VISION 360

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ISSUE 24

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

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tiol ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

EDITORIAL

Vision 360: Un-personified 'August'

The old English term 'August' is understood to be 'impressive'. While the preceding month of July, with a slew of judgements and issuance of notifications, had promised this August to be more August, alas so was not the case. The Apex Court in RE: **Filco Trade Center Private Limited and Another** had directed the Revenue to reopen the GSTIN portal for all the taxpayers for a period of 2 months from September 1, 2022. However, the Revenue has now sought another month to follow the direction. Moreover, the Revenue is yet to clarify certain issues in respect to the direction. For instance, whether those taxpayers, who had paid the pre-GST duties post the due date for regularization of exports, would be covered under the benefit.

The CBIC has further reduced the e-invoicing threshold to bring larger number of taxpayers under its ambit. However, certain issues should first be addressed such as cancelation of e-invoices cannot be done partially or the data allows for amendment only within 24 hours due to data storage problems.

Nonetheless, the month of August also saw a few August moments in tax such as the clarification of CBIC in respect of liquidated damages which will go a long-long way into reducing the litigation burden on the already over-burdened Judiciary. Further, a little birdie tells us that the GST Council all armored to decide on the GSTAT conundrum in their forthcoming 48th meeting.

Further, in an impressive decision, the Apex Court has held that the State is not obligated to provide HSN code and GST rates in public tender. Thus, in a way, re-affirming that the classification and the charging of the correct GST rate is the responsibility of the supplier himself.

Notably, the HC in a well-reasoned decision has held that frequent violations of natural justice in reassessment proceedings warrant immediate attention at highest level, and also imposed costs. This will surely mitigate the violations to a considerable extent. Further, in a huge relief, the CBDT has extended time -limit for furnishing Form 67 for claiming foreign tax credit, effective from April 2022.

We have also penned down an article on the alternate efficacious remedy and the powers of the NCLT, discussing the recent judgement of the Delhi HC in RE: Bhushan Power and Steel Ltd vs. Union of India where the Court has deliberated upon the interplay of powers between the NCLT and Commissioner of Customs in case of customs dues and the Writ's jurisdiction power of the High Court.

In the regulatory segment, the SC in a commendable judgement has held that the Financial Creditor should be granted opportunity for explaining delay in filing insolvency application. In another important judgement, the SC has held that mere 'designations' is not sufficient to make Director liable for cheque dishonour proceedings. In another stride towards the 'Digital India movement' the MCA has amended its Rules for the books of account kept in electronic mode. Further, the RBI has increased the Repo Rate by 50 basis points.

Compiling all such developments, we at **TIOL**, in association with **Taxcraft Advisors LLP, GST Legal Services LLP and VMGG & Associates**, are glad to publish the 24th edition of its exclusive monthly magazine 'VISION 360'. We hope that, as always, you will find it an informative and interesting read. We look forward to receiving your inputs, thoughts and feedback, in order to help us improve and serve you better!

Happy Reading!

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

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An Isometric view into Alternate Efficacious Remedy and Powers of NCLT

Every now and then, the higher Judiciary has given views, and opinions on 'Alternate Efficacious Remedies' through orders and judgments. One of the recent judgments by the Hon'ble Delhi High Court is **Bhushan Power and Steel Ltd vs. Union of India**, (**'Bhushan Steel'**) [CM APPL. 34435/2022] where the Hon'ble Court discussed the interplay of powers between the National Company Law Tribunal (**'NCLT'**) and Commissioner of Customs in case of customs dues and the Writ's jurisdiction power of the High Court.

WRIT JURISDICTION UNDER ARTICLE 226 – WHETHER AN ALTERNATE EFFICACIOUS REMEDY?

A common notion from several judicial precedents prevailed that Writ Petitions under Article 226 of the Constitution are not maintainable where an Alternative Statutory Remedy is available. The moment the respondents argue that an alternative remedy is available, the writ is virtually chucked out on this preliminary ground alone.

This time though, the Hon'ble Delhi High Court took while addressing revenues argument questioning maintainability of the Petition based on availability of alternate efficacious remedy held that the High Court having regard to the facts of the case has the discretion to entertain or not to entertain a Writ Petition. However, the High Courts had imposed certain restrictions one of which is **effective and efficacious remedy** is available for the Petitioner, then the High Court would not normally exercise its jurisdiction. It noted that relegating a party to an alternative remedy is a limitation that the Court imposes upon itself, it does not fetter the powers of the Court under Article 226 of the Constitution of India. The High Court has yet again expounded the inherent nature of the powers conferred under Article 226 and opined that this power is not limited in nature to the extent of issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari for the enforcement of fundamental rights but also for **any other purpose**. 'Any other purpose' is the discretionary powers of the High Courts.

Starting from the Apex Court to the High Court, different interpretations had been made of alternative and efficacious remedies. The back-and-forth decisions of the higher judiciary is really a evaluation for the citizens of the Country. Time and again the Apex Court and the High Court had consistently condemned the practice of filing Writ Petitions in the High Court where an alternative remedy has been provided under the relevant statute, but it is not 'absolute' rule of law and there are valid exceptions where the Writ Petitions are maintainable in the High Court and in such cases, the Petitioner ought not to be relegated to the alternative remedy. The recent case of Hon'ble of Delhi High Court is one such example.

Earlier, the Apex Court in **Harbanslal Sahnia vs.Indian Oil Corporation Ltd**, [(2003) 2SCC 107], wherein the court held that in spite of the availability of the alternative remedy, the High Court may still exercise its Writ Jurisdiction in a case where the Writ Petition seeks enforcement of any of the fundamental rights, where there is failure of principles of natural justice, where the orders or proceedings are without jurisdiction or are ultra vires of an Act is challenged.

Although there is no end to the discussion of alternate and efficacious remedies, it's always the Hon'ble High Court's discretion.

CUSTOMS DUES – ABSOLUTE POWER OF NCLT OR NOT?

The Honourable Court in **Sundaresh Bhatt, Liquidator of ABG Shipyard vs Central Board of Indirect Taxes and Customs**, [Civil Appeal No. 7667 of 2021] held that Insolvency and Bankruptcy Code ('**IBC**'), 2016 will prevail over Customs Act, 1962. The Hon'ble Court observed that the IBC Code will prevail to the extent the moratorium is imposed in terms of Section 14 of the IBC Code and the Respondent authority only has a limited jurisdiction to determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate the recovery of dues by means of sale/confiscation, as provided under the Customs Act.

The Petitioner's main contention in Bhushan Steel was as the resolution plan was approved by the NCLT or the adjudicating authority, then of course the custom demands stand extinguished in terms of the provisions in the IBC Code, and the contention was accepted by the said court. The Petitioner drew attention to the case of **Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.**, [2021 SCC Online SC 313] wherein the Hon'ble Supreme Court has enunciated that the demands/ customs dues stand extinguished once a resolution plan is approved by the NCLT. The relevant para is extracted below:

"102. In the result, we answer the questions framed by us as under : 102.1.That once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan."

INDUSTRY PERSPECTIVE

Saurabh Gupta

Tax Head

Azure Power Group

01 Given the present sentiments which presently do not seem to be favoring China centric business approach, is there any re-consideration to look at other favorable territories qua importation of raw materials for solar power sector, with special focus on concessional duty rates?

Government is clearly focused on reduction of import dependence and hence various tariff and non tariff barriers are being institutionalized, for e.g. government has recently levied 40% BCD on import of modules and 25% BCD on import of cells w.e.f. April 01, 2022. Moreover, indigenous manufacturing is encouraged by giving benefit of production linked incentive scheme for manufacturing units situated in India. However, industry can still explore the option of importing material from Southeast Asian Countries taking benefit of various Foreign Trade Agreements that India has entered with them. Although, since, the cost of material in these countries are much higher than in comparison to China, Industry needs to assess the benefit of concessional duty rate against the incremental cost of material associated with such imports.

Additionally, Industry can explore the option of importing the material under Project Import Scheme, which is a special measure that allows import at comparatively concessional rate.

Saurabh Gupta
Tax Head - Azure Power Group

02 There has been a paradigm shift in accounting for companies owing to implementation of IND-AS. How do you see this particular development impacting Income Tax liabilities of companies and/or challenges companies may face during assessment?

Whole method of calculation of deferred tax provision has changed so industry has to carefully assess the impact on the financial statement. On transition to Ind AS, the deferred tax on reconciliation items, deferred tax on components of Other Comprehensive Income and accounting adjustments passed during consolidation poses a challenge in terms of their treatment in tax books. We have seen that more often than not the tax officers end up claiming taxes on income arising out of such adjustments on one hand and they disallow expense which stems out of such adjustments which results into a double whammy for corporate tax payers. Needles to say it poses a great deal of challenge for tax managers of companies to explain such transactions to tax officers.

03 What will be the future of automation in tax compliances? Will it increase efficiency or simply be an alternative to the manual work-force?

Automation plays a significant role in making compliances easier and efficient. Creating time-efficient processes through technology frees the professionals and resources to be utilized for more strategic business responsibilities. It ensures accuracy and removes risks due to human error in tax reporting, computations, and meeting timelines. Automated tax checking puts in place a process for defining, scheduling, and executing compliance checks in time to manage and mitigate the risks. It would help the management timely identify compliance issues, take corrective actions, and implement mitigation strategies.

This being said, reliance on automation must be accompanied with vigilance and strategic approach. Although automation in tax compliances would ease the burden, its accuracy cannot be guaranteed all the time especially when the law itself is evolving every now and then. It's (automation) like a double-edged sword, we have often seen a single error turning to be catastrophe. A technology is only that, it is meant for providing assistance and not substitution, and most certainly it cannot be used to completely replace a manual workforce.

04 What are your views on the new provisions qua collection of tax at source under section 194?

As per clause (iv) of section 28 of the Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hands of the recipient of such benefit or perquisite. However, in many cases, such recipient does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income. Accordingly, in order to widen and deepen the tax base, the Finance Act 2022 inserted Section 194R to the Act to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite. I believe, while it is yet another

compliance burden for corporate sector, it will help the exchequer to widen the tax net.

05 The regulatory environment currently is very dynamic and ever evolving, there are scores of changes which department bring in every year which leads to additional compliance burden on corporate sector. What are your thoughts on the same?

The compliance burden is ever increasing since the introduction of GST. As a matter of fact, availability of ITC subject to appropriate furnishing of the returns by the vendor goes a step ahead in compliance measures. It restricts recipients' credit and links it with vendor's compliance.

No doubt the government is bringing more and more stringencies in ITC mechanism day by day and although it may cause despair to many, one may optimistically see the discipline it silently promotes. This approach is not new, and taxpayers shouldn't be taken by surprise. On previous counts too introduction of TDS mechanism was aimed at forcing the non-compliance taxpayers to file the return and fall in line with the statutory requirement. Over the years, business has struggled to institute discipline in compliances with vendors and other business partners and statistically a large number of such vendors and business partners, especially SMEs lacked in sufficient compliance.

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

06 Government has undertaken major Changes in the tax system by introducing E-Waybill, E-Invoicing, Faceless Assessment etc. How do you see these changes in bringing transparency and efficiency in the tax system?

Tax Leakages and frauds using fake invoices was the issue that the government was trying to fight even before GST era but was not able succeed. Before the government introduced the GST e-invoicing system, it had no proof of completed transactions between businesses. So, the GST e-invoicing system helps tax authorities to monitor B2B transactions where GST is applicable and ensures the legitimate claims for Input Tax Credit (ITC).

For the government, GST e-invoicing has created much-needed transparency to curb tax evasion and fraud. However as expected, the Industry is facing lot of issues in reconciliation of e invoicing with books of account which poses additional compliance burden on companies.

07 Tax incentives extended to Renewable energy sector such as Accelerated depreciation, Generation based incentives and Section 80-IA benefits etc. which were provided in past have been removed. However, the benefits of Lower corporate tax regime u/s 115BAB have been extended to Power generation

Saurabh Gupta
Tax Head - Azure Power Group

07 companies. What Is your view on this benefit given the fact that it is available in contrast with section 80IA benefit? Does the sector still need these SOPs for a long-term sustainability or can we say that the sector has now matured enough to sustain without these benefits?

It was a welcome step taken by the Government to categorise power sector as manufacturing sector for the purposes of said income tax benefit. Lower corporate tax rate has always been an ask by foreign investor and portfolio investment managers looking for investments into India's power sector. This can be seen as a replacement to 80-IA benefit, but one has to do a careful analysis of project cash flows and return on investment calculations before opting for lower tax rate. The sector is matured now and is adding more and more capacities each year even in absence of tax and other incentives such as generation bases incentive. However the power producing companies are finding it more and more difficult to meet return expectation of lenders and foreign equity investor in view of tax incentives going away coupled with pressure on tariff with introduction of reverse bidding. In such scenario, cost optimization and cost reduction through technological advancement and process re-engineering seems to be only respite.

