contended that certain goods pertaining to motor vehicles viz. controller assembly, bolt, nut, screw etc. imported by them were excluded from Note 2 to Section XVII. The Revenue classified imported goods under CTH 8708 as specifically meant to be used in motor vehicles.

The Tribunal observed that in terms of HSN Explanatory Notes to Heading 8708, condition of non-exclusion from Note 2 to Section XVII needs to be necessarily satisfied. It was further observed that the lower authorities did not determine the classification nor provided reasoning for classification of each product. In view of the above, the Tribunal remanded matter to Commissioner (Appeals).

Authors' Notes:

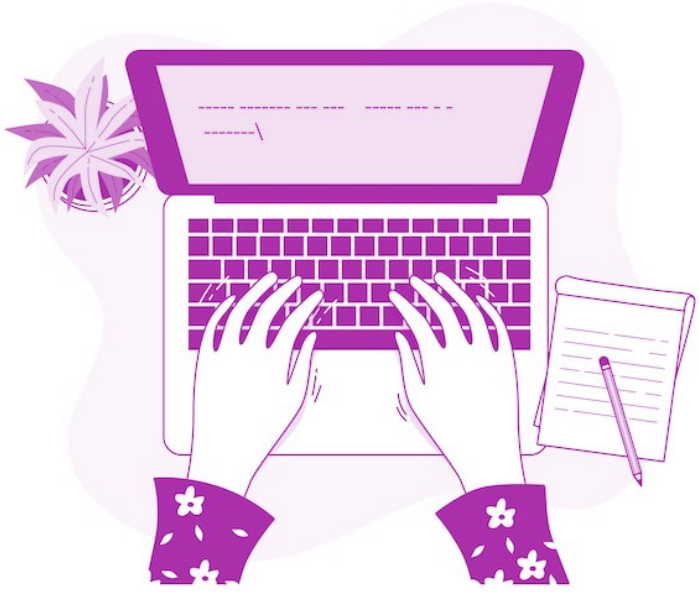
The classification of motor vehicle goods/ parts has been a bone of contention between authorities and taxpayers for donkey's years. While certain judicial authorities have held that articles even though principally used for the Motor vehicles of CTH 8708, would merit classification under respective headings, certain judicial authorities have held otherwise. Recently, the Apex Court in RE: ***Westinghouse Saxby Farmer Limited [2021-TIOL-121-SC-CX-LB]****, has held that goods manufactured specifically for the Railways as per the designs and layouts provided by them, are rightly classifiable under CTH 8607. However, it shall be noted that a review application has been filed against the SC judgement in Westinghouse (supra).*

No penalty and confiscation for mere clerical error in filling Bill of Entry

Ceramic Tableware Private Limited [Customs Appeal No. 50720 of 2021-SM dated 17 June 2022]

The Tribunal observed that the instant matter was a simple clerical mistake and there was no evidence of contumacious behaviour on the side of the Appellant no penalty can be imposed. This fact was obvious on the basis of record, since the Appellant has suo motu reached out to the Department for making required correction in the Bill of Entry with respect to the classification, and also offered to pay the differential charge.

In view of the above observations, the Tribunal allowed the appeal by setting aside the decision for confiscation and penalty both under Section 112(a)(ii) and 114AA of the Customs Act.

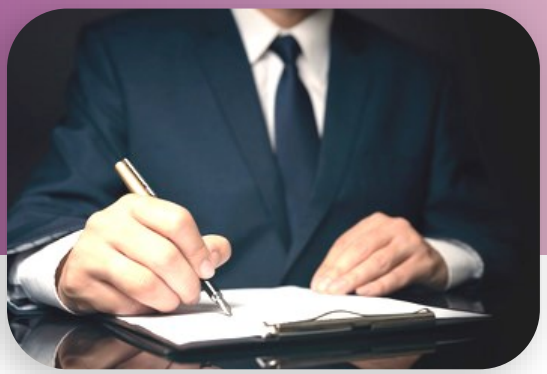


CUSTOMS & FTP
From the Legislature

Sr No	Notification/ Circular	Summary
1	Notification No. 3/2022- Customs, dated 02 June 2022	**Provisional assessment of Saccharin, exported from Thailand into India** Provisional assessment of Saccharin, exported from Thailand into India has been subjected to provisional assessment till the completion of the investigation conducted. Such provisional assessment may be subject to such security or guarantee as the proper officer of customs deems fit for payment of the deficiency, if any, in case a definitive countervailing duty is imposed retrospectively, on completion of investigation by the designated authority.
2	Notification No. 19/2022- Customs dated 03 June 2022	**Anti-Dumping Duty on import of Toluene Di-isocyanate (TDI)** CBIC has extended to levy Anti-Dumping Duty on import of Toluene Diisocyanate originating in or exported from China PR, Japan and Korea RP till 27 September 2022
3	Notification No. 20/2022- dated 07 June 2022	**Government rescinds notification Anti-dumping duty on imports of Hydrogen Peroxide** The Central Government has revoked the anti-dumping duty imposed on 'Hydrogen Peroxide', classifiable under CTH 28470000 originating in or exported from Bangladesh, Taiwan, Korea RP, Indonesia, Pakistan and Thailand, and imported into India.
4	Notification No. 31/2022 dated 07 June 2022	**CBIC extends time period for furnishing final Mega power project certificate** CBIC has extended time period for furnishing the final Mega power project certificate from 120 months to 156 months and extended the period of validity of security in the form of Fixed Deposit Receipt or Bank Guarantee from 126 months to 162 months, in case of provisional mega power projects.
5	Notification No. 21/2022 dated 08 June 2022	**CBIC extends Anti-Dumping Duty on pneumatic tyres of specific specifications** CBIC has extended the Anti-Dumping Duty of pneumatic tyres of specific specifications from China PR up to 17 December, 2022.

