VISION 360

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A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

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Vision 360: Setting the tempo for the new Financial Year!!

As the Budget fever has started wearing down, the industry seems to have started bracing themselves for the new Financial Year. The ensuing year, being the first one in the post-COVID era, is expected to be pivotal for setting the momentum and recovery of the dwindling economy.

Beginning the year on a positive note, the vaccination drive is aggressively pursued by the Government and millions of people has already been vaccinated across the nation. With the moral boost seconded by the vaccine and diminishing fear of the COVID-19 among the general public, normalcy is shoring back in everyone's lives. The judiciary system is no different and recently the SC decided a two-decade old tax dispute by holding that cross-border payment for software is not royalty. The SC reasoned that there is no obligation on a person to deduct tax at source, as the end-user license agreements in these cases do not create any interest or right in such end-users, which would amount to the use of or right to use any copyright. Given the significant impact of this judgement, we have covered the same in the 'Sparkle Zone' section of our this Magazine!

In another major decision by the SC, it has been held that pledging of shares by corporate debtor is not sufficient to qualify as financial creditor for the purposes of CIRP. Thus, it can be seen that February 2021 has been a rather busy month for the SC. In fact, even the Kerala SGST Department has suo moto been active in issuing a guideline for the field GST officers qua demand and recovery proceedings. This pro-active approach of the Kerala State Government has been well received by one and all in the trade and industry. We have analysed this guideline in this newsletter along with our insights and observations.

On the Customs front, the Government has introduced online e-Tariff Rate Quota System for Imports and online e-Certificate Management System. Further, the Delhi HC has commenced hearing a Writ Petition challenging denial of SEIS benefit on services provided to telecom sector.

On the Regulatory front, it would be pertinent to note that the fast-track process of mergers has been extended to start-ups. Such a move would definitely save time and effort on their restructuring exercises. Further, the Government has also reduced the timeline for acceptance of right issue. The above updates suggest that the Government has been working considerably into ranking up their ease of doing business rankings.

ALL IN ALL, THE RECENT DEVELOPMENTS, STAND TESTIMONY TO THE FACT THAT THE GOVERNMENT HAS BEEN MAKING CONSIDERABLE EFFORTS IN GETTING THE ECONOMY BACK ON TRACK AND PAVING UP THE WAY FOR A BIGGER AND BRIGHTER ECONOMY!

All in all, the recent developments, stand testimony to the fact that the Government has been making considerable efforts in getting the economy back on track and paving up the way for a bigger and brighter economy. We, the entire team of **TIOL**, in association with **Taxcraft Advisors LLP**, **GST Legal Services LLP** and **VMG & Associates**, are glad to present to you this comprehensive coverage on all the key tax and regulatory updates!

Happy Reading!

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

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Kerala Government's blueprint for demand and recovery under GST

Now that the GST law is nearing its 4th birthday, the Government authorities have begun issuing notices to the taxpayers to for inquiries into specific transactions and for initiation of GST audits. In this regard, it would be pertinent to note that Section 73 of the CGST Act provides for determination of tax where tax is not paid or short paid or any erroneous refund is claimed and ITC has been wrongly availed or utilized. Further, Section 74 of the CGST Act provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts.

A key distinction between the two rather similar provisions, is that while one deals with bona fide short / non-payment of tax, the other deals with mala fide evasion of taxes. Given the track record of the pre-GST laws in relation to such provisions, the GST provisions too, being not much different, are expected to follow a similar path.

In this regard, Kerala State Department's suo moto effort in issuing a guideline for the field officers to conduct and conclude proceedings under Section 73 and 74 of the CGST Act is a commendable step. In the said guideline, the Department seems to have tried to reiterate the guidelines and principles laid down in the past by various courts in the Pre-GST regime. The key highlights of the Kerala Government's guideline have been summarized hereunder:

Mens Rea

The Guideline categorically distinguishes cases where the incidence of short payment of tax occurs on account of bona fide errors and cases where such short payment of taxes occurs on account of deliberate attempts to evade the incidence of taxes. It has been clarified that determination of tax in cases where there is an element of mens rea i.e., guilty mind, has to be done under the provisions of Section 74 of the CGST Act and in all other cases the determination has to be done under the provisions of Section 73 of the CGST Act.

The said guideline has further clarified that in order to distinguish whether there is any element of mens rea or not, ***intent*** to evade tax by way of fraud or through willful misstatement or through suppression of facts, has to be established. In this regard, the said guidelines also draw attention to the explanation to Section 74. The explanation to the said provision provides that the term 'suppression' shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, etc., or failure to furnish any information on being asked for.

Basis the above, it can be inferred that the meaning of the term 'suppression' has been kept very wide to include any type of non-declaration in statutory document. In past, it has been seen that the Revenue, more often than not, automatically presumed deliberate action on part of the assessee to evade payment of tax and burden of proof is therefore rested on the assessee to prove his innocence.

It would further be pertinent to note the term 'intent' has not been specifically provided under section 74 of the CGST Act, which, on the other hand, was specifically provided under the erstwhile Section 11AC of the Excise Act, for the purpose of invoking the extended period of limitation. Accordingly, it remains to be seen whether such non-inclusion of the term 'intent' would lead to arbitrary invocation of extended period of limitation or not.