However, one of the key aspects to note here is that this benefit is available as substitution for other tax benefits such as Section 80I-A and additional depreciation benefits, therefore one has to do a thorough analysis of costs and benefits of the said provision before taking a decision.

Moreover, this has a sunset clause wherein the projects commissioned post March, 2023 would not be eligible for lower tax rate benefit. The Government should consider an extension of this sunset clause especially when the projects are somewhat delayed by COVID-19 disruptions as well as delays on account of non-readiness of power evacuation infrastructure.

Disclaimer : The views/opinions expressed in this section are personal views of the Author and do not necessarily reflect the views/opinions of the Organisation and/or the publisher.

ITAT holds developer not liable for TDS on subvention charges/pre-EMI interest paid to housing finance company on buyer's behalf

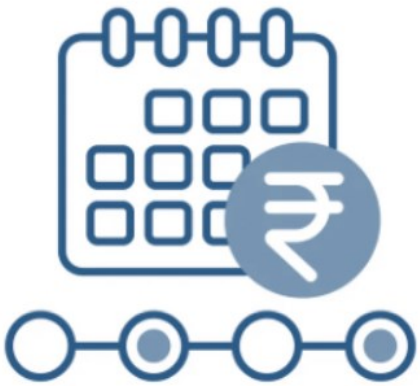
Ozone Urbana Infra Developers Pvt. Ltd

ITA No. 225/Bang/2022

The Assessee was a private limited company engaged in the business of development of residential apartments, hotels, educational institutions, and commercial complexes. A survey was conducted at the business premises of the Assessee and it was found that the Assessee had entered into tripartite agreements with buyers and Indiabulls Housing Finance Ltd ('IHFL') under which the Assessee was required to pay pre-EMI interest as per the interest subvention scheme.

Further, on verification of the books of accounts of the Assessee, it was noticed that the Assessee had not deducted TDS on amount paid as subvention charges or pre-EMI charges to IHFL and the Assessee had also not paid tax to the Government despite deduction on various accounts due to financial crisis. Accordingly, the AO held Assessee liable for TDS on such pre-EMI interest. Aggrieved, the Assessee approached the CIT (Appeals) who confirmed the order of the AO by relying on various judicial pronouncements which caused the Assessee to prefer an appeal before the ITAT. Before the ITAT, the Assessee placing reliance on the tripartite agreement contended that the responsibility of making interest payment was on the buyers and therefore, only the buyers were liable for the payment of TDS under Section 194A of the IT Act.

The ITAT analyzed the contents of Section 194A of the IT Act and the definition of interest under Section 2 (28A) of the IT Act and noted that for applicability of Section 194A of the IT Act, the payments were to be in the nature of interest and the Assessee was the 'person responsible' for paying interest. Thereby, the ITAT observed that since the money was borrowed by the buyers and the Assessee had only undertaken the liability of paying pre-EMI interest on buyer's behalf until the possession, the buyers were primarily responsible for paying interest. Further, the buyers being individuals or HUFs were not liable to TDS under Section 194A of the IT Act. Accordingly, the Assessee being an agent of the buyers could not be held responsible for the payment of TDS.



Further, with regards to the non-payment of TDS by the Assessee on other accounts to the Government due to financial crisis, the ITAT placing reliance on the SC ruling in **Hindustan Coca Cola [2007-TIOL-144-SC-IT]**, remanded the matter back to the AO directing the AO to verify whether the buyers had discharged their tax liability on the sums corresponding to non-payment of TDS. Thus, observing that where the developer bore the burden of pre-EMI interest to attract buyers as a part of business strategy, such buyers did not get absolved from their primary liability under Section 194A of the IT Act being persons responsible for paying interest. The ITAT holding that the property developer was not liable for deducting TDS under Section 194A of the IT Act on payment of subvention charges or pre-EMI charges to housing finance company on behalf of buyer/borrower, allowed the Assessee's appeal.

HC holds frequent violations of natural justice in reassessment proceedings warrant immediate attention at highest level, imposes INR 50,000 as cost

Nabco Products Private Limited

2022-TIOL-1155-HC-ALL-IT

The Assessee had preferred a writ petition before the HC against the reassessment notice and order under Section 148A(d) of the IT Act which was followed by an application seeking rectification of the order under Section 154 of the IT Act. The Revenue had passed the order under Section 148A(d) of the IT Act without

taking into cognizance Assessee's reply against the reassessment notice. The Department also rejected application under Section 154 of the IT Act seeking rectification of the order. The HC noted that, the cases where Income Tax Authorities ignored the principles of natural justice were frequent and on a steady rise. The HC further observed that the departmental counsels stating excuses such problem with the computerization system solely controlled by the CBDT, conducted proceedings orally and the Income Tax Authorities could not correct the systems on their own.

Accordingly, the HC observed that, the Assessee could not be allowed to suffer and the prevailing state of affairs clearly reflect the absence of any effective system of accountability of the erring officers. The harassment of the Assessees and breach of principles of natural justice was resulting in an uncontrolled situation. Moreover, the practice of frequently violating principles of natural justice, non-consideration of replies under one pretext or the other or rejecting it in one or two lines without recording reasons needed to be taken care of immediately by the Revenue at the highest level. The HC also observed that, the prevailing situation of arbitrary approach and breach of principles of natural justice not only affected the Assessees adversely but also developed a perception amongst the people that it is difficult to get justice from the authorities in statutory proceedings.

Thus, the Hon'ble HC quashed the reassessment notice and order passed under Section 148A(d) of the IT Act with a liberty to proceed again after affording a reasonable opportunity to the Assessee. The HC also imposed a cost of INR 50,000 on the Revenue for conducting the reassessment proceeding under the new

regime in an arbitrary manner and directed it to pay the cost to the Assessee within two weeks. The HC also directed CBDT to remove the shortcomings and develop a system of accountability of erring officers/ employees.

HC holds delay in issuing reassessment notice, a substantial lapse, not curable by corrigendum

Infineon Technologies AG

2022-TIOL-989-HC-KAR-IT

The Assessee was a foreign company who was served with a notice for AY 2015-16 under Section 148 of the IT Act. The subject notice was dated March 31, 2017 and issued on April 4, 2017. Further, the Revenue had issued a corrigendum to the notice on April 11, 2017 stating that correct assessment year was AY 2010-11 rather than AY 2015-16. Aggrieved, the Assessee preferred a writ petition before the HC challenging the notice and corrigendum. The HC noted that to reopen the assessment for AY 2010-11, the Revenue was required to issue a valid notice under Section 148 of the IT Act within a period of six years from the end of the relevant AY in accordance with the provisions of Section 149 of the IT Act, which was on or before March 31, 2017.

The Assessee contended that the notice issued under Section 148 of the IT Act was time barred as the second notice i.e. the corrigendum was issued on April 11, 2017, which was beyond the six years' limitation for reassessment. Taking cognizance of the same the High Court observed that the first notice issued to Assessee only led Revenue to invoke their jurisdiction to reopen the assessment for AY 2015-2016 and not for AY 2010-11, since it categorically mentioned that the assessment was to be reopened for AY 2015-16. Moreover, the Revenue invoked the jurisdiction to reopen the assessment for the year 2010-2011 only after issuance of the said corrigendum on April 11, 2017, which was clearly time barred.

Further, the HC noted that the Revenue failed to substantiate the contention that the notice was issued on March 31, 2017, and not on April 4, 2017. Accordingly, the HC observed that the notice and corrigendum issued to Assessee under Section 148 of the IT Act was time barred since they were issued after the period of six years from the end of relevant AY. It was, thereby, held the delay in issuing reassessment notice was a substantial lapse which was not curable by corrigendum.

HC holds VSV benefit applicable for petition for interest-waiver, holds Revenue's approach 'hyper technical'

Kapri International (P) Ltd

2022-TIOL-1154-HC-DEL-IT

The Assessee in middle of liquidation proceedings wherein the Court had directed the liquidator to release outstanding demand to the Revenue and file application for waiver of interest and penalty. The Revenue waived off the penalties but denied waiver of the interest. Aggrieved, the Assessee filed an application under Section 220(2A) of the IT Act, disputing the rejection of waiver of interest. The same was pending adjudication when the Assessee filed a declaration under the VSV Act for settlement.

However, the VSV Authority rejected the said declaration on the ground that the subject petition did not qualify as 'appeal' within the meaning of VSV Act. Reliance was placed on the FAQs to Circular No. 9/2020

dated April 22, 2020 wherein it was clarified that interest waiver applications were not appeals for the purposes of the IT Act. Aggrieved, the Assessee preferred a writ petition challenging the order of the VSV Authority. The HC had observed that there was no straitjacketed definition of appeal under VSV Act for Revenue to take support of and noted the intent of VSV Act was to provide resolution of all nature of disputes relating to tax, penalty, interest, fee as determined under provisions of VSV Act.

Further, placing reliance on the SC ruling in **Tanna & Modi [2007-TIOL-114-SC-IT]**, the HC observed that the provisions of the VSV Act had to be read purposively and in harmony with the scheme of the VSV Act and its intent. Moreover, a reference to the statement of objects and reasons of VSV Act showed that the intent of the legislature was clearly to have an expansive inclusion rather than a restrictive exclusion.

Placing reliance on the coordinate bench ruling in **Shyam Sunder Sethi [2021-TIOL-1646-HC-DEL-IT]** wherein similar rejection order based upon FAQs under the VSV Act was considered to be bad in law, the HC observing that the ground of rejection of Assessee's declaration under the VSV Act was not valid, directed the Revenue to re-examine/reassess the declaration and proceed on merits. Thereby, allowing the Assessee's writ petition and setting aside VSV authority order rejecting the declaration filed by the Assessee, the HC held that the company petition against the rejection of interest waiver under Section 220 (2A) of the IT Act was an 'appeal' and within the scope of VSV Act and that the Revenue's attempt to exclude a genuine disputant of tax liability from the possibility of settlement under VSV Act was extremely hyper technical.

DIRECT TAX
From the Legislature

NOTIFICATIONS

CBDT amends Rule 21AK of the IT Rules to include offshore & over-the-counter derivatives for Section 10 (4E) exemption

Notification No. 87/2022

August 1, 2022

With effect from April 1, 2022, Section 10(4E) of the IT Act was introduced to exempt income from transfer of non-deliverable forward contracts. The subject provision has been amended effective from April 1, 2023, to include incomes from transfer of offshore derivative instruments and over-the-counter derivatives.

Given this backdrop, CBDT amends Rule 21AK of the IT Rules to insert the 'offshore derivative instruments or over-the-counter derivatives' within its ambit for the purpose of Section 10(4E) of the IT Act, also providing the definitions of derivative, offshore derivative instrument and over-the-counter derivatives.

Rule 21AK of the IT Rules prescribes conditions for exemption under Section 10(4E) of the IT Act on income of non-residents from transfer of certain instruments when transacted with an offshore banking unit of an Indian Financial System Code.

CBDT notifies books of account, records to be maintained by Charitable Entities

Notification No. 94/2022

August 10, 2022

CBDT notifies Rule 17AA of the IT Rules. The new Rule provides that every fund or institution or trust or any university or other educational institution or any hospital or other medical institution is required to keep and maintain books of account and other documents at their registered office for a period of ten years from the end of the relevant assessment year.

However, the books of account and other document may be kept at such other place in India as the management may decide by way of a resolution and is intimated under the signature and verification of the person authorised to verify the return to the jurisdictional AO within seven days thereof with the full address of that other place.

The Rule also clarifies that where the assessment in relation to any AY is reopened under Section 147 of the IT Act within the period specified in Section 149 of the IT Act, the books of account and other documents which were kept and maintained at the time of reopening of the assessment shall continue to be so kept

and maintained till the assessment so reopened becomes final.

The Rule mandates that under the aforementioned provisions, the charitable entities shall keep and maintain: -

- books of account, including: (i) cash book, (ii) ledger, (iii) journal, (iv) copies of bills or counterfoils of receipts, (v) original bills and receipts, (vi) any other book that may be required to be maintained in order to give a true and fair view of the state of the affairs of the person and explain the transactions effected,
- books of account for business undertaking referred to in Section 11(4) of the IT Act,
- books of account for business carried out other than the business undertaking referred to in Section 11 (4) of the IT Act.

The Rule also provides for maintenance of other documents for maintaining records of:

- projects and institutions run by the person containing details of their name, address and objectives;
- income during the previous year;
- application and investment of income;
- voluntary contribution made with a specific direction that they shall form part of the corpus;
- contribution received for the purpose of renovation or repair of temple, mosque, gurdwara, church or other place notified under Section 80G(2)(b) of the IT Act which is being treated as corpus under Explanation 1A to the third proviso to Section 10(23C) of the IT Act or Explanation 3A of Section 11(1) of the IT Act;
- loans and borrowings;
- properties; and
- specified persons.

CBDT notifies Form 29D for claiming tax refund under Section 239A of the IT Act

Notification No. 98/2022

August 17, 2022

CBDT notifies Rule 40G of the IT Rules and Form No. 29D for claiming refund under Section 239A of the IT Act.