Sr No	Notification/ Circular	Summary
6	Advisory No. 10/2022 dated 14 June 2022	**Changes in System with respect of AD Code Registration in exports** The CBIC has introduced changes in the Customs System w.r.t. AD Code Registration in exports, so as to do away with the requirement of multiple AD codes associated at different ports. • According to the new changes, the AD code associated with the bank account will now be registered at only one port, and the registered AD Code will be available at all customs locations. Therefore, there will not be a requirement for a separate registration each time; • In the event there is an amendment or change in the particular AD Code, the same shall be made at the port of registration. • For the existing AD codes, the custom port where the last shipping bill was filed shall be considered as the registration port. • The details of the port of registration for each registered AD code against an IEC would be available on the ICEGATE login under Bank Account Management Option.
7	Instruction No. 09/2022- dated 22 June 2022	**Restrictions on import of products made of plastic** CBIC has issued instructions regarding the restrictions on the import of products made of plastic. The instruction is connected with the changes in Plastic Waste Management Rules notified vide its Notification dated 12 August 2021. • From 01 July 2022, the Ministry of Environment, Forests, and Climate Change has prohibited the use of 'single-use plastic.'; • The manufacture, import, stocking, distribution, sale, and use of single-use plastic (SUP) commodities, including polystyrene and expanded polystyrene will be prohibited; • The SUP includes earbuds with plastic sticks; plastic sticks for balloons; plastic flags; candy sticks, ice-cream sticks; polystyrene (Thermocol) for decoration; plates, cups, glasses; cutlery such as forks, spoons, knives, straws; trays; wrapping or packaging films around sweet boxes, invitation cards, and cigarette packets; plastic or PVC banners less than 100 microns; stirrers. • The above provisions will not apply to commodities made of compostable plastic.

Sr No	Notification/ Circular	Summary
8	Notification No. 52/2022 dated 24 June 2022	**Customs Brokers Licensing (Amendment) Regulations, 2022** CBIC has amended the Customs Brokers Licensing Regulations, 2018, in the following manner: • Enrollment of the Customs Broker as a member of the Customs Broker's Association registered in the Customs Station at every jurisdiction, where the Customs Broker is operating and it is recognized by the Principal Commissioner of Customs or Commissioner of Customs; • Prescribes that no Customs Broker shall enroll himself in more than one Association, at a given time, in a particular jurisdiction; • The Board may allow a further time period for certain compliance of duties or obligations on the representation by the Customs Broker, where it is unable to comply with its duties or obligations within the time period, for the reasons beyond its control, but otherwise satisfy all other conditions.
9	Public Notice No. 13/2015-2020 dated 09 June 2022	**The DGFT extend the last date for filling the annual report under EPCG scheme** The DGFT has amended Para 5.15 of the Handbook of Procedures 2015-20 ('HBP') for Export Promotion Capital Goods ('EPCG') Scheme so as to extend the last date for filing of the annual report for the year 2022-23 from 30 June 2022 till 30 September 2022. Further, the DGFT clarified that the penalty of INR 5000/- will be imposed for late filing of annual returns from 2022-23 onwards. These amendments are applicable for EPCG authorization issued under FTP 2015-20.



NCLAT directs Financial-Creditors to refund the extra chunk received from resolution applicant, to unsecured loan-holder

Synergy Technologies & Anr. vs. Shri. Parthiv Parikh & Ors

Company Appeal (AT)(Insolvency) No. 352 & 424 of 2021

The Appellants (Synergy Technologies) originally filed the claim as Operational Creditor much before the approval of the Resolution Plan and the IRP informed the Appellants that the Forms submitted by them was incorrect form, as they were not an Operational Creditor of the Corporate Debtor and treated as a financial creditor since they had given an unsecured loan and accordingly, they were required to submit forms as applicable to financial creditors.

Based on the directions of IRP, the Appellants filed their claims in Forms as 'Unsecured Financial Creditor'. However, the Appellants did not receive any communication from the IRP with regard to the admission/ rejection of the claim and the Resolution Plan was approved without the participation of the Appellants as Financial Creditor in the Committee of Creditors.

Aggrieved, the Appellants approached the NCLAT which noted that there was an apparent mistake by RP in not considering the Appellant's claim being unsecured loan holder as per the written statement of his predecessor IRP and accordingly remarking that it was unfortunate to record that the IRP had responded to the Appellants that their claim was to be made as Financial Creditor as they had given unsecured loan and not as Operational Creditor after verifying records by him and hence the Appellants' claim as Operational Creditor was not accepted. The NCLAT noted that despite filing Forms as Unsecured Financial Creditor, the RP had not considered their claim as Financial Creditor.