Guideline vs. Pre-GST regime

The said guideline seems to be in line with the various judicial precedents of the pre-GST regime wherein it has been held that extended period of limitations and penalty provisions can be invoked only in cases where the assessee has deliberately attempted to evade payment of tax on account of account of any collusion, willful miss-statement or suppression of facts. In a catena of judicial precedents, the following principles have been laid down where the

extended period of limitation is not to be invoked:

a. Escapement of tax has been occasioned by suppression, omission or failure to disclose material facts required for verification of assessment by the Assessee;

b. In cases involving interpretation of law, mala fide intention or suppression of fact cannot be alleged and therefore, the extended period of limitation cannot be invoked;

c. Assumption/ presumption is not sufficient to invoke extended period of limitation;

d. Where the assessee was under a bona fide belief and there was no intention to evade payment of tax.

It would be pertinent to note that the above principles of law, more or less, have been drawn from the following landmark judgements:

a. **Hindustan Steel Limited vs. State of Orissa [2002-TIOL-148-SC-CT-LB]** wherein the Apex Court had held that unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation, the penalty is not imposable.

b. **Commissioner of Central Excise, Chandigarh v. Pepsi Foods Limited [2007-TIOL -106-SC-CX]**, wherein it was held that when a statute creates an offence and an ingredient of the offence is a deliberate attempt to evade duty either by fraud or misrepresentation, the statute requires 'mens rea' as a necessary constituent of such an offence. But when actually no fraud or suppression or misrepresentation is alleged by the Revenue against the assessee in the show cause notice, the imposition of penalty under Section 11AC is wholly impermissible.

Contrary to the above judgements, there are also case laws in the IT Law as well as Excise law, wherein the top Courts have held that 'willful concealment' and 'means rea' are not essential ingredients for attracting the civil liability.

In view of the above, it can be seen that there are contradictory judgments with respect to existence of an element of mens rea for levy of penalty under civil laws. However, the instant guideline specifically provides that mens rea would be a determining factor to decide whether to initiate proceedings under Section 73 or under Section 74 of the CGST Act. Therefore, it is hoped that the instant guideline would be followed by the authorities in true spirit. The guideline has very aptly provided the following key distinctions between the provisions of Section 73 and 74 of the CGST Act.

Sr. No.	Particulars	Section 73	Section 74
1.	Short / Non-payment of Tax	No requirement to establish mens rea	Specific requirement to establish mens rea
2.	Time limit	• Order to be issued within 3 years from the date of filing of annual return; • SCN to be issued within 3 months prior to limitation period for issuance of order	• Order to be issued within 5 years from the date of filing annual GST return to which the amount relates; • SCN to be issued within 3 months prior to limitation period for issuance of order

Sr. No.	Particulars	Section 73	Section 74
3.	Intimation	Before service of notice, proper officer may communicate the details of tax, interest and penalty as ascertained by proper Officer in Form **GST DRC-01A** giving opportunity of being heard	Before service of notice, proper officer may communicate the details of tax, interest and penalty as ascertained by proper officer in Form **GST DRC -01A**
4.	Tax along with interest not paid or short paid	Issue SCN in respect of such amount not paid or short paid along with a summary thereof electronically in Form GST DRC-01 If tax paid within 30 days of SCN, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded. If tax not paid within 30 days, consider representation, if any filed, and determine tax, Interest and Penalty equivalent to 10% of tax or Rs. 10000/-, whichever is higher and issue order along with a summary of such order to be uploaded electronically in Form **GST DRC – 07**.	Tax along with interest and a penalty equivalent to 15% of such tax not paid or short paid by the person chargeable with tax. Issue SCN in respect of such amount not paid or short paid along with a summary thereof electronically in Form GST DRC-01 If tax and penalty paid within 30 days of SCN, along with interest and a Penalty equivalent to 25% of such tax, proceedings to be concluded and order to be issued in Form GST DRC-05 concluding the proceedings. If tax not paid Within 30 Days Tax not paid, consider representation, if any filed, and determine tax, Interest and Penalty equivalent to tax so determined and issue an Order along with a summary of such order to be uploaded electronically in Form GST DRC – 07. Where the person served with order pays Tax along with interest and a Penalty equivalent to 50% of tax determined within 30 days of communication of Order, all proceedings in respect of the said notice shall be deemed to be concluded.

Author's Note:

Kerala Government has fairly covered the well settled principles of law of the pre-GST regime to build the four-walls of the GST law, within which the Revenue authorities ought to conduct their proceedings. Such guideline would surely act as a handbook for field officers to conclude proceedings. It would be interesting to see whether the CBIC takes note of this guideline issued by the State Department of Kerala and makes it applicable centrally.

Balance Sheet Acknowledgement of Liability - Can it be a tool to gain extended Limitation period

We all have heard about the concept of Limitation period, the general belief is that once a liability is more than 3 years old and not legally contested for, the claimant can't initiate any legal proceedings after expiry of three years. As per provisions of Limitation Act 1963, period of limitation is defined for various categories of suits/proceedings, the general period for any contractual liability or a liability related to accounts is three years. Though, the period can be extended by a specific application for condonation of delay which adjudicating authorities decide upon on a case to case basis. A very important aspect which has come into question before various courts is that whether an entry in balance sheet of a corporate debtor results into acknowledgement of liability and whether same can be construed to perfunctory extension of limitation period. Time and again, the financial creditors have formed the view that balance sheet recognition of liability is a written acknowledgement by corporate debtor and have calculated limitation period from the date of respective balance sheet. If we carefully examine the provision of Section 18 of Limitation Act, it says that "where before the expiration of the prescribed period for a suit in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall commence from the time when the acknowledgement was so signed". Now courts have in various instances have considered this definition along with additional facts that Balance Sheet of a company is prepared under statutory requirements of Companies Act and is prepared and authorized by Board of Directors of the Company who essentially are the people responsible for running the affairs of company, so any liability recognized under balance sheet is a written acknowledgement of liability and squarely fits into the provisions of section 18 of Limitation Act.