Rule 40G states that application in Form No. 29D shall be accompanied by a copy of an agreement or other arrangement referred to in Section 239A of the IT Act and can be presented by the claimant himself or through a duly authorised agent.

CBDT extends time-limit for furnishing Form 67 for claiming

foreign tax credit, effective from April 2022

Notification No. 100/2022

August 18, 2022

CBDT amends Rule 128(9) of the IT Rules to extend the time limit for furnishing Form No. 67 till the end of the AY in which the foreign sourced income is offered to tax or is assessed to tax in India, where the return for such AY has been furnished within the time-limit specified under Section 139(1)/139(4) of the IT Act.

Form No. 67 is the statement of income from a country or specified territory outside India and statement of foreign tax credit. Prior to the amendment, Rule 128(9) of the IT Act provided that Form No. 67 shall be furnished on or before the due date specified for furnishing the return of income under Section 139(1) of the IT Act.

The amended Rule 128(9) provides that where an updated return is filed under Section 139(8A) of the IT Act, Form No. 67 shall be furnished on or before the date on which updated return is furnished to the extent it relates to the income included in the updated return.

The amended Rule 128(9) is effective from April 1, 2022 and shall apply to all the claims of foreign tax credit furnished during FY 2022-23.

CBDT amends Rule 17CB of the IT Rules to replace 'trust or institution' by 'specified person'

Notification No. 101/2022

August 22, 2022

CBDT amends Rule 17CB of the IT Rules. Rule 17CB of the IT Rules deals with method of valuation for the purposes of Section 115TD (2) of the IT Act which provides that for taxation of accreted income under Section 115TD (1) of the IT Act, accreted income means the amount by which the aggregate fair market value of the total assets of the specified person exceeds the total liability on the specified date, calculated as per the prescribed method.

As per the amendment the words 'trust or institution' shall be read as 'specified person' across Rule 17CB of the IT Rules. The word 'specified person' shall have the same meaning as assigned to it in clause (iia) of the Explanation to Section 115TD of the IT Act according to which 'specified person' means:

- any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv), (v), (vi) and (via) of Section 10(23C) of the IT Act.
- a trust or institution registered under Sections 12AA and 12AB of the IT Act.

ITAT deletes notional interest imputed by TPO on outstanding AE receivables qua Sony Pictures

Sony Pictures Networks India Pvt Ltd

022-TII-275-ITAT-MUM-TP

The Assessee was a subsidiary of a Singapore-based company that was engaged in the production/ acquisition and sale of television programs, marketing of airtime slots of television channels to Indian advertisers, and distribution of satellite channels. During the AY under consideration, the Assessee was engaged in international transactions with its holding company, benchmarking its transaction for the sale of content and rendering incidental services to AE using the TNMM method, but the TPO after analyzing the international transactions made an adjustment in respect of notional interest on allegedly delayed receivables from its holding company, by applying CUP.

Aggrieved, the Assessee filed objections before the DRP against the TP adjustment made by the TPO. The DRP upheld the adjustment but directed the AO to recompute the adjustment by charging interest adding a markup of 3% on the Assessee's domestic cost of borrowings. Resultantly, the adjustment was only reduced significantly. Aggrieved, the Assessee approached the ITAT before which the Revenue argued that the Assessee had granted 75 days credit period to third parties as against 360 days credit period to AE, whereas the Assessee submitted that 75 days credit period had been allowed to the Assessee by third parties and that its AE had made all payments within the time specified in invoices.

The ITAT noted that as per the service agreement between the Assessee and AE, there was no clause specifying the period within which payment was to be made by AE or providing for charging of interest in case of delayed payments. Moreover, the period within which payment was to be made (viz. within 360 days from the date of shipment) was specified in some of the invoices raised by the Assessee on its AE. The ITAT also noted that the Assessee's average margin (3.43%) earned from its international transaction with AE was higher than the comparables' margin (1.89%) and that the transaction of providing credit period on sale was an integrated part of the transaction of sale, and charging notional interest on overdue payments sprung from such transactions.

Accordingly, placing reliance on the Delhi HC ruling in **Kusum Healthcare [2017-TII-28-HC-DEL-TP2],** wherein it was held that TP adjustment for overdue interest was unwarranted where operating margin earned from an international transaction with AE was higher than the comparables, the ITAT observed that the international transactions of the Assessee were already at arm's length in the present case, and therefore, the adjustment in respect of notional interest resulted in absurd, un-realistic margins and such adjustment was liable to be deleted. Thus, deleting the TP adjustment with reference to notional interest imputed on outstanding receivables, the ITAT allowed the Assessee's appeal.

ITAT holds AO cannot reject Assessee's segmental accounts without showing the defect

SMA Nutrition India Pvt Ltd

2022-TII-271-ITAT-DEL-TP

The Assessee was a wholly owned subsidiary of a Swiss company that was engaged in the provision of IT administration and coordination services (Business Support segment) and was in the process of setting up a distribution business of infant nutrition products. (Distribution segment) and accordingly had prepared segmental accounts of the two segments. The Assessee had entered into certain international transactions with its AE which involved service fees, reimbursement of expenses, and purchase of IT equipment and services which were benchmarked by the Assessee using TNMM as the MAM.

However, while making TP adjustments in respect of fees received for rendering services to AE, the TPO as well as the DRP, rejected Assessee's segmental analysis and considered entity level financial statements for the purpose of benchmarking, on the basis that the Assessee's entire turnover was derived from international transactions with AEs and that the Assessee operated in a single segment. Aggrieved, the Assessee approached the ITAT contending that its functional profile in the two segments was entirely different from each other, and as per a plethora of coordinate bench decisions, segmental accounts could not be discarded merely on the basis that the same were not certified by auditor/CA.

The ITAT observed that the segmental accounts prepared by the Assessee could not be rejected without pointing out defects in the allocation made by the Assessee. Moreover, the segmental accounts were duly audited and certified by CA. Thus, ITAT has remitted the issue to the AO to review the segmental accounts prepared by the Assessee. Further, ITAT has also directed us to accept the same unless the AO could rebut them with cogent reasoning.

ITAT holds TPO/DRP incorrectly understood Assessee's business model of rendering MVAS/SWD, remits TP adjustment

OnMobile Global Ltd

2022-TII-274-ITAT-BANG-TP

The Assessee provided mobile value-added services ('MVAS') to telecommunication operators in India and abroad. The services include ringback tones, contests, jokes, cricket alerts etc., which enabled subscribers to personalize their mobile phones and thereby enhance user experience.

The Assessee entered into contracts with telecom operators in India and abroad, for providing services to customers of telecom operators. Once the contract was signed, the Assessee established subsidiaries (AEs) in the respective countries for the furtherance of its business. While the contract was entered into by the Assessee, the subsidiaries performed routine functions such as installation of equipment, routine and low-level technical support and collections from the customers for the Assessee. The subsidiaries operated on a cost-plus model for the services rendered.

The subsidiaries retained a return on cost for the services provided and transferred the rest of the proceeds to the Assessee. The amount received from the subsidiaries was shown under the head 'Telecom Value Added Services rendered'. The Assessee benchmarked these transactions entered into with each of the subsidiaries independently, by taking each of the subsidiaries as the tested party. In addition to the above transactions, the Assessee rendered software development services ('SWDs') to the US-based AE which were benchmarked independently.

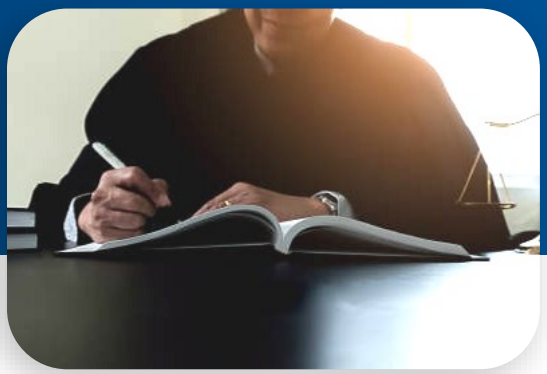
The income from the SWDs was shown under the head 'Business Development Services rendered'. Since the Assessee was the least complex entity in this transaction, the Assessee selected itself as the tested party and benchmarked the transaction.

On a reference made by the AO, the TPO made a TP adjustment. Initially, a draft assessment order came to be passed by the AO in which, inter alia, the aforesaid TP adjustment was incorporated.

Aggrieved, the Assessee filed its objections before the DRP which rejected the Assessee's objections to a large extent while granting marginal relief. Pursuant to the directions of the DRP, the AO passed the final assessment order in which the TP adjustment was reduced. Aggrieved by the final assessment order, the Assessee approached the ITAT which noted that the AEs of the Assessee were rendering the services and not vice versa as understood by the TPO and accordingly, the TPO / DRP failed to appreciate the above business model of the Assessee and proceeded to treat the Assessee as a SWDs provider to all of its AEs. Moreover, The TPO had wrongly considered MVAS as SWDs on the premise that the same was rendered using a software platform which had been developed by the Assessee.

Thus, holding that the TPO/DRP had not appreciated the facts of the business model of the Assessee, properly and proceeded to make the TP adjustment on an incorrect premises, thus ITAT remitted the issue to TPO for denovo consideration, basis the correct understanding of the business of Assessee.

GOODS & SERVICES TAX
From the Judiciary



SC: State not obligated to provide HSN code and GST rates in public tender

Union of India vs. Bharat Forge Limited and Anr. [2022-TIOL-67-SC-GST]

A global e-tender was floated by M/s. Diesel Locomotive Works in April 2019, to procure turbo wheel impeller balance assembly under the Make in India scheme. Bharat Forge Ltd., one of the bidders, had approached the Allahabad High Court, inter alia, assailing that neither the Notice Inviting Tender ('NIT') nor the bid documents mentioned the relevant HSN, which is adopted by the GST Council to indicate the GST rates. It was contended that they had quoted the correct GST rate of 18%, whereas the top three tenderers quoted at 5%, accordingly their overall prices were lower in comparison. Due to the non-disclosure of the HSN Code in the bid document, the correct tax rate for all bidders was not disclosed, and thus the public tender violated Article 19(1)(g) of the Constitution. The High Court allowed the petition, and directed the Central Government to verify the HSN Code from taxing authorities and indicate the same on bid documents.

Aggrieved, the Central Government challenged the HC's order before the Apex Court. The main contention argued was the maintainability of the writ of mandamus as there was no breach of statutory duty by the Government. Further, it was argued that the bid documents clearly stated that the Government would not be responsible for misclassification taxes and duties, therefore mandating the Government to seek HSN Code clarification was not feasible.


रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

The Supreme Court upheld the writ, and consequently quashed the mandamus issued by the HC. The Apex Court ruled that the State is not duty bound to mention HSN Codes in public tender documents. The court was of view that there should be a 'public duty' for invoking mandamus, and not necessarily a statutory duty. It can be imposed by common charter, common law, custom or even contract. Referring to a catena of judgments, the Court noted that the writ of mandamus has a wide scope and should be invoked whenever a public duty is breached. It was further held that judicial review is limited for state contracts and they can only intervene when the state acts arbitrarily, or whimsically against public interest. The court noted that it was Bharat Forge's duty to enquire about the HSN code and other tax rates.

Authors' Notes:

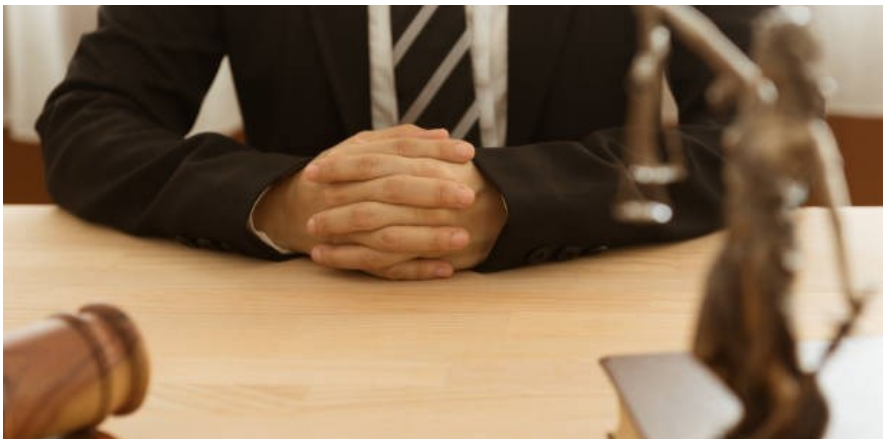
> *The HSN classification of railway products has been a perpetual issue right from the Excise days, which has re-ignited under the GST regime as well. Where inconsistencies and scope for multiple interpretations in the applicability of HSN codes to products sold in the same industry will exists, possibility of different price bids will remain. While the Allahabad HC had intended to provide a level playing field to the bidders, ensuring no misclassification, it would not have been feasible. The responsibility of classifying the goods and charging the tax correctly, always rests upon the seller.*

Shifting such grave responsibility on the shoulders of the buyers would have created a havoc in the industry.