Thus, partially allowing the appeal against the NCLT order approving the Resolution Plan when the Appellants' objections were pending, the NCLAT held that the Financial Creditors, who received the major chunk from the Resolution Applicant, were required to appropriately refund the original claim, minus any amount received, made by Financial Creditor as Operational Creditor in the same percentage as these Financial Creditors had received from Resolution Applicant.

Authors' Note:

It would be interesting to note that in the present case, the NCLAT noted that the purpose of CIRP was to provide life to the organization and not to provide death knell/liquidation and appellants was provided with a resolution that appellants will receive the amount as refunded by other financial creditors.

SAT upheld the SEBI order penalizing Company, for mis-utilising IPO proceeds

Tarini International Ltd. & Ors. vs. SEBI

Appeal No. 179 of 2019 with Appeal No. 138 of 2020

The Appellant was in the business of providing consultancy services related to hydropower generation, transmission and distribution and infrastructure and had issued a prospectus for IPO aggregating to INR 16.30 Crores, however, based on complaints with reference to the utilization of IPO proceeds, SEBI conducted an investigation during which, SEBI prima facie found that approximately INR 15.40 Crores were not utilized by the Company for the object stated in the prospectus and the same were diverted to various group companies and other entities.

Therefore, SEBI issued a show-cause notice to the Appellant and thereafter proceedings for violation of the ICDR Regulations along with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f) and (k) of the PFUTP Regulations was initiated. Aggrieved, the Appellant approached the SAT which noting that the prospectus detailed different heads for which the amount was to be utilized, however, the Company's annual report reflected the actual utilization with certain deviation, observed that the prospectus had not mentioned that the amount would be utilized as a loan to any of the subsidiaries or promoter group entities.

Further, acknowledging SEBI's investigation, the SAT observed that the Appellants used the funds meant for long-term working capital requirements for transferring the funds to other promoter group entities and that the loan agreements were unstamped, un-notarized on plain white papers executed post facto, inspiring no confidence. In addition to the above, observing that the impugned order recorded that Company used proceeds of the IPO for buying its own shares by using conduits, in violation of the stated objectives of the IPO, the SAT concluded that the Appellants mis-utilized the IPO proceeds.

Thus, dismissing the Appellant's appeal challenging the SEBI order inter alia penalizing the Appellant for diverting IPO proceeds by resorting to unfair means behind the back of investors, in violation of the PFUTP Regulations and the ICDR Regulations, the SAT disposed of the appeal.

NCLT holds a written contract not a pre-requisite to prove existence of financial debt

Subir Sengupta vs. Corroganon India Pvt. Ltd.

CP(IB) No. 1787/KB/2019

The Corporate Debtor had approached the Petitioner (Financial Creditor) and asked for certain financial assistance for a project, after which the Petitioner advanced loan of INR 25.51 Lakhs to the Corporate

Debtor in 6 tranches between 2015 and 2016. In 2017, the Corporate Debtor started to default in repaying the loan advances by the Financial Creditor, subsequently, in 2019, the Petitioner approached the NCLT against the Corporate Debtor under Section 7 of the IBC.

Before the NCLT, the Corporate Debtor contended that the Petitioner had failed to establish the loan facility allegedly availed by the Corporate Debtor, and that the Petitioner was admittedly appointed as project co -ordinator and was completely involved in the project and there was not a single shred of evidence to prove advancement of any loans from the alleged financial creditor in any manner whatsoever. Further, the Corporate Debtor also contended that there was no written contract regarding any loan being sanctioned to the Corporate Debtor by the Petitioner which was mandatory for filing an insolvency petition.

The NCLT placing reliance on the NCLAT ruling in **Narendra Kumar Agarwal and Ors. v Monotrone Leasing Private Limited and Ors. [(Company Appeal (AT) (Insolvency) No. 549 of 2020]** observed that a written contract could not be treated as an essential element or pre-requisite to prove the existence of Financial Debt.

Further, on finding that the Petitioner had failed to bring on record any other evidence to substantiate its claim that there was a financial debt and a default of the same and that the Petitioner relied on its bank statements that reflected transactions between the parties, the NCLT observed that in absence of any written document indicating the purpose of said transactions, it could not be assumed to have been towards a loan as claimed by the Petitioner.

Thus, holding that a written contract was not a pre-requisite to prove existence of financial debt, The NCLT dismissed the Petitioner's petition under Section 7 of the IBC seeking to initiate an insolvency process against the Corporate Debtor for want of evidence.

Authors' Note:

It would be interesting to note that in the instant case, the NCLT also observed that though a written contract could not be treated as a pre-requisite to prove the existence of financial debt, the Adjudicating Authority was required to be satisfied that the Corporate Debtor was not being dragged into CIRP for any purpose other than resolution of insolvency and that in the present matter, there was not enough evidence to satisfy the Adjudicating Authority of the same.