COURTS HAVE UPHELD IN PAST THAT LIABILITIES RECORDED IN BALANCE SHEET IS AN ACKNOWLEDGEMENT OF LIABILITY!

This being said, it opens a can of worms as if such decisions are upheld by courts then people would continue to rake up old issues which they willfully decided not to contest during limitation period.

Recently this matter has been examined in detail by NCLAT in the matter of V. Padmakumar where it was held by a larger bench of NCLAT that that a recognition of liability in balance sheet of a company can't be referred to for the purposes of calculation of limitation period under I&B Act. The same is also supported by a Supreme Court decision in the matter of Babulal Vardharji Gurjar that where court denied the benefit of section 18 of Limitation Act merely on the basis of recognition of liability under balance sheet.

Though still there are varied opinion which cast questions on this matter as time and again, courts have upheld in past that liabilities recorded in balance sheet is an acknowledgement of liability, another important point to note here is that while Section 18 admits any other documentary evidence such as a signed letter between the parties as an acknowledgement of liability, then why an officially laid down document such as Balance sheet of company can't be referred to for similar purposes. However, the flip side is that financial statements of a company are prepared following generally accepted accounting practices which follows a principle of accrual, conservatism and going concern, so any commercial matter between the parties can't be a real reflection of disclosures made in financial statement of company. Thus it seems that the matter may still be looked into in light of various other facts of a particular case. It would be interesting to see how the aforesaid judgment is perceived by the corporate and how long it goes to settle the dispute between the parties.

Ankit Maheshwari

Asst. Vice President - Finance,
CARS24 Private Limited

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

Cars24 is rather operating in one-of-a-kind business model. What are the challenges being faced during the recent years, especially in view of the recent pandemic? Any key issues and ways adopted to overcome the same?

Well, our business model, although unique, is a rather simple one. Basically, we buy the cars and sell it to one of our 10,000 plus channel partners, across the country, and retains a service margin on each transaction. During the pandemic, we witnessed a paradigm shift in the mindsets of Indian consumers qua automotive. While traditionally, public mode of transport had been preferred by the Indian consumers, the health risks of requirement of maintaining the social distancing norms due to COVID-19 has augmented the appetite of our industry with increase in inquiries for pre-owned vehicles. According to our survey, the intention to use private vehicles by consumers has witnessed an increase of 41%.

Further, the COVID-19 pandemic has also led the consumers to opt for digital / online modes of transactions. As consumer satisfaction and convenience had always been our key focus areas, the pandemic has rather opened up multiple doors of opportunities for us with rapid growth in the digitalization and e-commerce industry. Keeping this in mind, we have recently launched a Home-Inspection services to help the customer to sell their vehicles with ease from their homes while taking all the necessary precautions during the pandemic. The company has also forayed into two-wheeler segment with CARS24 Moto recently apart for expanding operations to other overseas counties.

Your thoughts on the recently introduced Budget 2021. Has it fulfilled the expectations of the e-commerce or rather your industry?

Well, given the adverse impact of the pandemic on the entire economy, it was indeed expected that the Government would be rolling out an investor friendly budget favouring the domestic manufacturing and service industry. By and large the same has been done given the rationalisation of Customs Tariff rates and bringing the transparency in the tax systems though Faceless assessment and Litigation on the Direct tax field. However, the Indian tax authorities in the last two to three years have introduced several provisions specifically targeting the e-commerce industry. Equalisation Levy on non-resident operators, Withholding Tax under Section 194-O, maybe good to increase the tax base but have increased the compliance burden substantially on ecommerce companies. It was expected that the Government would find a way to reduce the compliance burden and clarify the overlapping effect of provisions of Equivalisation Levy and withholding tax provisions relating to royalty/fees for technical Services.

At the same time, the introduction of Faceless litigation before IT Tribunals, Dispute Resolution Scheme and prescribing a time-limit for past matters shows the intent of Government to adjudicate the litigation matters in a timely and speedy manner. However, we also feel that the said changes, could have also been extended to the Indirect taxes. Most notably, the SVLDRS Scheme for legacy IDT matters should have also been introduced for legacy VAT/CST related issues as well. Nonetheless,

given the unprecedented time we are living right now, the Government has indeed been able to fulfil the expectations of each industry, including ours, in one or other ways.

The tariff classification in the automotive industry is considered to be one of the most interpretational and litigated issue. Does it affect your business in any manner?