Moreover, the Apex Court has rightly held that the State is not duty-bound to mention the HSN Codes on the tender. This would amount to shifting the responsibility of correct tariff classification on the State. Further, non-mentioning of HSN Codes does not amount to any action against the public interest at large.

HC: Adjudication Proceedings cannot be initiated and concluded on the same day without providing hearing opportunity

AMI Enterprises Private Limited [W.P. (T) No. 2312 of 2022 dated 10 August 2022]



The Petitioner had generated an E-Way Bill for inter-State transport of his goods. During the interception of the consignment, it was observed that the E-Way Bill had been expired while the vehicle was in transit. Consequently, the vehicle had been detained for the alleged violation of section 129 of the CGST Act r/w. Rule 68 of the CGST Rules. The entire proceedings, including the vehicle detention, show-cause notice, and the adjudication order, were passed on the same date. The Petitioner had paid the entire demand of tax along with interest and got the vehicle released on the same date. Thereafter, the Petitioner had preferred an appeal which came to be rejected. Aggrieved, the Petitioner preferred a Writ before the Jharkhand HC.

The Petitioner submitted that the entire proceedings was held ex parte and no proper opportunity of furnishing a reply or hearing was given to them. The Petitioner further stated that it was a bona fide error and there was no intention to evade tax. The Revenue on the other hand contented that the provisions of sec 129 does not contemplate the requirement of an intention to evade tax in order to impose tax liability, interest, and penalty hence, the order passed against the Petitioner did not suffer from any legal infirmity. The Revenue further contended that on the request of the Petitioner itself, the vehicle was released after the payment of tax and interest as they did not want to submit anything on the issue, therefore the case was adjudicated ex parte.

The HC observed, that the proceedings against the Petitioner were initiated and concluded on the same date. Therefore, the HC held that the adjudication order and the appellate order both suffered from procedural infirmities and deprived the Petitioner/Driver an adequate opportunity to defend themselves. Accordingly, the HC allowed the writ, dismissing the adjudication and the appellate orders.

Authors' Notes:

It would be pertinent to note that in a similar matter, the Apex Court in RE: ***Satyam Shivam Papers Private Limited [Special Leave to Appeal (C) No(s). 21132 of 2021]*** *had affirmed the judgement of the Telangana HC holding that tax evasion cannot be presumed on mere non-extension of validity of e-way bill by the Assessee.*

SC's limitation order not applicable to revenue for granting GST refund. Interest payable on delay

Ankush Auto Deals [2022-TIOL-1098-HC-DEL-GST]

The Petitioner had filled a GST refund claim during July 2021, which had been granted in tranches in January and March 2022, without interest despite substantial delay. Aggrieved, the Petitioner preferred a Writ before the Delhi HC. The Revenue contended that delay in processing the refund owing to the COVID-19 outbreak. The Revenue further relied on the Supreme Court's Suo moto extension order and the judgement of the Madras HC in RE: GNC Infra LLP [2022-TIOL-55-HC-MAD-GST], wherein had been held that Suo moto extension order by the SC would apply to refund u/s. 54 of the CGST Act.

The HC observed that the statutory rate of interest is pegged at 6% u/s. 56 of the CGST Act. The said interest gets triggered after the expiry of 60 days from the date of receipt of application for refund, which is compensation for use of money. It was further observed that neither the SC's limitation order, nor the Madras HC's judgement in RE: GNC Infra [supra] concern the point in issue i.e., grant of interest on refund withheld beyond the period prescribed under the Act. Thus, the submissions of the Revenue are not sustainable.

In view of the above observations, the Delhi HC held that the Revenue could not have retained the money beyond the period stipulated under Section 56 of the CGST Act. The HC further directed the Revenue to grant the applicable interest on delayed refund.

HC rams Department for casual approach regarding GST registration cancellation

DRS Wood Products [TS-405-HC(ALL)-2022-GST dated 12 August 2022]

The Petitioner, a partnership firm, engaged in manufacturing and trading veneer had been duly registered under the CGST Act. While trying to upload an E-way Bill, the Petitioner realised that the registration had been cancelled. Aggrieved, the Petitioner filed an application for revocation of the cancellation order. In response, the Revenue stated the cancellation was the ground that as per the inspection report no business activity, stock, or employees was found at the Petitioner's principal place of business during the investigation. Thereafter, an SCN had been issued proposing rejection of revocation application. Aggrieved, the Petitioner had filed an Appeal, which came to be rejected. Thus, the Petitioner preferred a Writ before the Allahabad HC.

The HC observed that cancellation of GST registration has serious consequences as it takes away the fundamental right to engage in business activity. The HC further highlighted certain lacunas in the SCN, such as opaqueness of the allegations and also no relevant report or inquiry conducted to form the opinion was relied upon in the SCN. In view of the above, it was held that a vague show-cause notice without any allegation or proposed evidence against the petitioner is violative of principles of administrative justice. The HC further held that the harassment caused to Petitioner since 2020 was due to the Department's arbitrary actions, Consequently, the Court ruled that the registration of the Petitioner be renewed.

Authors' Notes:

The Allahabad HC in the instant case has rightly set aside the order upholding the rejection of revocation application of GST registration cancellation, on the basis of a vague SCN, which did not record the allegations / alleged contraventions of the assessee. It would be pertinent to note that as a settled principle of law, a vague SCN is void ab initio. The Bombay HC in RE: Royal Oil Field Private Limited [2006 (194) ELT 385 Bom] had held that a notice which does not disclose the material based on which the consequent adverse action is proposed to be taken, is vague and unsustainable.

When the SCN, which is the foundation on which the department has to build up its case, is vague and lack details, it has to be held that the impugned order based on such an SCN is bad in law and cannot be sustained.

While applying the SC direction, HC allows the application for revoking GST registration filed beyond the time limit prescribed

Shri. Pandarakandiyil Moideenkutty [WP(C) No. 19904 of 2022 dated 06 July 2022]

The Petitioner was the proprietor of a business registered under the CGST Act. The said registration came to be cancelled on 02.02.2021 on account of non-filling of returns. The Petitioner did not file any application for revocation of registration but ultimately filed an appeal under Section 107 of the CGST Act challenging the order revoking the registration, which also came to be rejected. Aggrieved, the Petitioner then preferred a Writ before the Hon'ble Kerala HC, whereby the Petitioner pleaded that if the cancellation of registration is not revoked then the Petitioner will be put to great prejudice and hardship.

The HC while relying on the judgment of Hon'ble Gujarat HC in RE: **Tahura Enterprise** and MP HC in RE: **MAA Sharda Construction Company**, contended that no tax law should be construed as creating difficulties in the doing of business and the State should essentially be concerned about collecting taxes and penalties wherever applicable rather than relying on technicalities to deny the restoration of registration in cases like this. Further the HC relied on the direction issued by the Hon'ble Supreme Court in Suo Moto Writ Petition No. 3 of 2020, for extension to the limitation period prescribed by Section 30 of the CGST Act while stating that if one were to apply the directions issued by the Hon'ble SC, it can be held, without any difficulty, that the Petitioner had time till 28.05.2022 to file an application for revocation.

HC further remarked that the Petitioner had availed a wrong remedy by filing the appeal rather than an application for revocation and therefore the HC directed the Petitioner to file a fresh application for revocation. Lastly, the HC held that the restoration of registration will not mean the cessation of statutory liabilities of the Petitioner.

Hearing Aids taxable at the rate of 18% and not exempted

Sivantos India Private Limited [AAR(KAR)ADRG 27/2022 dated 12 August 2022]

The Applicant is engaged in the business of supplying hearing aids and its parts and accessories in the domestic market. The Applicant had sought an advance ruling before the AAR to ascertain the classification and rate of tax on supply of parts and accessories that are suitable for use solely with the hearing aids. The Applicant also seeks advance ruling on whether such parts and accessories are

exempted under Notification No. 2/2017-CT(R) dated 28 June 2017.

The Applicant submitted that they are classifying the said parts and accessories under heading 9021 9010 and are charging GST at 18% in terms of SI No. 453 of Schedule III to the Notification No. 1/2017- CT(R) dated 28.06.2017. However, the Applicant argued that the said parts and accessories are designed by their parent company to make them suitable for use solely with the hearing aids.

AAR observed that the heading 9021 40 covers only the hearing aids but not parts and accessories thereof, the part and accessories of hearing aids are specifically covered under heading 9021 9010. It was further observed that the notification clearly exempts only the hearing aids and not its parts and accessories. Accordingly, it was held that the parts and accessories are not entitled for the exemption.

In view of the above, the AAR concluded that the hearing aids are excluded from the entry no. 221 of the Schedule II, which attracts 12% GST, and that the parts and accessories of hearing aids are covered only in SI No. 453 of Schedule III chargeable to 18% GST.

HC: Cut-off date for filing TRAN-1 and revision in return cannot be same

Interplex Electronics India Private Limited [2022-TIOL-1118-HC-MAD-GST]

The Petitioner had uploaded its TRAN-1 on 27 December 2017 claiming the transition of the CENVAT credit balance. However, due to oversight, the Petitioner had inadvertently made a clerical error in mentioning the amounts. Further, due to the manual error, the values were reported incorrectly. Hence, there was an erroneous reduction of CENVAT credit. As the last date of filing and revision was on the same date, the Petitioner was unable to rectify the figures in TRAN-1 by revising it. Aggrieved, the Petitioner preferred a Writ before the HC. The Petitioner contended that perusal to Rule 120A the timelines set out under Rule 117 when applied equally to revision as well and as to a consequence, it leads to an absurd practical application as the last date to file and revise of TRAN-1 were the same. However, the Revenue pleaded that the time prescribed for submission and revision was mandatory and it cannot challenge the same without assailing Rule 120A.

The HC further observed that the timeline stated under Rule 117 has to be read into Rule 120 as well, but this would not lead to a conclusion that the application of Rules 117 and 120A cannot be harmonized, to make them workable, viable and practical. Accordingly, it was held that the due date/ time limit for filing return in TRAN 1 seeking transition of credit and due date/ time limit for revision of TRAN 1 cannot be same. Consequently, the writ was allowed by granting additional timeline for revision of TRAN 1 returns.

Authors' Notes:

> *The Apex Court in a recent judgement in RE:* ***Filco Trade Centre Private Limited [2022-TIOL-57-SC-GST dated July 22, 2022]*** *has ruled that the GSTIN portal shall reopen for all the taxpayers for a*

period of 2 months i.e. from September 01, 2022 to October 31, 2022. As per the judgement, all the taxpayer can claim the transitional credit, irrespective of whether or not they had filed writ petition or their claim had been rejected on the ground that there were no technical glitches. However, it would be pertinent to note that the Revenue has sought time from the SC to enable the re-opening of the TRAN-1 facility in the GSTN portal.

Unutilized-ITC refund cannot be denied on the basis non-submission of Foreign Inward Remittance Certificates

Mavenir Systems Private Limited [WP 15323/2022 Dated 11.08.2022]

The Petitioner is engaged in the business of providing information technology/software services to domestic as well as overseas customers. The Petitioner had filed GST refund application for the unutilized ITC, but the Revenue rejected the refund claim on the sole basis that they had not furnished the BRCs/ FIRCs in support to the export payments that were received in foreign exchange. Aggrieved the Petitioner preferred a Writ before the Karnataka High Court.

The Petitioner contended that they had satisfied all the jurisdictional pre-conditions in respect of the services and further they had also submitted the BRCs before the authorities prior to issuance of the impugned orders which were ignored by the Department. It was further contended that the impugned order went beyond the scope of SCN, as the SCN did not raise the allegation that the refund application was liable to be rejected on account of non-submissions of BRCs / FIRC. They argued that the Revenue had ex-facie erroneously assumed the existence of a jurisdictional fact, viz. the payment for the relevant services can be said to have not been received by the Petitioner in convertible foreign exchange. Finding force in the arguments put forth by the Petitioner, has stayed the operation of the refund rejection order.