SC upholds SEBI order debarring Company from the market for engaging in manipulative trades

MBL and Company Ltd. vs. SEBI

Civil Appeal Nos 4262-4263 of 2022

The Appellant had engaged in manipulative trades as a consequence of which the share price of a company (Gujarat NRE Coke Ltd.) was manipulated. Accordingly, SEBI passed an order debarring the Appellant from buying, selling or otherwise dealing in securities in its proprietary account for a period of 4 years, for indulging in manipulative trades. Aggrieved, the Appellant approached the Securities Appellate

Tribunal (SAT) which confirmed the findings of SEBI. This caused the Appellant to approach the SC.

The SC noted that the order which had been passed by SEBI could not be regarded as disproportionate to result in the interference of this Court in the exercise of its jurisdiction under Section 15Z of the SEBI Act, observed that the Whole Time Member of SEBI (WTM) had prohibited the Appellant from participating in its proprietary account for a specified period, leaving it open to the Appellant to continue operation in their broking account.

Further, observing that the order passed by SEBI as well as that passed by the SAT noted the modus operandi of the Appellant which was to place a huge sale order at a price higher than the last traded price of the company and thereafter to make a self-trade of only one share for that higher price, thereby, establishing a new higher last traded price and also observing that SEBI had specifically applied its mind to the issue as regards the impact of such manipulation, the SC observed that the impact of a manipulation which was carried out by a participant in the securities market could not be assessed only in terms of the gain which had been caused to the participants themselves, but in terms of the wider consequences of the action on the securities market.

Thus, upholding the SEBI order for debarring the Petitioner from the share market for manipulative trades for a period of 4 years, the SC dismissed the appeal challenging the SEBI order.

Authors' Note:

The SC in the present case rightly upheld the debarring of the Petitioner for manipulative trades for a period of 4 years as the securities market deals with wealth of investors and any such manipulation is liable to cause serious detriment to investors' wealth.

HC allows NBFC to take possession of hypothecated assets pending arbitral proceedings

Tata Capital Financial Services Ltd. vs. Kunal Structure (India) Pvt. Ltd. & Ors

Commercial Arbitration Petition No. 21 of 2022

The Petitioner was an NBFC engaged in the business of providing financial facilities such as auto loans, personal loans, business loans, home loans, asset loans etc. The Respondent was a company incorporated under the Companies Act, 1956 and having its place of business in Ahmedabad. The parties entered into a Loan cum Hypothecation Agreement (LHA) wherein, the loan amount of INR 21 Crores was disbursed and the assets viz. construction equipments/vehicles stood hypothecated in favour of the Petitioner. The Respondent defaulted in the repayment of the monthly loan instalments yet remained in possession of the assets.

Consequently, the Petitioner invoked the arbitration clause in light of the substantial deterioration of equipment as also the specific clause in the LHA that enabled the Petitioner to take possession of hypothecated assets. The Respondent contended that the LHA

was not appropriately stamped as per law and hence no relief under Section 9 of the Arbitration Act could be granted in light of the SC's decision in **Garware Wall Ropes Ltd [(2019) 9 SCC 209]**.

Aggrieved, the Petitioner, pending the arbitral proceedings, approached the HC. The Hon'ble HC rejected Respondent's contention that the LHA was not appropriately stamped as per law and hence no relief under Section 9 of the Arbitration Act could be granted in light of the SC's decision in **Garware Wall Ropes Ltd. [(2019) 9 SCC 209]**, as the said judgement was applicable with respect to

and not under Section 9 of the Arbitration Act. Further, the HC dismissed the Respondent's argument in light of the specific terms of the LHA with regards to taking of possession that the Petitioner had a mortgage of Respondent's immovable property of a higher value than the claim, remarked that the HC could not accept a contention which was contrary to the very terms and conditions of the LHA.

In addition to the above, noting that the Respondent had not disputed the arbitration invoked by Petitioner, which showed the inclination on part of the parties to refer the disputes to arbitration, the HC directed the Respondent to in the interim, hand over the construction equipments/vehicles to the Petitioner, and referred the parties to arbitration. Thus, the HC granting interim relief to the Petitioner pending arbitral proceedings, on grounds of specific terms of the LHA that entitled the Petitioner to take possession of hypothecated assets, granted the possession of hypothecated assets with regards to the default on loans availed by the Respondent and appointed a sole arbitrator to adjudicate the disputes between the parties which had arisen under the LHA, accordingly disposing of the petition.

Authors' Note:

*It would be interesting to note that the SC in **Garware Wall Ropes Ltd [(2019) 9 SCC 209]** observed that in the context of Section 11 of the Arbitration Act, the arbitration clause contained in the sub-contract would not "exist" as a matter of law until the sub-contract was duly stamped.*

HC holds that IBC proceedings cannot be pressed into service to dilute Income Tax Department's right to re-open assessment

Dishnet Wireless Ltd. vs. Assistant Commissioner of Income Tax

W.P.No.34668 of 2018

The Income Tax Department had issued certain notices under Section 148 of the IT Act seeking to reopen the completed assessment with respect to the Corporate Debtor after the CIRP was sanctioned and approved by the NCLT.

Aggrieved, the Corporate Debtor preferred a writ petition before the HC which noted that the resolution plan approved under Section 31 of Insolvency and Bankruptcy Code, 2016 (IBC) did not contemplate tax dues under the IT Act and that the proceedings under Section 148 of the IT Act had not crystallized at that stage. The proceedings under IBC were initiated a few days prior to initiation of proceedings under Section 148 of the IT Act, it was incumbent upon the Corporate Debtor to have ensured proper notice to the Income Tax Department and obtained appropriate concession in the CIRP.