Being a service provider, the classification disputes of the automobile industry does not really affect our business. However, we are aware of the troubles faced by importers and traders in the industry. The Government Departments always look to classify the automobiles and its parts under the tariff headings attracting the highest rate of taxes, and vice versa in the case of taxpayers. We understand that more often than not, the prescribed guides for classification, are also sometimes misused for the purpose of escapement of duty. Before the Budget 2021, there had been rumours regarding the introduction of a licensing regime for classification of goods under residual categories. Luckily for the importers, no such announcement has been made by the Finance Minister as of yet. However, the Finance Minister has proposed to change the entire customs duty structure w.e.f. October 2021. Accordingly, it remains to be seen what the pandora box holds for our trading / manufacturing friends.

In the Product Linked Incentive Scheme, the Automotive Industry has been recognized as a Key sector. Do you intend to avail its benefit?

Yes, we surely do intend to avail any benefit available to our business. However, given the lack of documentation on the Scheme, we are not quite certain as to how the scheme would be applicable and what are the criterions thereof. As of today, I am aware that the Government has proposed about 57K Crore for the automotive sector under the PLI Scheme for the coming five years. As the Government has proposed substantial investment in the PLI scheme for our automotive sector, though mainly for manufacturers, Cars24 being an ally to the industry, is also expected to reap the benefits of the Scheme to a great extent. Once the procedural aspects of this scheme are made effective, we would be devising a plant to avail its benefit.

The Finance Minister in the Budget 2021 has announced a Scrappage Policy qua automotive. Your views?

For long the Scrappage Policy had been on the table of the Government and now finally it seems to have picked up some momentum. This policy has been formulated keeping in view the environmental aspects. Under this policy, private and commercial vehicles, which are over 15 and 20 years old, respectively, will have to undergo fitness tests. It is further expected that the Government would be bringing about a fully automated system for such fitness tests, to minimize any human intervention. We feel that this policy would provide a much-needed boost to the environment of the Country and would indirectly affect or lead to increase in our business as well. As the consumers would be mandatorily required to get the fitness testing of their used vehicles, leading to re-sale or purchase of motor vehicles.

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?

Undoubtedly, the Government has indeed taken some bold steps in re-vamping the age-old tax system in India. Starting from the introduction of GST and gradually moving towards the e-waybill and e-invoicing has indeed brought the transparency in recording and reporting of the transaction from taxation perspective. Though, all the said systems have been introduced with series of initial hiccups and multiple amendments in the beginning, still one would say that the same has been introduced successfully given the massive scale of user base and implementation in India. Cars24 being a start-up, since beginning the tech has been our strength and accordingly adopting to the changes in the tax system has not really been much of a challenge for us. Instead, with the e-invoicing and simplification of return structure, tax compliance has seen dramatic increase in ease of doing business in India.

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

Mumbai ITAT holds accredited training centers is not a PE under India-Canada DTAA

International Air Transport Association (CANADA)
2021-TII-36-ITAT-MUM-INTL

The Assessee was a Canadian non-profit corporation operating in India through a branch in the field of commercial aviation industry. During the year under consideration, the Assessee earned income from classroom training, royalty and annual fees. At the time of assessment proceedings, the AO attributed 40% income out of total income to the sale of distance learning kits shipped directly authorized training center.

Aggrieved by the action of AO, objections were filed before the DRP which affirmed the actions of the AO. Thereafter, the Assessee preferred an appeal before the ITAT.

ITAT had observed that the training centers were providing their own courses along with courses provided by third parties and the Assessee. Therefore, it does not qualify as dependent agent permanent establishment of the Assessee. Further, it was held that the there was no material to disclose that transactions between assessee and the training centers were not at ALP.

ITAT further observed that sale of publication does not qualify as transfer of intellectual property and does not contain any undivulged technical information which is not available in the public domain and therefore, does not qualify as royalty income in the hands of Assessee.

Authors' Note:

Article 4(4) and 4(5) of the India – Canada DTAA deals with conditions when the actions of an agent triggers PE within the state. These conditions are summarized below:

- if an agent has an authority to conclude contracts on behalf of the other party;
- operates fixed place under the supervision of the other party;
- regularly maintains a stock of goods from which he regularly delivers;
- activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and the transactions between the agent and the enterprise are not made under arm's length conditions.

In case of Canadian Assessee, the AO alleged that the agent is DAPE of the Assessee however did not appreciated the facts on record that agent has its own and third-party courses to offer it to the end customer. Therefore, it does not satisfy the criteria of ***'…devoted wholly or almost wholly on behalf of…'***. Further, the AO did not question the price at which the said transactions were undertaken, which was essential to prove that the said training center is DAPE of the Assessee.

ITAT held that Interest on delayed compensation on compulsorily acquired land is non-taxable

SV Global Mill Ltd
2021-TIOL-469-ITAT-MAD

The Assessee company was engaged in the business of real estate development. During the year under consideration, it had received interest on delayed payment of compensation for compulsory acquisition of land from Special Land Acquisition Officer. The Assessee claimed it as exempt income in its return of income in accordance with Section 96 of RFCTLARR Act, 2013. However, the AO had treated the subject interest income as taxable income.

Aggrieved by the AO's order, the Assessee has filed an appeal before CIT(A) wherein the order was passed in the favour of the Assessee on the ground that RFCTLARR Act overrides the provisions of Income Tax Act, 1961. Interest received for delayed payment of compensation falls under the definition of compensation for acquisition of land, which is specifically exempted as per Section 96 of RFCTLARR Act and consequently it cannot be taxed under Income Tax Act.

Pursuant to the above, the Revenue appealed to the ITAT, which has upheld CIT(A)'s order and held that the subject interest is not taxable in the hands of the assessee.