GOODS & SERVICES TAX
From the Legislature

Sr. No	Notification/ Circular	Summary
1.	**Notification No. 17/2022–Central Tax dated 01 August 2022**	**CBIC reduces e-invoicing threshold to 10 Cr w.e.f 01 October 2022 for e-Invoicing applicability** In line with the recommendations of the GST Council, the CBIC, has reduced the threshold for e-Invoicing applicability from 20 Crore to 10 Crore. Thus, taxpayers having an aggregate turnover of more than Rs. 10 Crores, would be subjected to e-invoicing provisions w.e.f 01 October 2022.
2.	**Circular No. 178/10/2022 dated 03 August 2022**	**CBIC clarifies GST applicability on liquidated damages and penalty on breach of contract** **Liquidated Damages** Liquidated damages are not a compensation for contract breach or non-performance. They are payments for not tolerating contract breaches. Such payments are essentially a movement of money and not taxed. However, amounts paid for acceptance of late payment, early lease termination, pre-payment of loan, or amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely acceptance of late payment, early lease termination, pre-payment of loan, and making arrangements for the intended supply by the supplier. Such payments, even if called a fine or penalty, are essentially consideration for a supply and are liable to GST if the supply is taxable. **Compensation for cancellation of coal blocks** There was no agreement between previous coal block allotees and the Government that they would consent to or permit cancellation if they were compensated. No such promise or offer was made by the prior allottees to the Government. Therefore, compensation paid for cancellation of coal blocks is not taxable. **Cheque dishonour fine/ penalty** The fee or penalty that a supplier or banker levies for dishonouring a check is a penalty imposed not for tolerating the behaviour or situation, and thereby discouraging such an act or situation. Therefore, a check dishonour fine or penalty is also not taxable. **Penalty imposed for violation of laws** Penalties for violation of laws cannot be considered as the Government or

Sr. No	Notification/ Circular	Summary
2.	**Circular No. 178/10/2022 dated 03 August 2022**	local authority's compensation for tolerating violation. They stipulate penalties for not tolerating, penalising, and discouraging violations. Hence these amounts are not leviable to GST. **Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period** These amounts are recovered by the employer not as a consideration for perpetuating early resignation, but as penalty to prevent and deter non-serious employees from taking up employment. Therefore, employer-recovered funds are not taxable. **Late payment surcharge or fee** The supplier's facility of accepting late payments with interest, or a fine is merged with the main supply. Since it is ancillary to and bundled with the principal supply, it should be assessed at the same rate as the principal supply. **Cancellation charges** Facilitating cancellation of an anticipated supply for a charge or retention or forfeiture of the consideration or security deposit is the principle supply. Forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in case of a successful bidder failing to act after winning the bid for allotment of natural resources is a mere flow of money, as the buyer or successful bidder gets nothing in return for such forfeiture. Such payments are essentially a cash flow and are not taxable.
3.	**Circular No. 179/11/2022-GST dated 03 August 2022**	**CBIC clarifies GST Rates on Items as per Council's Decision** **Electric vehicles whether or not fitted with a battery pack** Electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attracts GST at the rate of 5%. **Stones which are not mirror polished** Napa stones being a fragile stone, cannot be subjected to extensive mirror polishing and hence, such 'minor polished stones' do not qualify as 'mirror polished stones' and hence, are eligible for concessional rate of 5% GST. **Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes** Fresh mangoes falling under heading 0804 are exempted; • Sliced and dried Mangoes falling under 0804 attracts concessional GST rate of 5%;

Sr. No	Notification/ Circular	Summary
3.	**Circular No. 179/11/2022-GST dated 03 August 2022**	• All other forms of dried mango, including Mango pulp are taxable @12%. **Fly ash bricks and aggregate** It attracts 12% GST, explicate that condition of 90% or more fly ash content applied only to Fly Ash Aggregates and not to Fly ash bricks and Fly ash blocks.
4.	**Instruction No. 03/2022-23[GST-INV] dated: 17th-August-2022.**	**Guidelines on Issuance of Summons under Section 70 of CGST Act** CBIC has issued the following guidelines on Issuance of Summons under Section 70 of CGST Act • Superintendents should only issue summons after obtaining prior written permission from an officer not below the rank of Deputy or Assistant Commissioner. If it is not possible to obtain such prior written permission, oral or telephonic permission should be obtained, reduced to writing, and intimated to the officer at the earliest opportunity. • While issuing a summons, the officer should record the person's appearance/non-appearance and save a copy of the statement. Unless it hinders the investigation, the summons should include the offender's name. • The Instruction exempted the issuance of summons when statutory documents are available on the GST Portal. Senior management of a company or PSU should not be summoned first. They should only be summoned if the investigation reveals their decision-making process. • Summoning officer must be present at the time and date for which the summons is issued. In case of emergency, the summoned person must be notified in advance. All summoned people must appear before the officers, with the exception of women and privileged people. • Issuance of repeated summons must be avoided and if the summoned person does not join investigations after being repeatedly summoned, a complaint should be filed with the Jurisdictional Magistrate under Sections 172 and 174 of the Indian Penal Code. Before filing the such complaint, it must be ensured that the summons was duly served per Section 169 of the CGST Act.

Sr. No	Notification/ Circular	Summary
5.	**Instruction No. 02/2022-23 [GST - Investigation] 17/08/2022 dated: 17th-August-2022.**	**Guidelines for arrest and bail for offences punishable under CGST Act** Guidelines are issued considering judgement of Hon'ble Supreme Court in case of **Siddharth Vs. State of UP and DK Basu Vs. State WB**. • The arrest should not be made in a routine and mechanical manner. The Commissioner or competent authority must determine if the answer to certain questions is affirmative or not before arrest. Approval to arrest should be granted only where the intent to evade tax or commit acts leading to utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay the amount collected as tax is evident. • The Principal Commissioner or Commissioner should consider the role of the person involved, the evidence available, and the commission of offense under Section 132 of the CGST Act. The arrest memo must be in compliance with the directions in DK Basu vs. State of West Bengal. The arrest of women as per Section 46 of CrPC and mandate medical examination of the arrested person shall be done. A separate arrest memo must be made and provided to each arrested person and the arrest should be made with minimal use of force and publicity. • If bail conditions are not met, the arrested person must appear before a magistrate within 24 hours of arrest and be turned over to police if necessary. The Instructions also mention making of prosecution complaint under section 132 at the earliest and also maintaining of bail register. • Principal Director-General (DGGI) or Principal Chief Commissioner or Chief Commissioner shall send a report on every arrest to Member (Compliance Management) and to the Zonal Member within 24 hours of the arrest and maintain an all-India record of arrests made in CGST. From September 2022 onwards, a monthly report of all persons arrested in the Zone shall be sent by the Principal Chief Commissioner or Chief Commissioner to the Directorate General of GST Intelligence by the 5th of every month. DGGI should comply the monthly reports from the formations and sends a zone-wise report to the CBIC by the 10th of every month. All such reports must be sent via e-mail, and hard copies should be stopped immediately.

CUSTOMS & FTP
From the Judiciary

Inconsistent stand on classification at different places causes unnecessary litigation for the importers

Reliance Jio Infocomm Ltd [2022-TIOL-708-CESTAT-MUM]

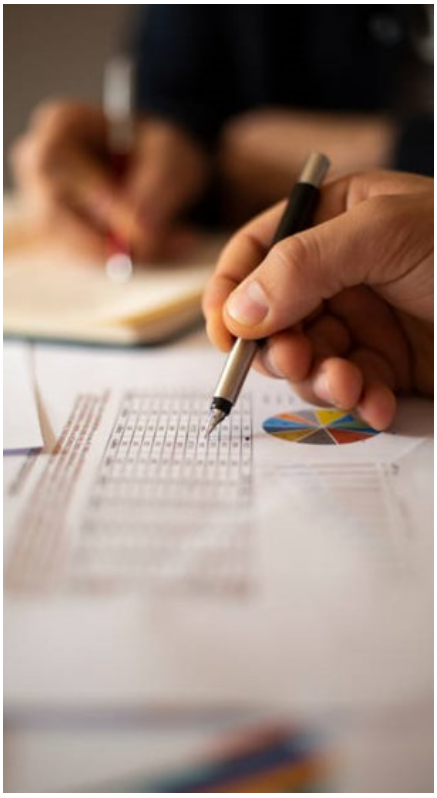
The Appellant had filed an appeal before the Commissioner (Appeals), contending that the Small Factor Pluggable are classifiable under CTH 851770 and therefore, eligible to avail exemption benefit under Notification No. 24/2005-Cus. dated March 01, 2005.

The Tribunal observed that the Department had not filed any appeal against the order passed by Commissioner (Appeals), Hyderabad and therefore that it is not open for Department to take a different stand on the same issue in Mumbai and Hyderabad. It was further observed that the Difference in classification of the impugned goods imported at different places would negate the very purpose of the Tariff Act on the one hand and would cause avoidable litigation for the importers on the other.

In view of the above, it was held that as the Commissioner (Appeals), Hyderabad's findings were comprehensive and reasoned, which Commissioner (Appeals), Mumbai adopted in the impugned judgement, hence there was no need for additional intervention. Consequently, the revenue's appeal was rejected.

Refund cannot be denied on hyper-technical objection

Paras Marble [2022-TIOL-1067-HC-RAJ-CUS]



The Petitioner had acquired EODC and thus later filed the refund claim of the bank guarantee in the year 2018 but the application was inadvertently addressed to the Commissioner, Customs. In 2019, the application was referred back to the Petitioner with instructions to file the application before another officer. Thereupon, the Petitioner filed a refund claim application, but not in the prescribed format and accordingly the application was being returned. In 2020, the Petitioner made a new application to the Assistant Commissioner (Refunds) in Form No. 102 as per the Customs Refund Application (Form) Regulations, 1995, however the refund claim was rejected on the sole basis that the claim was time barred. Aggrieved, the Petitioner preferred the Writ.

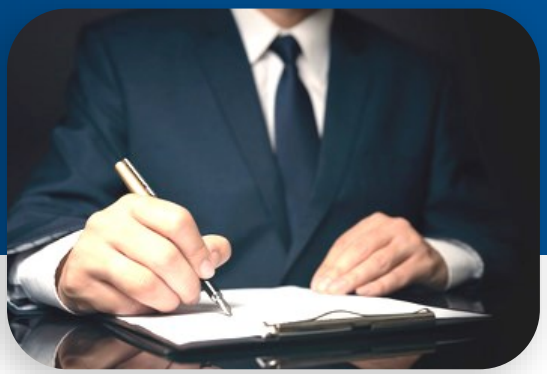
The Petitioner contented that findings of the Respondents that the application for refund was time- barred is unjustified. Aggrieved, the Petitioner preferred a Writ before the HC. The HC held that the Petitioner was unquestionably seeking his refund claim in a bona fide manner which should not have been rejected because it was not filed with the right authority or in the right format and thus being delayed. The HC directed the Department to treat the refund application within the limitation and thus to be decided within a period of three months. Consequently, the petition was allowed.

CUSTOMS & FTP
From the Legislature

Sr. No.	Notification/ Circular	Summary
1	**Notification No. 24/2022- Customs (ADD) dated 03 August 2022**	**CBIC imposes ADD on Opal Glassware Import from UAE and China** CBIC has extended the levy of ADD on import of Opal Glassware falling under CTH 7013 from UAE and China PR for a period of 5 years.
2	**Circular No. 12/2022– Customs dated August 16, 2022**	**Guidelines for launching of Prosecution for offences under Customs Act** CBIC has issued the guidelines for launching of Prosecution in relation to offences punishable under the Customs Act • The arrest and prosecution can be made in cases involving unauthorized importation of baggage/cases under the Transfer of Residence Rules, where the market value of the goods involved is INR 50 Lacs; • The outright smuggling of high-value goods such as precious metals, restricted items or prohibited items or foreign currency where the market value of the offending goods is INR 50 Lacs; • The arrest and prosecution can be triggered in cases related to the importation of trade goods. It entails wilful mis-declaration of value/ description, concealment of restricted goods or goods notified under Section 11 of the Customs Act, and the market value of the offending goods is INR 2 crores or more, • Cases involving fraudulent evasion or attempted evasion of duty under the Customs Act, if the amount of duty evaded is INR 2 crores or more, will be prosecuted and arrested; • Similarly, in cases related to fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty in connection with the export of goods, if the amount of drawback or exemption from duty is INR 2 crores or more, it may trigger arrest and prosecution; • The prosecution shall not be initiated in the cases involving non-declaration of foreign currency by foreign nationals and NRIs detected at the time of departure from India, exceeding the threshold limits of INR 50 Lacs, if it is claimed that the currency has been legally acquired and brought into India but not declared inadvertently.