Further, noting that the claims of the Income Tax Department were not considered by the NCLT while approving the resolution plan, the HC observed that the question of abatement of the rights of the Income

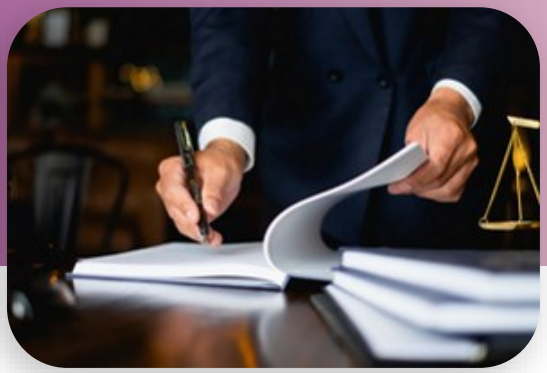
Tax Department could not be admitted.

Thus, observing that the CIRP sanctioned and approved could not impinge on the rights of the Income Tax Department to pass any fresh assessment order, the HC dismissing the writ petition challenging the notices issued by the Income-Tax Department, held that the IBC proceedings could not be pressed into service to dilute the rights of the Income Tax Department to re-open the assessment and the Income Tax Department could not be precluded from reopening the completed assessment, thereby, allowing the Corporate Debtor the alternative of approaching the Commissioner of Income Tax if so aggrieved with the said reopening of assessment.

Authors' Note:

Interestingly, in the instant case, the HC also observed that the provisions of the IBC could not be interpreted in a manner which were inconsistent with any other law for the time being in force.

REGULATORY
From the Legislature



MCA Introduced Additional Requirements for Specified Foreign Nationals for DIN and Appointment as Director

MCA vide Notification No. G.S.R. 410(E) dated June 1, 2022 has amended the Companies (Appointment and Qualifications of Directors) Rules, 2014 to introduce additional requirements for the nationalities of a country that shares a land border with India for purpose of DIN allotment and appointment as director.

Where such person seeks appointment as director, in that case necessary security clearance from the Ministry of Home Affairs, Government of India shall be obtained and attached along with the consent in Form DIR-2.

It has further clarified that no application number shall be generated to such person applying for DIN unless necessary security clearance from the Ministry of Home Affairs, Government of India has been obtained and attached along with application in Form DIR-3.

MCA Reduced fines Related to Non-Compliance of NFRA Rules

MCA vide Notification No. G.S.R. 456(E) dated June 17, 2022 has introduced the National Financial Reporting Authority Amendment Rules, 2022 to amend the punishment for whosoever contravenes the National Financial Reporting Rules which are in respect to Accounting standards & Auditing standards applicability and related proceedings.

Fine for such contravention has been reduced to a limit of INR 5,000 from the previous limit of INR 10,000 and in case such contravention is a continuing one, further fine for every day after the first during which the contravention continues has been reduced to limit of INR 500 per day from the previous limit of INR 1,000 per day.

MCA Introduced Provisions for Restoration of Name in Databank for Independent Directors

MCA vide its Notification No. G.S.R. 439(E) dated 10th June, 2022 has notified Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022 to introduce the provisions for restoration of name in a databank in case removal was made on failing to pass the self-assessment test that was required to be cleared for inclusion of name.

This amendment allows the restoration of name on payment of fees of INR 1,000 subject to such name would be shown in separate restored category for one year during which such individual is required to pass the self-assessment test. On failing to fulfil such condition name shall be removed and individual has to apply for fresh application if need to include the name afterwards. If self-assessment is passed within one year, name shall be included under normal category and fees paid initially would be continue to be valid.

Authors' Note:

This will help in reducing the hassles while applying freshly for inclusion of name data bank.

RBI Raised the Limit of e-Mandates Transactions

RBI vide Notification No. RBI/2022-23/73 dated June 16, 2022 has raised the Additional Factor of Authentication (AFA) limit which is done while processing the first transaction in case of e-mandates / standing instructions on cards, prepaid payment instruments and Unified Payments Interface and for the subsequent transactions up to INR 5,000/-, prescription of AFA was waived.

But now, RBI on the review of implementation of the e-mandate framework and the protection available to customers, it has been decided to increase the aforesaid AFA limit from INR 5,000/- to INR 15,000/- per transaction.

Authors' Note:

Considering the increase in usage and security among users of cards, prepaid payment instruments and UPI, RBI has now increased the limits for e-mandate to enhance the user experience and support the growth of Digital India project of the Government of India.