Authors' Note:

The decision of the CIT(A) which is upheld by the Hon'ble ITAT is in line with the CBDT Circular No 36 of 2016 clarifying the exemption of compensation received in respect of award or agreement vide Section 96 of RFCTLARR Act 2013 under the IT Act even when there is no specific provision of exemption for such compensation in IT Act.

Further, Kerala HC in case of Madaparabil Varkey Varghese **[2019-TIOL-3004-HC-KERALA-IT]** has affirmed the above position.

AAR held offshore services intrinsically connected with setting-up of plant in India as taxable under Income Tax Act, 1961

Technip France SAS
2021-TII-03-ARA-IT

The Applicant, a French Company, was engaged in Engineering, Procurement and Construction ('EPC') business in the field of oil production. It was awarded a lumpsum turnkey contract to set-up a plant in India wherein offshore scope of work involved supply of equipments, engineer licensing fees and inspection charges and onshore scope involved supply of other equipments, third party inspections and services in relation to setting up of the plant at site, start-up commissioning and post commissioning services. Further, the wholly owned Indian subsidiary of the Assessee was to undertake onshore scope of work.

The Applicant had filed an application seeking ruling as to

whether tax on supply of offshore equipments and offshore services was applicable to tax in India as per Income Tax Act, 1961 and/or India-France DTAA.

The AAR, placing reliance on judgement given by the Hon'ble SC in the case of Ishikawajima-Harima Heavy Industries Limited Vs. DIT (288 ITR 408) (SC), has ruled that income arising out of offshore supply of goods, where the title to and property in the goods had been transferred outside India, shall not be subject to tax in India.

Further, the AAR rejected the Applicant's claim that engineering services were related to supply of offshore goods and held that even if the part of design services were developed in France, such engineering, drawing, designing and other services were used by the project office in India. Therefore, offshore services in relation to the construction, erection, installation, commissioning and testing of the plant in India and offshore advisory services were held to be taxable in India as business income under Article 7 of India-France DTAA.

AAR allowed treaty benefit to Singapore-based investment company on sale of shares

BG Asia Pacific Holding Pte. Limited
2021-TII-09-ARA-IT

The Assessee is a Singapore based company and wholly owned subsidiary of a UK based company. The Assessee proposed to sell its entire shareholding in an Indian company to another Indian company. The proposed transfer of shares was to take place under a private arrangement outside the stock exchange as an "off-market" sale transaction.

Both the seller and the buyer of the shares approached the AAR questioning the applicability of Indian capital gains tax on the Assessee in connection with this transaction and also the requirement of TDS deduction by the buyer from the sale consideration payable for the proposed sale of the shares.

On the basis of above facts, AAR held that capital gain is not taxable in India in the hands of the Assessee upon sale of shares of the Indian company as the Assessee satisfied the conditions of Limitation of Benefit clause stipulated in the India-Singapore DTAA and was eligible to avail exemption under the DTAA.

Authors' Note:

The decision is an outcome of appropriate interpretation of DTAA and the changes made therein with effect from April 01, 2017. Clause 24A of DTAA provides that "A resident of a Contracting State shall not be entitled to the benefits of....if its affairs were arranged with the primary purpose to take advantage of the benefits....". Further, the said clause provides discuss the definition of 'A shell or conduit company' which excludes companies satisfying certain criteria or companies which are listed on recognized stock exchange of the Contracting State.

Basis the facts and above understanding, AAR held that the transaction shall not be subject to Capital Gains in India.

ITAT affirms levy of late fee on late filing of TDS returns pertaining to period prior to June 1, 2015

Special Judge Court SC/ST
2021-TIOL-458-ITAT-JAIPUR

The Assessee filed its TDS return for the first quarter FY 2013-14 in October 11, 2017 for which the due date was March 31, 2014 thereby the ACIT imposed a late filing fee on the Assessee under Section 234E of the IT Act for the delayed filing of TDS return. It is pertinent to note that late filing fee collection as envisaged under section 234E was levied on June 01, 2015 by amendment to section 200A.

Aggrieved, the Assessee approached the CIT(A) contending that the revenue had no authority to impose late filing fee for returns prior to June 01, 2015. The CIT(A) held that late fee levied to be valid and in accordance with the provisions of law. Aggrieved by the action of AO and CIT(A), the Assessee preferred an appeal before the ITAT.

ITAT observed that there is no provision to make a distinction between the TDS statements pertaining to period prior to June 01, 2015 and post such period, as it will result in creating two classes of Assessee who for the same default will suffer different penal consequences leading to unintended class discrimination which cannot be the intention of the legislature in absence of anything contrary provided under the statute.

On the basis of the above facts and observations, ITAT upheld the levy of the late fee under Section 234E for statements filed after June 01, 2015.

Authors' Note:

Amended Section 234E w.e.f June 1, 2015 provides for late fees of INR 200 per day on a person who fails to file TDS returns within prescribed period.

There are various judgements of different ITATs in favour of taxpayers deleting the levy of penalty for the returns of period prior to June 01, 2015 filed after the levy of late fees under Section 234E and vice versa. Considering the same the impugned issue should be adjudicated at higher forum or the CBDT should come up with an appropriate clarification.