Sr. No.	Notification/ Circular	Summary
3	**Notification No. 26/2015-2020 dated 10 August 2022**	**DGFT has done away with the requirement of advance registration under NFMIMS** The DGFT has done away with the requirement of advance registration of minimum 5 days from the expected date of arrival of import consignment under NFMIMS ('Non-Ferrous Metal Import Monitoring System') under the Foreign Trade Policy 2015-2020 **Manner of maintaining the ECL** ECL will be maintained in FORM ECL-1 on the common portal for each person in regard to every deposit made towards duty, interest, penalty, fee or any other sum payable by the person. Any deposit into the ECL will be made by a person by generating a deposit challan in FORM-ECL-2 which will be valid for a period of 15 days. **Manner of making payment from ECL** A person may use the amount available in the electronic cash ledger for making payment duty, interest, penalty, fee, or any other sum payable through challan in FORM ECL-3. The successful debit will be visible on ECL and the credit will be shown in the Electronic Duty Payment Ledger (Cash) maintained in FORM ECL-4. **Refund** The balance in the ECL, after payment of duty, interest, penalty, fee or any other amount payable, may be applied for refund by the person on the common portal in FORM ECL-5. The balance will not be available and the refund will be decided in 30 days. **Intimation of discrepancy in ECL** Upon noticing any discrepancy in his electronic cash ledger, the registered person shall communicate the same on the common portal.
4	**Circular No. 14/2022-Customs dated 18 August 2022**	**Customs duty on Display Assembly of a cellular mobile phone** CBIC has clarified that the import of display assembly of cellular mobile phone along with back support frame of metal/ plastic will be eligible for concessional BCD of 10%. However, in cases wherein other items such as antenna pin, power key, slider switch, battery compartment, Flexible Printed Circuits for volume, etc. are imported along with display assembly (with or without back support frame of metal/plastic) the whole assembly will attract BCD at the normal rate of 15%. It has been further clarified that a display unit that includes ten specified items such as touch panel, cover glass, indicator guide light, LCD backlight and polarisers will attract BCD of 10%. However, if the product includes additional parts such as antenna pin, sim tray, speaker net, battery compartment or

Sr. No.	Notification/ Circular	Summary
4	**Circular No. 14/2022-Customs dated 18 August 2022**	other items, then the whole assembly is liable to 15% duty. Such assembly consisting of a display assembly of a mobile phone with or without back support frame, plus any other parts is not eligible for the concessional duty rate
5	**Instruction No. 19/2022-Customs dated 17 August 2022**	**Applying Customs (Administration of Rules of Origin under Trade Agreements) Rules ('CAROTAR') 2020 maintaining consistency with the provisions of relevant trade agreement or its Rules of Origin** CBIC has instructed the Department to maintain consistency with the provisions of relevant trade agreements or its Rules of Origin. Vide the captioned Instruction the CBIC emphasizes as following: • Section 28DA empowers the proper officer to ask the importer to furnish further information, consistent with the trade agreement, in case the proper officer has reasons to believe that the country-of-origin criteria have not been met; • The said provision further enables the proper officer, where the importer fails to provide the requisite information for any reason, to cause further verification consistent with the trade agreement; • In the event of a conflict between a provision of these rules and a provision of the Rules of Origin, the provision of the Rules of Origin shall prevail to the extent of the conflict.



SC holds Financial Creditor should be granted opportunity for explaining delay in filing insolvency application

Kotak Mahindra Bank Ltd. vs. Kew Precision Parts Pvt. Ltd. & Ors

Civil Appeal No. 2176 of 2020

The Appellant Financial Creditor had, since November 2012 sanctioned loan facilities to the Corporate Debtor and loan amounts were disbursed during calendar year 2012 and 2013. The Corporate Debtor defaulted in making repayment of its dues to the Appellant Financial Creditor. The Appellant Financial Creditor, therefore, declared the Account of the Corporate Debtor as non-performing asset on September 30, 2015. On December 20, 2018, the Corporate Debtor offered to settle the outstanding dues at a lumpsum amount of INR 24.55 Crores. The offer was accepted by the Appellant Financial Creditor. The terms of settlement were signed and executed by the Corporate Debtor and the Appellant Financial Creditor and the sum was to be paid on or before December 31, 2018.

The Corporate Debtor defaulted in payment of INR 24.55 Crores to the Appellant Financial Creditor as agreed. Accordingly, the Appellant Financial Creditor filed a petition under Section 7 of the IBC before the NCLT for the initiation of CIRP. The NCLT admitted the petition by an order dated September 6, 2019 and imposed a moratorium in terms of Section 14 of the IBC and also confirmed the appointment of an IRP. Aggrieved, the suspended Directors of the Corporate Debtor preferred an appeal before the NCLAT contending that the petition filed by the Appellant Financial Creditor under Section 7 of the IBC was patently barred by limitation.

Before the NCLAT, the Appellant Financial Creditor relying on the proposal for one time settlement given by the Corporate Debtor contended that the existence of financial debt had been admitted by the Corporate Debtor. Observing that there was no acknowledgement of debt within the period of limitation of 3 years, and hence the Financial Creditor's application was barred by limitation, the NCLAT closed the CIRP proceedings in the NCLT. Aggrieved, the Appellant Financial Creditor approached the SC which observed that NCLAT proceeded without considering the question of applicability of Section 5 of the Limitation Act

for condonation of delay, to proceedings under Section 7 of the IBC. Moreover, if notified of the proposal to close the proceedings, the Appellant Financial Creditor would have got the opportunity to rectify the defects in its application under Section 7 of the IBC by filing additional pleadings and/or documents. Accordingly, the NCLAT erred in closing the CIRP proceedings without giving the Appellant Financial Creditor the opportunity to explain if there was sufficient cause for the delay in approaching the NCLT.

Thus, setting aside the NCLAT order to the extent it closed the CIRP proceedings against the Corporate Debtor and holding that the Appellant Financial Creditor should have been granted opportunity for explaining delay in filing insolvency application, the SC allowed the Appellant Financial Creditor's appeal, directing the NCLT to consider the application for CIRP afresh, in accordance with law after granting the Appellant Financial Creditor and the Corporate Debtor an opportunity to file additional affidavits/ documents.

Authors' Note:

> *In the instant case, the SC also observed that IBC was not just another statute for recovery of debts but was a beneficial legislation for equal treatment of all creditors of the Corporate Debtor, as also the protection of the livelihoods of its employees/workers, by revival of the Corporate Debtor through the entrepreneurial skills of persons other than those in its management, who failed to clear the dues of the Corporate Debtor to its creditors.*

HC quashes DRI-order raising demand against Corporate Debtor post approval of resolution-plan by NCLT

Bhushan Power and Steel Ltd. vs. Union of India & Ors.

W.P.(C) 7248/2020 and CM APPL. 24458/2020

In the instant case, a writ petition was filed by the Petitioner/Corporate Debtor before the HC against the order in original passed by the Additional Director General (Adjudication), DRI levying a demand of INR 23.53 Crores on the Petitioner/Corporate Debtor along with penalty and interest even after approval of the resolution plan by the NCLT. The Respondent/DRI issued a show cause notice pertaining to transactions in issue for which demand had been raised, thereafter, CIRP was triggered pursuant to an application under Section 7 of the IBC and the resolution plan of the Corporate Debtor was approved by NCLT, after which the

impugned order came to be issued by the Additional Director General (Adjudication) DRI.

Before the HC, the Respondent/DRI contended that the present writ petition could not be entertained as an alternate remedy of appeal was available. Before the HC, the Petitioner/Corporate Debtor contended that since the resolution plan had been approved by the NCLT, the aforementioned demand stood extinguished in terms of the provisions of the IBC. In support of this plea, the Petitioner/Corporate Debtor also placed reliance on the SC ruling in **Ghanshyam Mishra [2021 SCC OnLine SC 313]** wherein the SC had *inter-alia* held that once a resolution plan was duly approved by NCLT, the claims as provided in the resolution plan stood frozen and were binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders.

Noting that the creditors of the Corporate Debtor had already been paid in terms of the approved resolution plan, the HC observed that it was clear that if the resolution plan was to be reprised, it would result in burdening the Petitioner/Corporate Debtor with unexpected claims, thereby derailing it from its path to recovery and the SC in **Ghanshyam Mishra [2021 SCC OnLine SC 313]** had already taken this concern into account, and therefore, ruled that such-like debts/demands stood extinguished. Thus, remarking that the Respondent/DRI could not accept the Petitioner's/Corporate Debtor's contention that the demand stood extinguished once a resolution plan was approved by NCLT, the HC quashed the order passed by the Additional Director General (Adjudication) DRI demanding a sum of INR 23.53 Crores in addition to the levy of penalty and interest, from the Petitioner/ Corporate Debtor.

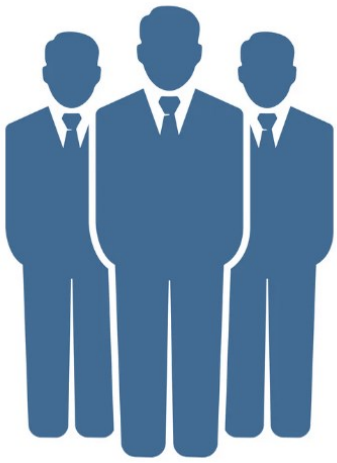
Authors' Note:

> *It would be interesting to note that in the present case, with regards to the Respondent/DRI's submission that the present writ petition could not be entertained as an alternative remedy was available, the HC observed that it was well established that relegating a party to an alternate remedy was a limitation which the Court imposed upon itself that did not fetter the powers of the HC under Article 226 of the Constitution.*

SC holds mere 'designations' not sufficient to make Director liable for cheque dishonour proceedings

Sunita Palita & Ors. vs. Panchami Stone Quarry

SLP (Crl.) No. 10396 of 2019



The Respondent-Company filed a petition of complaint under Section 138/141 of the Negotiable Instruments Act, 1881 before the judicial magistrate against the accused company, its Managing Director, and the independent non-executive Directors. Aggrieved, the Appellants' filed a Criminal Revisional Application under Section 482 of the CRPC before the HC seeking the HC to quash the petition of complaint. However, the HC rejected the application while overlooking the Appellants' contention that they were independent non-executive Directors. The HC recorded that the petition specifically averred that all the accused persons were responsible for the day-to-day affairs of the accused company, and consequently opined that the averments in the complaint were sufficient to meet the requirements of Section 141 of the Negotiable Instruments Act.

Aggrieved, the Appellants approached the SC contending that they were independent non-executive

Directors of the accused company, who were in no way responsible for the day-to-day affairs of the accused company. The SC, placing reliance on its ruling in **S.M.S. Pharmaceuticals[(2005) 8 SCC 89]** wherein it was held that the liability under Section 138/141 of the Negotiable Instruments Act arose from being in charge of and responsible for the conduct of the business of a company and not on the basis of merely holding a designation or office in the company, observed that it would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development) etc. into criminal proceedings under the Negotiable Instruments Act, only because of their designation.

Moreover, emphasizing that Section 482 of the CRPC protected the inherent power of the HC to make such orders as may be necessary to give effect to any order under the CRPC or to prevent abuse of the process of any Court or otherwise secure the ends of justice, the SC observed that the HC failed to appreciate that the Appellants were neither Managing Director nor Joint Managing Director nor signatories of the dishonoured cheque and hence remarked that the HC erred in law in not exercising its jurisdiction under Section 482 of the CRPC in the facts and circumstances of this case to grant relief to the Appellants. Further, the SC observed that when the accused was the Managing Director or a Joint Managing Director of a company, it was not necessary to make an averment in the complaint that he was in-charge of, and was responsible to the company for the conduct of its business, because the prefix "Managing" to the word "Director" made it abundantly clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company.

Thus, setting aside the order of the HC and quashing the petition of complaint before the judicial magistrate under Section 138/141 of the Negotiable Instruments Act against the Appellants, the SC clarifying that the proceedings may continue against the other accused in the petition of complaint, including, the accused company, its Managing Director / Additional Managing Director and/or the signatory of the cheque in question, allowed the appeal.

Authors' Note:

> *It would be interesting to note that in the present case, the SC also observed that it had to be borne in mind that the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulted in the enactment of such sections. However, a complaint should also not be read with a pedantically hyper technical approach to deny relief under Section 482 of the CRPC to those impleaded as accused, who did not have any criminal liability in respect of the offence alleged in the complaint.*

HC holds resolution-plan approval doesn't absolve guarantor from liability, upholds bank's action under SARFAESI Act

Sanjay Sarin vs. The Authorised Officer, Canara Bank & Ors.

W.P.(C) 2983/2022 & CM APPL. 8630/2022

In the instant case, the Financial Creditor-Bank had initiated CIRP against the Corporate Debtor and a resolution plan had been submitted by a resolution applicant and approved by the NCLT under Section 31 of the IBC. As per the resolution plan, the now successful resolution applicant was required to make payment to the Financial Creditor-Bank, however, the successful resolution applicant defaulted in doing so. Thereafter, the Financial Creditor-Bank initiated proceedings under Section 13(4) of the SARFAESI Act and took over Petitioner's/Guarantor's security offered under Section 14 of the SARFAESI Act. The Petitioner/ Guarantor challenged the Financial Creditor- Bank's action before the DRT which was pending adjudication.

Aggrieved, the Petitioner/Guarantor preferred a writ petition before the HC contending that its liabilities as a Guarantor were discharged with the approval of the resolution plan by the NCLT. Placing reliance on the SC ruling in **Lalit Kumar Jain [2021 SCC Online SC 396]** wherein the SC had held that discharge of the Corporate Debtor from a debt owed by it to its creditors, by way of an involuntary process such as insolvency proceedings, did not absolve the Guarantor of its liability since it arose out of an independent contract, the HC observed that the passing of a resolution plan did not ipso facto discharge the Petitioner/ Guarantor of his liabilities under the contract of guarantee.