SEBI Issued Deadline for Tagging of Demat Accounts

SEBI vide Circular No. SEBI/HO/MIRSD/ MIRSD_DPIEA/P/CIR/2022/83 dated June 20, 2022 has now given deadline for appropriate tagging of Demat Accounts to Stock Brokers. Currently, stock brokers are required to maintain Demat accounts under the following 5 categories:

S.No.	Demat Account Category	Purpose of Demat Account
1.	Proprietary Account	Hold Own Securities
2.	Pool account	Settlement Purpose
3.	Client Unpaid Securities Account	Hold Unpaid Securities of Clients
4.	Client Securities Margin Pledge Account	For Margin obligations to be given by way of Pledge/ Re-pledge
5.	Client Securities under Margin Funding Account	Hold funded securities in respect of margin funding

With the above circular, the SEBI in consultations with stock brokers and depositories has prescribed the following provisions in respect to tagging:

- All demat accounts of stock brokers which are untagged need to be appropriately tagged by June 30, 2022.
- Credit of securities shall not be allowed in any Demat account left untagged from July 01, 2022 onwards. Although, Credits on account of corporate actions shall be permitted.
- Debit of securities shall also not be allowed in any Ddemat account left untagged from August 01, 2022.
- Stock Broker will also be required to obtain permission from Stock Exchanges to allow tagging of such Demat accounts from August 01, 2022 onwards. For such, stock Exchange shall grant such approval within two working days after imposing penalty as per their internal policy.

Authors' Note:

In the view of unregulated demat accounts, SEBI has now taken strong initiative to strengthen the security and control over the system in order to achieve better reliability and efficiency over the transactions in stock markets.

SEBI Amended the Nomination Requirements for Mutual Fund Unit Holders

SEBI vide Circular No. No. SEBI/HO/IMD/IMD-II DOF3/P/CIR/2022/82 dated 15 June, 2022 has amended nomination requirements in order to bring uniformity across all constituents.

Investors subscribing to mutual fund units on or after August 1, 2022, will have the choice to either provide nomination in the format specified or opting out of nomination through a signed Declaration Form. Such nomination form or declaration form could be either in physical or online as per choice of unit holders.

Apart from above all existing individual mutual fund unit holders either solely or jointly are required to file nomination form or declaration form by March 31, 2023, failing which the folios shall be frozen for debits.

Authors' Note:

In order to bring uniformity in securities market in respect of nomination requirements, SEBI has provided the option to eligible mutual fund unit holders to have nominee or not.

Reduction in Time Limit to Seek Arbitration in Investor Grievance Redressal Mechanism

SEBI vide Circular No. SEBI/HO/MIRSD/DOS3/P/CIR/2022/78 dated June 3, 2022 has amended the Circular No. SEBI/HO/MIRSD/DOC/CIR/P/2020/226 dated November 6, 2020 in order to decrease the time limit available to investors to seek Arbitration. With this, SEBI has reduced the time limit to avail the route of arbitration mechanism in case either of complainant or member who is not satisfied with the recommendation of Investor Grievance Redressal Committees. This time limit has been reduced to 3 Months as compared to 6 months earlier.

Authors' Note:

Reduction in time limit available to investors for seeking arbitration mechanism will lead to speedy resolution of Investor's grievances.

Further Relaxation for LLP on Levy of Additional Fees in Filing Annual Returns

MCA vide General Circular no. 07/2022 dated June 29, 2022 has notified the further relaxations on levy of additional fees in filling of e-form for Annual Returns for Financial Year 2021-22. The extension is in addition to the extension period providedvide MCA General Circular No. 04/2022 dated May 27, 2022. No additional fees need to be paid for filling of FORM-11 (meant for LLP) upto July 15, 2022.

MCA has Allowed Two Re-submissions of

Application for Voluntary Removal of Name of Company

MCA vide Notification No. G.S.R. 436(E) dated June 9, 2022 has introduced the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 to amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 allowing limited re-submission of application for voluntary removal of name of company from the Register of Companies in Form SKT-2 where on examining the application, the Registrar finds that it is necessary to call for further information or finds such application or any document annexed therewith is defective or incomplete in any respect. Earlier, no rules were in place in respect of re-submission of application for voluntary removal of name of company due to which generally such applications were rejected by ROC and companies had to file a fresh application, thereby delaying the entire process.

Now, if upon examination ROC requires any additional information or finds that the Form or document is defective or incomplete in any respect then ROC shall inform to the applicant to remove the defects and re-submit the complete Form within fifteen days from the date of such information. After resubmission, if ROC finds that the Form or document is defective or incomplete in any respect then shall give further fifteen days. However, if applicant fails to re-submit within prescribed period such Form will be treated as invalid by ROC in electronic records and applicant will be informed. Any re-submission prior to commencement of such amendment rules would not be counted for the purpose.

Authors' Note:

Through this notification, MCA has provided the companies an option for re-submission of application instead of filling a fresh application. This amendment creates a more favourable environment for companies by encouraging an easier voluntary strike off procedure

Further Extension on Compliance of Restriction on Storage of Actual Card Data

RBI vide Notification No. RBI/2022-23/77 dated June 24, 2022 has further extended the timeline for complying with restriction stating that no entity in the card transaction / payment chain, other than the card issuers and / or card networks, shall store the Card-on-File data, and any such data stored previously shall be purged.

Previously it was applicable from June 30, 2022 but now it has been extended by 3 months i.e. September 30, 2022.

Introduction of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022

The IBBI vide its circular no. IBBI/2022-23/GN/REG084 dated June 14, 2022 has introduced the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022 (Amendment Regulations). It has been introduced to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to introduce new provisions under the same.