ITAT held ICD received by listed subsidiary is not a deemed dividend

Eicher Motors Ltd
2021-TIOL-192-ITAT-DEL

The Appellant filed its return of income which was selected for scrutiny assessment and an order was framed by the AO who observed that the Appellant had received ICD from its subsidiary in which the Appellant held more than 10% shares. The AO questioned the Appellant on why ICD received should not be treated as deemed dividend as per the Income tax provisions.

The Appellant contended that the ICD received from its subsidiary was repaid and was taken in the normal course of business as a NBFC from the subsidiary. The subsidiary of the appellant was a listed company in the BSE as well as the NSE when the ICD was given and therefore was a company of public interest.

The AO being convinced by the Assessee's contention passed the order with other disallowances. However, CIT assumed jurisdiction on the matter and held that non addition of the above amount has caused consequential loss of revenue and is erroneous and prejudicial to the interest of the revenue and to the extent of the non-addition stands modified.

Aggrieved, the Appellant approached the ITAT which held that the order of the CIT was based on wrong assumption of facts and no power of revision by CIT arose where the AO took one of two possible views at his disposal. The AO did not only consider the specific portion on ICD but other aspects before passing the assessment order as it contained other disallowances as well.

ITAT held for PLI Computation figures from financial statements to be considered and not notes to accounts

Dilipkumar V Lakhi
2021-TII-80-ITAT-MUM-TP

The Assessee is engaged in the business of manufacturing, selling, distribution, exporting and importing of cut and polished diamonds, jems and jewellery. During the assessment proceedings, the AO referred the case of the Assessee to the TPO for the determination of ALP of international transactions. The Assessee submitted documents in support of the ALP determined in the transfer pricing documentation. The Assessee had applied TNMM as the MAM and had considered 16 comparables for benchmarking its international transaction and calculated the profit margins of comparables as well as tested party.

The TPO perused the documents submitted by the Assessee and observed that the Assessee had not appropriately undertaken search process and rejected 8 comparables out of the 16. Further, the TPO carried out working capital adjustment citing the need for same in Assessee's industry.

Further, the TPO had adopted the notes to accounts which does not tie up with the audited balance sheet for one of the comparables to increase the return on capital employed to 20.44% which would otherwise have been 7.2%. Aggrieved by the action of TPO, the Assessee approached CIT(A) who passed an order in favour of the Assessee, pursuant to which, the Revenue filed an appeal with ITAT.

The ITAT dismissing the revenue's appeal held that the capital employed as per audited balance sheet should be taken and not as per the notes to accounts for the purpose of calculating the PLI as per return on capital employed method.

ITAT held that no negative working capital adjustment warranted in case of captive service provider

Lam Research India Pvt Ltd
2021-TII-47-ITAT-BANG-TP

In case of Lam Research (India) Private Limited, the Bangalore Bench of Hon'ble ITAT decided the issue pertaining to negative working capital adjustment in favour of the Assessee. During the assessment proceedings, the TPO made negative working adjustment to the PLI of comparable companies and made relevant adjustment. The Hon'ble DRP confirmed the action of the AO/TPO.

Aggrieved, the Assessee filed an appeal before the Hon'ble Bangalore Tribunal. The ITAT placing reliance in Assessee's own case for AY 2009-10 **[2015-TII-238-ITAT-BANG-TP]** and ruling of Hyderabad ITAT in case of Adaptec (India) Private Limited **[2015-TII-90-ITAT-HYD-TP]** held that there is no need for making any negative working capital adjustment when the Assessee, being a captive entity, does not carry any working capital function and does not bear any related risks.

Authors' Note:

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

However, the impugned issue can be looked with the other eye of the law wherein the TPOs tend to make adjustments for interest on receivables and allege that long outstanding receivables constitute separate international transaction and adjustment is required to be made on account of interest on delayed payments.

Certainly, the issues are different from each other on the ground as in the negative working capital issue the adjustment is made on ALP of the main transaction while in later case, the adjustment for notional interest is made to the income of the Assessee.

ITAT deleted TP adjustment on delayed receivables from AE

XL India Business Services Pvt. Ltd
2021-TII-75-ITAT-DEL-TP

The Assessee was a business support services provider, engaged in provision of data processing, data analysis, computational services, actuarial services, data collation, report preparation, reconciliation, etc. The Assessee had entered into international transactions with its AE. During the assessment proceedings, the AO referred the matter to TPO for determination of ALP. The TPO suggested an upward adjustment on account of net interest chargeable on delayed receivables and the draft assessment order was passed by the AO on the same lines.

Aggrieved, the Assessee approached the DRP which confirmed the addition. Aggrieved by the action of AOTPO and directions of DRP, the Assessee filed an appeal before ITAT.

ITAT held that the Revenue was not justified in making addition while observing that the Assessee had already factored in the impact of receivables in computing working capital adjustment and thereby on its pricing/profitability in relation to its comparables. Consequently, the adjustment cannot be made only on the basis of outstanding receivables. Accordingly, the ITAT deleted the adjustment on account of delayed receivables.

Authors' Note:

It is pertinent to note that working capital factors interest component on receivables in arriving at ALP. Principally, if the transactions are at ALP, no other adjustment is warranted.

The Hon'ble ITAT has ruled the issue in favour of Assessee following the jurisdictional HC decisions.