Further, placing reliance on the SC ruling in **Phoenix ARC Pvt. Ltd [2022 SCC Online SC 44]** wherein the SC had held that no writ petition could be entertained where proceedings were initiated under the SARFAESI Act and the borrower was aggrieved by the actions of the bank for which the borrower had remedy under the SARFAESI Act, the HC observed that the Petitioner's/Guarantor's challenge to the action of the Financial Creditor-Bank was already the subject-matter of challenge before the DRT and was pending adjudication, therefore, the present writ could not be entertained. Accordingly, the HC dismissed the writ petition filed by the Petitioner/ Guarantor challenging the recovery action initiated by the Financial Creditor-Bank against the Petitioner/Guarantor and the successful resolution applicant under the SARFAESI Act.

Authors' Note:

> *It would be interesting to note that in the present case, the HC also observed that if the resolution plan approved by the NCLT was contravened, any person other than the Corporate Debtor, whose interests were prejudicially affected, could make an application to the NCLT for an order of liquidation, therefore, the Petitioner's/Guarantor's grievance regarding non-implementation of the resolution plan, too, could not be a ground for the HC to entertain the instant petition.*

IBBI cautions IP to be vigilant in handling assignments, interpreting IBC provisions

In the matter of Rakesh Ahuja, Insolvency Professional

IBBI/DC/121/2022

The NCLT had admitted an application under Section 9 of the IBC for initiating CIRP against the Corporate Debtor. The IRP/RP had been appointed and later Mr. Rakesh Ahuja ('Insolvency Professional/IP') had also been appointed as the liquidator in the matter. However, the IBBI in exercise of its powers under section 218 of the IBC read with the IBBI Inspection Regulations, appointed an Inspecting Authority ('IA') to conduct an inspection, who under sub-regulation (1) of Regulation 6 of the Inspection Regulations shared the Draft Inspection Report ('DIR') with the IP to which the IP submitted a reply through an email.

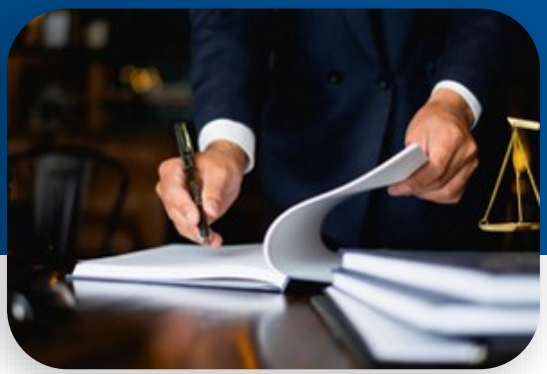
The IA submitted the Inspection Report to the IBBI which based on the material available on record including the Inspection Report, issued an SCN to the IP. The SCN alleged contravention of various sections of the IBC, the IBBI (Liquidation Process) Regulations, 2016 LR, the Insolvency Professional Regulations read with the Code of Conduct as specified under Insolvency Professional Regulations by the IP to which the IP responded. The IBBI made a reference to the SCN, response of the IP to the SCN and the material available on record, to the DC for disposal of the SCN and the IP was given an opportunity of personal hearing before the DC, which he availed and participated in the proceedings.

Before the IBBI, the IP submitted that he continued the liquidation process while dealing with the matter as per Regulation 35(1) of the LR and decided to conduct fresh valuations during Liquidation process solely on the recommendations of the stakeholders. The IBBI observed that under the LR, advice of Stakeholders' Committee was not of binding nature and instead of draining the resources of Corporate Debtor, the IP should have taken independent assessment on need for fresh valuation at the belated stage.

Further, noting that the Asset Memorandum was filed prior to appointment of valuers, IBBI observed that the same would have been prepared based on valuation reports received during CIRP period and hence did not reflect the latest value of the assets i.e., the value arrived at by the registered valuers appointed by the IP in the liquidation process. Moreover, as per Regulation 34 of the LR, the asset memorandum was required to provide the value of the asset valued in accordance with Regulation 35 of the LR, the intended manner of realisation and the expected amount of realisation which were not provided. Furthermore, the IBBI noted that the IP had not taken the due care in interpreting his entitled fee under the LR, however, considering the fact that no mala fide had been established and that the IP had taken reasonable steps to mitigate the loss caused to the stakeholders by refunding the amount of INR 3.46 Lacs in the liquidation account of the Corporate Debtor, the IBBI held the contravention to be taken as having been settled.

Thus, cautioning the IP to be more careful and vigilant in handling the assignments, as also in interpreting the provisions of the IBC and the LR made thereunder, the IBBI quipped that given the fact that the contraventions had not impacted the outcome in any way as realization so far had been above the liquidation value, therefore a lenient view was warranted.

REGULATORY
From the Legislature



MCA amends the Rules for the books of account kept in electronic mode

MCA vides Notification No. G.S.R. 624(E) dated August 05, 2022 amends the Companies (Accounts) Rules, 2014 to introduce the multiple changes in Rules prescribed for the books of accounts that are kept in electronic mode. With such amendment, the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, are required to be kept in servers physically located in India on daily basis instead of periodic basis as provided before amendment.

Further earlier the rules provide that such books of account shall be accessible in India, but with these amendments such books should be accessible in India **at all times**. Furthermore while intimating to Registrar on annual basis by the company at the time of filing of financial statement with prescribed details about service provider of such server where books are stored, now by virtue of this amendment additionally the company has to report the name and address of the person in control of the books of account and other books and papers in India where the service provider is located outside India.

Authors' Note:

> *These amendments are a step towards making the record keeping processes of corporates more effective and reliable. Maintaining of daily backups instead of periodic basis will safeguard the corporates against unseen future data crash exigencies.*

MCA introduces the Rules for physical verification of the Registered Office of the Company

MCA *vide* Notification No. G.S.R. 643(E) dated August 18, 2022 amends the Companies (Incorporation) Rules, 2014 to incorporate the Rules for physical verification of the Registered Office of the Company by Registrar.

Brief of such rules for physical verification is as follows:

Aspect	Particular
Verifier	Registrar
Basis of Verification	The information or documents as available on MCA Portal
Purpose	If the Registrar has reasonable cause to believe that the company is not carrying any business or operations
Witness & Assistance	Verification shall be in presence of two independent local witnesses and may also seek assistance of the local Police for such verification, if required.
Cross verification of Documents	Registrar shall carry filled documents in support of the address of the registered office and do cross verification with the copies of supporting documents of such address collected during the said physical verification, duly authenticated from the occupant.

Aspect	Particular
Photograph	The Registrar shall take a photograph of the registered office of the company while causing physical verification of the same.
Report	Report of physical verification shall be prepared by Registrar in prescribed format which shall include name and Corporate Identification Number, latest address as per MCA Portal, date of authorisation letter issued by ROC, name of ROC, date and time of visit for physical verification, details of available person and remarks.
Consequences	Where the registered address of company is found to be not capable of receiving and acknowledging the communications and notices, then before taking any action for striking off the name of company, the registrar shall: • Send a notice to the company and all directors of the company, of his intention to remove the name of the company from the register of companies; and • Requesting them to send their representations along with copies of relevant document within 30 days from the date of notice.

Author's Note:

> *Through these amendments, MCA has taken a step towards controlling the fake companies, by penalising them by way of removal of names etc. This would help the government to curb various other economic offences which people have been committing thru such companies. These provisions, if implemented effectively will act as a preventive measure to stop financial crimes rather than detective measures which are currently undertaken by Government thru its various agencies such as Director General of GST Intelligence, Department of Revenue Intelligence and Enforcement Directorate.*

MCA amends the disclosure requirements of Form DPT-3

MCA vide Notification No. G.S.R. 663(E) dated August 29, 2022 has amended the Companies (Acceptance of Deposits) Rules, 2014. Followings amendments are made vide this notification:

- Auditor will have to file declaration for information as on 31st March which is duly audited while filing the DPT-3.
- Reporting of loan which are not considered as deposits shall be disclosed in form DPT - 3 in the following manner:
  - ◊ Opening Balance
  - ◊ Additional loan during the year
  - ◊ Repaid during the year
  - ◊ Any other adjustments
  - ◊ Closing Balance

Further, ageing of loan is required to be

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MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA

given in amended form DPT – 3 in the following manner:

- Loan outstanding for less than or equal to 1 year
- Loan outstanding for more than 1 year and less than 3 years
- Loan outstanding for more than 3 years

Author's Note:

> *Earlier, only the amount of receipt is required to be reported in Form DPT–3. But with these amendments, corporates are required to reconcile the opening and closing balances of loan by providing loans taken and repayment made. These amendments will bring for transparency in the reporting system.*

SEBI provides that AMCs shall ensure scheme-wise disclosure of investments

SEBI *vide* Notification No. SEBI/LAD-NRO/GN/2022/92 dated August 03, 2022 amends the definition of associate in the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996. Accordingly the amended definition of associate shall not be applicable to such sponsors, which invest in various companies on behalf of the beneficiaries of insurance policies or such other schemes as may be specified by the Board from time to time.

Subsequently, SEBI vides circular no. SEBI/HO/IMD/DOF2/P/CIR/2022/111 dated August 25, 2022 has decided that Asset Management Companies shall ensure scheme wise disclosure of investments, as on the last day of each quarter, in securities of such entities that are excluded from the definition of associate.

SEBI instructs Stock exchanges and Depositories to develop a system to restrict trading during trading window closure period

SEBI *vide* Circular No. SEBI/HO/ISD/ISD-SEC-4/P/CIR/2022/107 dated August 05, 2022 instructs the Stock Exchanges and Depositories to develop a system to restrict trading by designated person or class of designated persons of listed companies during trading window closure period by freezing PAN. This Circular shall come into force with effect from the quarter ending September 30, 2022.

Currently, the trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Designated persons and their immediate relatives shall not trade such securities when the trading window is closed. The trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results.

To begin with, the provisions of this circular shall be applicable to declaration of financial results of the listed company that is or was part of benchmark indices i.e. NIFTY 50 and SENSEX from the date of implementation of this circular. The restriction on trading shall be for on-market transactions, off-market transfers and creation of pledge in equity shares and equity derivatives contracts of such listed

companies.

Procedure for implementation of the system is as follows:

- Designated Depository to provide access to listed company on a portal /platform.
- Portal will auto-populate details of designated person (PAN and Name).
- The listed company shall specify the first day immediately after the end of every quarter for which results are to be announced and date on which 48 hours ends post disclosure of financial results.
- Listed company to update or confirm

  ⇒ PAN of DPs to be frozen

  ⇒ ISIN

  ⇒ Start and End date of trading window closure period

- Listed company shall select or de-select PAN of DPs at least 2 trading days prior to trading window closure start date
- Designated depository shall provide relevant data to stock exchanges and other depository by next trading day and on daily basis for any updation in DPs during trading window closure period.
- Depositories and stock exchanges shall restrict trading of DP, till end of trading window closure period.
- Any addition/exemption of/to DP during trading window closure period, such changes shall be effected within 2 trading days of intimation by company.

Author's Note:

> *SEBI has provided a standardized procedure for restricting trading by designated partners by way of freezing PAN who is expected to have access to unpublished price sensitive information. This standardized procedure will lead to reduce the instances of insider trading.*

RBI increases the Repo Rate by 50 basis points

RBI *vide* Notification No. RBI/2022-23/101 dated August 05, 2022 has increased the policy Repo Rate under the 'Liquidity Adjustment Facility' by 50 basis points from 4.90 per cent to 5.40 per cent with effect from August 05, 2022.

Consequently, the standing deposit facility rate and marginal standing facility rate stand adjusted to 5.15 per cent and 5.65 per cent respectively.

Outsourcing of Financial Services - Responsibilities of Regulated Entities employing Recovery Agents

RBI *vide* Notification No. RBI/2022-23/108 dated August 12, 2022 instructed that the REs shall strictly ensure that they or their agents do not resort to intimidation or harassment of any kind, either verbal or physical, against any person in their debt collection efforts, including acts intended to humiliate publicly or intrude upon the privacy of the debtors' family members, referees and friends, sending inappropriate messages either on mobile or through social media, making threatening and/ or anonymous calls, persistently

calling the borrower and/ or calling the borrower before 8:00 a.m. and after 7:00 p.m. for recovery of overdue loans, making false and misleading representations, etc.

REs include:

- All Commercial Banks excluding Payments Banks;
- All All-India Financial Institutions;
- All Non-Banking Financial Companies including Housing Finance Companies;
- All Primary (Urban) Co-operative Banks, State Co-operative Banks, and District Central Co-operative Banks; and
- All Asset Reconstruction Companies.

Author's Note:

> *The issued instruction by RBI to strictly keep a watch on the activities of recovery agent is a step taken towards the safety and prevention of undue harassment of the borrowers by recovery agents*

Reserve Bank - Integrated Ombudsman Scheme, 2021

RBI *vide* Notification no. CEPD.PRD.No.S544/13.01.001/2022-23 dated August 05, 2022 has enforced Reserve Bank - Integrated Ombudsman Scheme, 2021 to 'Credit Information Company' also with effect from September 01, 2022. This scheme provides for cost free alternate grievance redress to customers of regulated entities covered under this scheme.