Salient features of introduced Amendment regulations are as follows:

IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022	
Additional attachments along with Application filed by Operation Creditor u/s 9	In case where application is filed by operational creditor on non-receipt of payment from corporate debtor, the operational creditor shall furnish copies of relevant extracts of Form GSTR-1 & GSTR-3B and the copy of e-way bills. These provisions are not applicable where the operational creditor does not require GST registration.
Submission of information sought by IRP/RP	The personnel of the corporate debtor, its promoters or any other person associated with the management of corporate debtor shall provide the information within such time and in such format as sought by IRP or RP.
Providing the information which assist IRP/RP	The creditor shall provide the information in respect of assets and liabilities of the corporate debtor which shall assist the IRP/RP.
Estimation of Fair Value and Liquidation Value	If the two estimates of value with respect to an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value.
Extract of Audits of Corporate Debtors	The creditors shall provide to the RP, relevant extract from the audits (stock audit, transaction audit, forensic audit) of the corporate debtor, conducted by the creditors.
Financial Statements of Corporate Debtors	The creditors shall provide to the RP the latest financial statements and other relevant financial information of the corporate debtor available with them.

Authors' Note:

Submission of extracts of GSTR – 1, 3B and e-way bills at the time of filling of CIRP may enhance the speed and efficacy of the admission process and prevent time wasted by the authority in requesting the required documents.

INTERNATIONAL DESK

First tax and customs collaborative transfer pricing management mechanism launched in Shenzhen, China

The Shenzhen Tax Bureau and Shenzhen Customs jointly issued a notice on matters regarding the collaborative management of transfer pricing of related-party imported goods.

This joint notice introduces a basis for collaborative management of transfer pricing of goods imported from related parties in the form of cross departmental co-operation between customs and tax authorities.

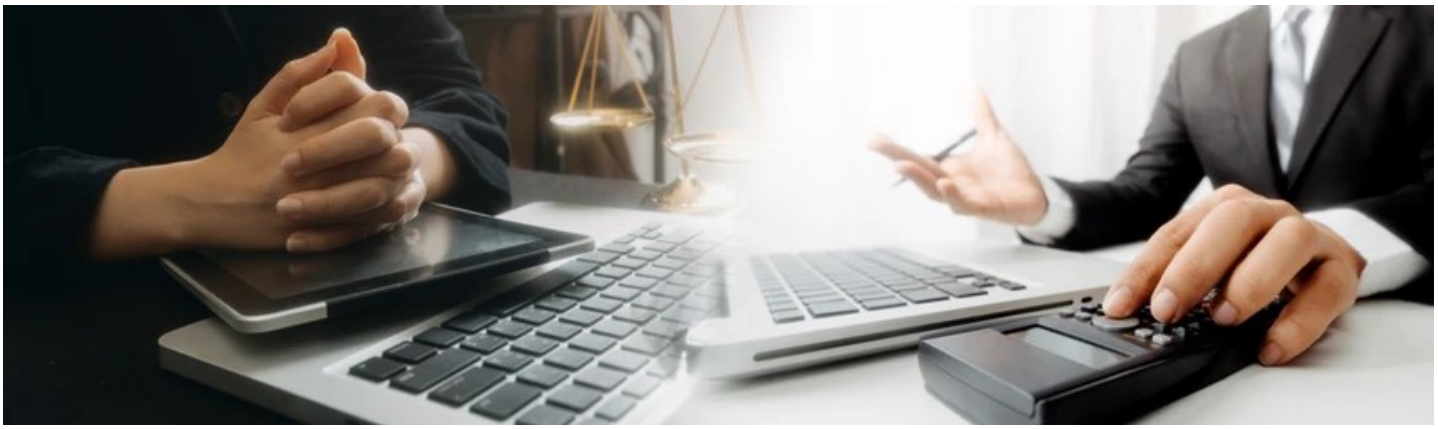
The collaborative transfer pricing management system introduced in Shenzhen provides a solution for Shenzhen-based enterprises that face challenges in harmonising the implications of related-party transactions between tax and customs authorities. The new system launched in Shenzhen is based on the customs' advance ruling system and the tax authorities' advance pricing arrangement system.

Through the joint notice, the Shenzhen Tax Bureau and Shenzhen Customs measures provide the specific requirements and procedures that enterprises must meet when applying for the collaborative management. The threshold for the application of collaborative transfer pricing management is not excessively high as any Shenzhen-based enterprise that meets the existing application requirements for a customs advance ruling and an advance pricing arrangement is eligible to apply, to the benefit of the Shenzhen enterprises.

OECD releases public comments on Tax Certainty for Issues related to Amount A under Pillar One, stakeholders call for widening of scope on 'related issues' in Amount A

Public comments on tax certainty for Issues related to Amount A under Pillar One have been released by the OECD in which the stakeholders have expressed that the scope of 'related issues' should be broad, suggesting that the mandatory and binding dispute resolution mechanism should not be limited to jurisdictions linked by bilateral tax treaties, but should be operative in respect of any party to the multilateral convention.

Further, the stakeholders have also suggested that materiality threshold should not be adopted, as it would make the mechanism unworkable and impractical and accordingly have recommended standardisation of information requests so as to allow businesses to prepare one set of information, with



requirements kept to a minimum to avoid lengthy information requests which are inefficient for both businesses and tax authorities.