Delhi HC quashes order for bank account attachment, absent statutory precondition

Proex Fashion Private Limited
2021-TIOL-90-HC-DEL-GST

The Revenue authorities had initiated investigations against the Petitioner under Section 71 of the CGST Act which inter alia empowers prescribed officers to access the premises of the assessees and demand the production of certain documents. Thereafter, revenue authorities had attached the bank account of the Petitioner under Section 83 of the CGST Act.

Aggrieved, the Petitioner had preferred a Writ before the Hon'ble Delhi HC challenging the order for bank account attachment. Taking cognizance of the submissions made by the Petitioner, the HC observed that action under Section 83 of the CGST Act can be taken during the pendency of proceedings under Section 62, 63, 64, 67, 73 or 74 of the CGST Act. It was further observed that various HCs have consistently held that the attachment of bank account entails serious consequences. Therefore, the power to attach the bank account cannot be extended to cover situations which are not expressly contemplated by the section. Absent the statutory precondition for exercise of the power of attachment, any order under Section 83 is wholly illegal and unsustainable.

Basis the above observations, it was held that as no proceedings under any of the provisions mentioned under Section 83 had been initiated, the impugned order is *ultra vires*.

Authors' Note:

The power to attach bank account is indeed a drastic power and must be invoked only in absolutely necessary cases. However, in recent times, it has been seen that the GST Authorities are arbitrarily issuing order for bank attachment even in cases where the facts do not warrant such action, thus resulting in harassment to the taxpayers. In such cases, the taxpayers have no choice but to approach the Courts, as there are there are no explicit guidelines on the use of such powers.

Recently, the Gujarat HC in the case of Jay Ambey Filament Private Limited vs. UOI **[2020-TIOL-1842-HC-AHM-GST]** had held that the subjective satisfaction for invoking power under Section 83 should be based on some credible materials or information and being a drastic power should be supported by supervening factor and should be used sparingly. It had been further held that such power should be resorted to only as a last resort or measure and should not be equated with the attachment in the course of recovery proceedings.

Gujarat HC issues notice in Writ challenging non-deduction of 'actual land-cost' for valuing construction services

Munjal Manishbhai Bhatt
R/Special Civil Application No. 1350 of 2021

The Petitioner had entered into an agreement with a developer for purchase of plot of land. The said agreement also encompassed construction of a bungalow on the said plot separate consideration was agreed upon between the parties to the agreement, i.e. (i) sale of land and (ii) construction of bungalow on the land. In respect thereto, the Petitioner had challenged Entry No. 3(if) of Notification No. 11/2017 – Central Tax (Rate) dated June 28, 2017 which inter alia provided that tax is payable at the rate of 18% GST on the entire consideration payable for land as well as construction of bungalow after payment of 1/3rd value towards the land.

The Gujarat HC observed that a prima facie case was made out for interim relief and accordingly permitted the Petitioner to deposit the amount of tax as raised under the invoice without prejudice to his rights and contentions as raised in this writ application. The HC further directed the Petitioner to share one set of the submission with the Respondent so that necessary instructions can be made in the next hearing.

Haryana AAR: Maintenance charges recovered by head office from branch office chargeable to GST

Tata Sia Airlines Limited
Haryana AAR Ruling dated 29 January 2021

The Applicant, having multiple locations throughout India, had been engaged in the business of passenger and cargo transport and services by air. The Applicant, having its HO in Haryana, had been procuring various goods / services under their GSTIN, while the same were being directly supplied at its BO.

In order to ensure up and running condition of the aircrafts, the Applicant maintained various spare parts at its HO itself. In reference thereto, the Applicant had taken aircraft under lease model. Accordingly, the Applicant had entered into various contracts, (contractual location being Haryana) with different vendors on which the IGST was being paid under RCM on the lease rentals in the State of Haryana.

The spares were ordered by the HO and the bill of entry was also filed with their GSTIN, however, the goods were being dispatched at the respective locations as per the requirement. The Applicant further procured assurance services (for repair of aircraft) from vendors located outside India in the State of Haryana and paid the GST under RCM. Further, the HO had entered into an agreement with its BO's for supply of maintenance services including assurance. The cost of such supply shall be equal to the cost of assurance services plus the cost of spares plus any other costs incurred plus mark-up thereon. In view of the above, the Applicant had sought a ruling before the Haryana AAR to inter alia ascertain whether the charges in lieu of maintenance services recovered by the HO from the BO shall qualify as supply of service.

It was observed by the AAR that the HO had been charging a mark-up over and above the cost of assurance services, cost of spare parts and any other cost in relation to upkeep and maintain the aircrafts, thereby adding value to the cost and hence, incurring a taxable supply of service.

The AAR further noted that the HO and BO being separate GST registrants, qualify as 'distinct persons' and therefore any supply between the two parties would be chargeable to GST. Accordingly, it was ruled that the charges in lieu of maintenance services recovered by the HO from the BO shall qualify as supply of service.
Further, referring to Section 2(93) of the CGST Act, it was observed by the AAR that ISD is the 'recipient' as it is the person making payment of consideration for the supply of goods or services. It was further observed that the very basis of the ISD related provisions under the CGST Act is that the ISD is not a supplier of goods or services and does not make any 'outward supply' but is entitled to distribute credit.