Significant provisions of such scheme are as follows:

Aspect	Particular
Regulated entities under this scheme	Regulated Entities Includes: • Bank • Non-Banking Financial Companies • System Participants • Credit Information Company
Appointment and Tenure of Ombudsman	• RBI's Officer will be appointed as Ombudsman and Deputy Ombudsman for a period not exceeding three years at a time.
Centralised Receipt and Processing Centre	• RBI shall establish the Centralised Receipt and Processing Centre at any place as may be decided by it to receive the complaints filed under the Scheme and process them. The complaints under the Scheme made online shall be registered on the portal (https://cms.rbi.org.in).
Powers and Functions	• The Ombudsman/Deputy Ombudsman shall consider the complaints of customers of Regulated Entities relating to deficiency in service.

Aspect	Particular
Powers and Functions	• There is no limit on the amount in a dispute that can be brought before the Ombudsman for which the Ombudsman can pass an award. However, for any consequential loss suffered by the complainant, the Ombudsman shall have the power to provide a compensation up to INR 20 lacs, in addition to, up to INR 1 lac for the loss of the complainant's time, expenses incurred and for harassment/ mental anguish suffered by the complainant.
Grounds of Complaint	• Any customer aggrieved by an act or omission of a RE resulting in deficiency in service may file a complaint under the Scheme.
Filing of complaints under this scheme	• The complaint was rejected by regulated entity or the complainant had not received any reply, and • The complaint is made to Ombudsman within one year after the complainant has reply the reply or where no reply has been received, within one year and 30 days from the date of complaint.
Procedure for filling the complaints	• Complaints may be raised through the online portal which is https:// cms.rbi.org.in. • The complaint may be submitted through electronic or physical mode to centralised Receipt and Processing Centre.
Grounds for non -maintainability of a Complaint	Matters involving: • commercial judgment/decision of a RE; • a dispute between a vendor and a RE relating to an outsourcing contract; • a grievance not addressed to the Ombudsman directly; • general grievances against Management or Executives of a RE; • a dispute in which action is initiated by a RE in compliance with the orders of a statutory or law enforcing authority; • a service not within the regulatory purview of the Reserve Bank; • a dispute between REs; • a dispute involving the employee-employer relationship of a RE; • a dispute for which a remedy has been provided in Section 18 of the Credit Information Companies (Regulation) Act, 2005; and • a dispute pertaining to customers of RE not included under the Scheme.

INTERNATIONAL DESK

International Tax Bulletin released by CBDT's FT&TR Division covering comparative revenue effect of Amount A vis-à-vis Article 12B

International Tax Bulletin had been released by the CBDT's FT and TR division which includes the comparative revenue effects of Amount A, Pillar One and UN's Article 12B taxation regimes. The revenue effects largely depend on design details of the Article 12B regime, country hosting MNEs which may be in the scope of Amount A or Article 12B taxation, relief from double taxation.

Researchers had computed two scenarios under Amount A through sales threshold of if EUR 20 billion and EUR 10 billion. A range of tax revenue estimates was provided under Article 12B, with the lower amount determined by taking only pure ADS companies into account, and the higher amount was determined by including companies that engage in hybrid ADS functions. In furtherance, two scenarios were modelled under the gross methods by using tax rates of 3% and 4%.

Separate results were concluded by different studies and companies in the scope of Article 12B are free to choose their model.

Further, basis the study it was also concluded that for the Member States that host MNEs in the scope of Amount A or Article 12B, domestic MNEs' portion of foreign sourced revenues and the amount of relief from double taxation when choosing between the Amount A and Article 12B regimes should also be considered.

OECD's Global Forum publishes Peer Review Reports on EOIR for 8 jurisdictions

Eight new Peer Review Reports on transparency and EOIR have been published by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes for the jurisdictions of Finland, Sweden, Portugal, Poland, Pakistan, Cook Islands, Ecuador, and Sint Maarten. The Peer Review Report with respect to Sweden, concludes that the legal and regulatory framework is 'in place' and thus the availability, access, and exchange of all relevant information for tax purposes is in accordance with international standards, making Sweden a 'Compliant' country overall.

The Peer Review Report with respect to Portugal, concludes that Portugal has made progress in all aspects of the EOIR standard since its previous review in 2015, and more particularly with respect to access and exchange of banking information, which now conforms to the international standard, upgrading Portugal's overall rating from 'Largely Compliant' to 'Compliant' since its last review. The Peer Review Report with respect to Finland downgrades the rating for Finland from 'Compliant' to 'Largely Compliant' but remains satisfactory and recommends that work should be taken to address the deficiencies identified in its definition of beneficial ownership and should enhance its supervision activities to ensure the availability of adequate, accurate and up-to-date information. While the Peer Review Report of Cook Islands rates the Cook Islands as 'Largely Compliant.

The Peer Review Reports of the remaining countries (Ecuador, Pakistan, Poland, and Sint Maarten) do not give any overall rating stating that they would be rated upon completion of Phase 2 review which has not been undertaken owing to COVID-related travel restrictions.

ATO releases Consultation paper on thin capitalization, royalty, and intangibles deduction rules invite comments

A consultation paper on 'Multinational tax integrity and enhanced tax transparency' has been released by the ATO seeking consultation on the following:

- Implementation of proposals for thin capitalization such as amending Australia's existing thin capitalization rules to limit interest deductions for MNEs in line with the OECD's recommended approach under Action 4 of the BEPS program.
- Introduction of a new rule limiting MNEs' ability to claim tax deductions for payments relating to intangibles and royalties that lead to insufficient tax paid.
- Ensuring enhanced tax transparency by MNEs through measures such as public reporting of certain tax information on a country-by-country basis, mandatory reporting of material tax risks to shareholders, and requiring tenderers for Australian Government contracts to disclose their country of tax domicile.

With the above-mentioned changes, ATO seeks to target activities deliberately designed to minimize tax, while considering the need to attract and retain foreign capital and investment in Australia, limit potential additional compliance cost considerations for business and continue to support genuine commercial activity.

ATO remarks that the said consultation paper complements the Government's other MNE tax initiatives, including Australia's ongoing participation in negotiations on the OECD 'two-pillar' solution to address the tax challenges of the digitalization of the economy, which includes a 15 percent global minimum effective tax rate on the profits of large MNEs. Comments on the consultation paper have been invited by the ATO until September 2, 2022.

SPARKLE ZONE

GST on assignment of leasehold of land

Brief Background

For the economic benefit of the Country at large, the Government has set-up various State Industrial Development Corporation, who dedicate various plots of land, for industries to set up their businesses. For getting such rights over the land, these business entities have to pay an upfront premium which allows them to have a long-term leasehold right over the land which may be for 99 years or higher.

However, it is not necessary that the business entity who has taken the plot of land on lease, will be in a position to utilize the same for the entirety of the lease period. Therefore, they have an option to assign those leasehold rights for the balance duration to another entity which is endeavouring to setup their industrial unit. The taxability of such leasehold rights has been a perpetual issue covering various schools of interpretation, which has inevitably led to confusion even under the GST law.

Supply under GST

The definition of supply u/s. 7 of the CGST Act is an inclusive one, which covers all forms of supply for a consideration and in the course or furtherance of business. It provides for illustrative forms of supply like sale, barter, rental, lease etc. Even though assignment of rights is not specifically mentioned, the same can be covered within the definition of supply. Further, the definition of business under GST law is wide enough to cover such transactions of assigning leasehold rights. Thus, from a standalone viewpoint of the definition of supply, the assignment of leasehold rights is covered within its ambit.

However, it would be pertinent to note that Section 7(2) provides that certain activities or transactions provided in Schedule III would be treated neither as supply of goods nor as supply of services. Entry No. 5 of Schedule III of the CGST Act provides for sale of land. Therefore, sale of land would be treated neither as supply of goods nor as supply of services.

Thus, one may infer that the sale of freehold land and completed building is not a supply as per Schedule III of the CGST Act. However, the question as to whether the same analogy also holds true for assignment of long-term leasehold rights over the land and transfer of completed building, it is another matter of interpretation.

Benefits arising out of immovable property

The term 'Benefits arising out of land or immovable property' has nowhere been defined under any India statutes. Accordingly, it would be pertinent to refer to the definitions of the term 'immovable property'. In terms of the Registration Act, 1880, 'immovable property' includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass. Similarly, as per the General Clauses Act, 1897 'Immovable property' shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything

attached to the earth.

Thus, it can be seen that there is no doubt that leasehold rights is a benefit conferred upon a person to enjoy the occupancy and possession over the land for the lease period. Therefore, leasehold rights amount to a benefit arising of land. Since benefit arising of land is considered as an immovable property, leasehold rights can also be classified as immovable property. Accordingly, it may be argued that the assignment of leasehold rights is the transfer of an immovable property.

Taxing Statutes

It would be pertinent to note that the Service Tax law specifically excluded transfer of title in immovable property from the definition of service. However, the GST law does not provide for any such specific exclusion. The GST law merely excludes the sale of land and complete building from the definition of supply. Accordingly, it is a matter of interpretation whether such benefit arising out of land can be treated as equivalent to sale of land.

The foregoing paras make it clear that land includes benefit of arising out of land. However, the immovable property treat land as a benefit arising out of land. If the leasehold rights are treated as land itself, no tax would be applicable on its assignment. However, if the said leasehold rights are treated as a benefit arising of land, separate from land, the same may be subjected to tax under GST.

It would be pertinent to note that the CGST Act defines the term 'Services' as anything other than goods is services. Clause 2(a) of Schedule II of CGST Act provides that the term means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. Further Entry No. 2 of Schedule II of the CGST Act provides that any lease, tenancy, easement, license to occupy land is a supply of services.

Further, the CBIC vide Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017 has notified the GST rate on lease premium as follows:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
41	Heading 9972	One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.	Nil	Nil

From a combined reading of Clause 2 of Schedule II of CGST Act and Notification No. 12/2017- Central Tax (Rate), it can be inferred that the transaction of lease of land is taxable under GST as service except the service defined in Sl. No. 41.

Judicial Precedents

Thus, it become imperative to understand from the judicial precedents, whether long term lease can be treated to be equivalent to sale of land.

It would be pertinent to note that the Madras HC in RE: **Archaka Sundara Raju Dikshatulu v. Archaka Seshadri Dikshatulureported in (1928) 54 MLJ 76**, had held that the lease for 99 years or for a long term in consideration of a premium paid down is as much an alienation as a sale or mortgage. It was further observed that the mere use of the word 'lease' or the fact that a long term is fixed would not by itself make the document in lease.

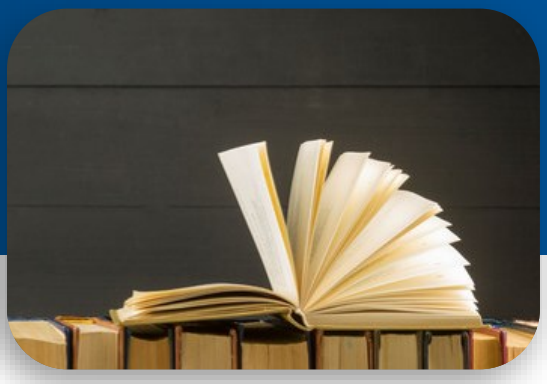
It would further be pertinent to note that in a similar matter in RE: **Rama Varma Tambaran v. Raman Nayar reported in (1882) ILR 5 M 89**, it was held that there was no real distinction between mischief of such a transfer in perpetuity and a transfer for the long period of 96 years. Thus, this Court took a view that a permanent lease is as much an alienation as a sale.

Further, the New Delhi CESTAT in RE: **RIICO Limited vs. Commissioner of C. Ex. [2017-TIOL-1725-CESTAT-DEL]**, it was held that one-time payment received for grant of long term lease of 30 years or more of industrial plot, is not liable to Service Tax for all the periods covered in the lease deed.

Conclusion

In view of the above, it can be seen that GST leviability on lease of land is a matter of interpretation. Moreover, the CGST Act does not provide any definitive clarity on such transactions. Accordingly, a Circular by the Board in this regard, would go a long way in avoiding litigations.

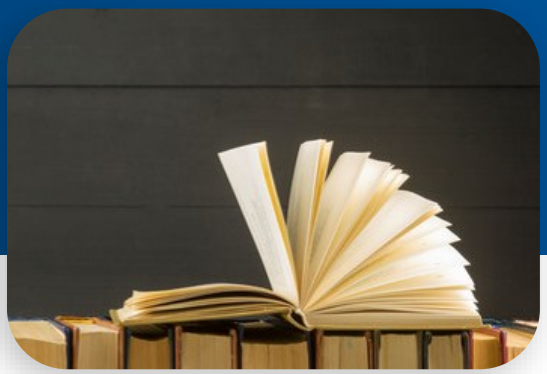
GLOSSARY



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

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

GLOSSARY



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

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

FIRM INTRODUCTION

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

Website: **www.taxcraftadvisors.com**

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.

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