In addition to the above, with regards to the selection and appointment of members of Dispute Resolution Panel, seeking clarity on how the random selection was to take place and who was responsible for making it, the stakeholders have suggested the inclusion of taxpayer in the random selection process in the event that the competent authorities fail to appoint a panel member.

OECD released fourth batch of TP country profiles for four new countries, increases participation score to 73

The OECD releases fourth batch of the transfer pricing country profiles including additional four countries, thereby increasing the score of the participating countries to 73 from 69 since the last update on March, 2022. The four new countries to join hands in sharing TP profiles include Egypt, Liberia, Saudi Arabia and Sri Lanka.

The TP profiles throw light on the general view of comparative snapshot of the country's transfer pricing legislation on various key transfer pricing principles, including the arm's length principle, transfer pricing methods, comparability analysis, intangible property, intra-group services, cost contribution agreements, transfer pricing documentation, administrative approaches to avoiding and resolving disputes, safe harbours and other implementation measures etc.

The OECD has been publishing profiles since 2009 and the updated profiles intend to reflect the current state of countries' legislation and to indicate to what extent the domestic TP rules follow the OECD TP Guidelines.

The OECD had released the first three batches of updated transfer pricing country profiles in August 2021, December, 2021 and March, 2022 respectively.

GLOSSARY

Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ADD	Anti-Dumping Duty
AE	Associated Enterprises
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
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
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
CIT	Commissioners of Income Tax
Cus	Customs Act, 1962
CVD	Countervailing Duty
DDT	Dividend Distribution Tax
DRC	Dispute Resolution Committee
DRI	Directorate of Revenue Intelligence
DTAA	Double Taxation Avoidance Agreement
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
G2B	Government to Business
GST	Goods and Services Tax
H&EC	Health and Education Cess
HFC	Housing Finance Company
HNI	High Net Worth Individual
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code
ICDR	Issue of Capital and Disclosure Requirements Regulations,

Abbreviation	Meaning
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
InvITs	Infrastructure Investment Trusts
IRP	Interim Resolution Professional
IT Act/ 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
LTC	Long-Term Capital Gains
MAT	Minimum Alternate Tax
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-Fuungible Tokens
NELP	New Exploration Licensing Policy
NHB	National Housing Bank
NPA	Non-Performing Assets
NPS	National Pension System
OBU	Offshore Banking Unit
OEC	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
PFUTP	Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, 2003
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

GLOSSARY

Abbreviation	Meaning
RIC	Road and Infrastructure Cess
RP	Resolution Professional
RTGS	Real Time Gross Settlement
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty
SCGT	State Goods and Services Tax
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
SFT	Statement of Financial Transaction
SIAC	Singapore International Arbitration Centre
SPF	Specific Pathogen Free
STT	Security Transaction Tax
SWS	Social Welfare Surcharge
TAN	Tax Deduction Account Number

Abbreviation	Meaning
TCS	Tax Collected at Source
TDS	Taxes Deducted at Source
TPO	Transfer Pricing Officer
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
VDA	Virtual Digital Assets
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

Taxcraft Advisors LLP ('TCA') is a multidisciplinary advisory, tax and litigation firm having multi-jurisdictional presence. TCA team comprises of professionals with diverse expertise, including chartered accountants, lawyers and company secretaries. TCA offers wide-ranging services across the entire spectrum of transaction and business advisory, litigation, compliance and regulatory requirements in the domain of taxation, corporate & allied laws and financial reporting.

TCA's tax practice offers comprehensive services across both direct taxes (including transfer pricing and international tax) and indirect taxes (including GST, Customs, Trade Laws, Foreign Trade Policy and Central/States Incentive Schemes) covering the whole gamut of transactional, advisory and litigation work. TCA actively works in trade space entailing matters ranging from SCOMET advisory, BIS certifications, FSSAI regulations and the like. TCA (through its Partners) has also successfully represented umpteen industry associations/trade bodies before the Ministry of Finance, Ministry of Commerce and other Governmental bodies on numerous tax and trade policy matters affecting business operations, across sectors.

TCA & **VMGG & Associates ('VMGG')** are group firms providing consulting and audit services. While TCA is a multidisciplinary advisory, tax and litigation firm, VMGG is a firm registered with the Institute of Chartered Accountants of India. VMGG is therefore primarily into audit and attestation services (including risk advisory and financial reporting).

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**

GST Legal Services LLP ('GLS') is a consortium of professionals offering services with seamless cross practice areas and top of the line expertise to its clients/business partners. Instituted in 2011 by eminent professionals from diverse elds, GLS has constantly evolved and adapted itself to the changing dynamics of business and clients requirements to offer comprehensive services across the entire spectrum of advisory, litigation, compliance and government advocacy (representation) requirements in the field of Goods and Service Tax, Customs Act, Foreign Trade, Income Tax, Transfer Pricing and Assurance Services.

Of-late, GLS has expanded its reach with offerings in respect of Product Centric Regulatory Requirements (such as BIS, EPR, WPC), Environmental and Pollution Control laws, Banking and Financial Regulatory laws etc. to be a single point solution provider for any trade and business entity in India.

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