Authors' Note:

The issue of applicability of GST on cross-charge of common services within the different registrations of the taxpayers has always been a contentious issue in the GST regime. This instant AAR has correctly ruled that a corporate office and a branch office are two distinct persons and therefore the transactions between the two would qualify as 'supply'. The Haryana AAR in the instant case has followed the ruling of Karnataka AAR in the case of Columbia Asia Hospitals Private Limited **[2018-TIOL-31-AAAR-GST]**, wherein it had been ruled that activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative services for the units located in the other states shall be treated as supply as per Entry 2 of Schedule I of the CGST Act. The instant ruling of Haryana AAR has re-affirmed this position of law under GST.

Madras HC directs CBIC to consider Uber's representation on motor-cycle transportation taxability

Uber India Systems India Private Limited
W.P. No.3732 of 2021

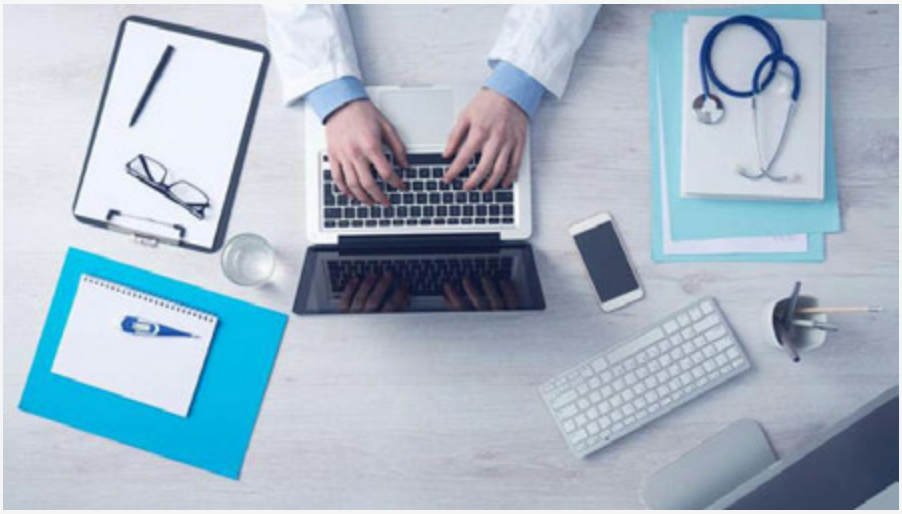
The Petitioner is a technology company, engaged in the business of operating and managing a software application used for providing ride services by connecting them with drivers. The Petitioner had filed various representations before the CBIC to clarify the taxability on ride-hailing services provided by them. The Petitioner had been depositing 5% GST whereas its competitors had been claiming the benefit of exemption under Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017.

As the CBIC did not give any heed to the Petitioner's representations, they preferred a Writ before the Madras HC against such non-responsiveness of CBIC. The Petitioner argued that the status quo in the instant scenario leads skewed market situation. Taking cognizance of the submissions made by the Petitioner, the Madras HC has directed the CBIC to decide the representation within 6 weeks and accordingly posted the matter on 05 April 2021.

Karnataka AAR holds that Health care services supplied in India is exempt from GST

Dr. H.B. Govardhan
2021-TIOL-66-AAR-GST

The Applicant, a doctor, being a salaried employee in a hospital in Bengaluru, had been also been rendering consulting services to hospitals / laboratories, etc. in the USA. and other countries through phone calls, video-conferencing, etc. In view of the above, the Applicant had sought a ruling before the Karnataka AAR to ascertain the following:



- Whether the Applicant would be liable to be registered under GST;
- Whether the services provided by the Applicant to other countries would amount to export of intellectuals; and
- Whether there would be any tax liability on health care services (part time practicing in clinic) rendered in India to the Recipient from India.

AAR observed that the Applicant would be receiving samples, test reports, etc., basis which the Applicant would be providing his expert services like diagnosis and treatment. It was further observed that the Applicant would be required to organize collaborative projects between a Biotechnological Company in the USA and clinical centres in India.

It was further observed that the services of diagnosis and treatment would qualify as 'health care services' which are exempt from GST. As for the services in relation to organizing collaborative projects between Companies situated abroad and clinical centres in India, it was observed that such services, being in the nature of business promotion services, would qualify as an intermediary service.

Lastly, it was observed by AAR that while providing services to Companies situated abroad, the place of supply is in India and therefore, the same cannot be called as 'export of service'. Basis the said observations, AAR held as follows:

- Applicant is liable for GST registration;
- Health care services in relation to diagnosis, etc. are exempt from GST; and
- Business promotion services are not export of services, and therefore liable to GST.

HC: Gujarat HC puts CBIC to notice w.r.t. proposed guidelines regarding recovery during search

Bhumi Associate
2021-TIOL-421-HC-AHM-GST

Earlier, the Applicant had preferred a Writ before the Gujarat HC challenging the action of the Revenue authorities which allegedly amounted to undue harassment, coercion, etc. under the guise of bona fide interrogation. Taking cognizance of the matter, the Gujarat HC had directed the CBIC and Chief Commissioners of the Gujarat, to inter alia issue an instruction of proceedings under Section 67 of the CGST Act which deals with the power of the Officers in relation to inspection, search and seizure.

In respect thereto, the HC held that ASG shall discuss the matter seriously with the highest authority of the CBIC. HC had further appreciated the efforts of the officers to catch hold of fraudsters and all those persons involved in the huge scam of tax evasion etc., however, clarified that the Officers should act and perform their duties within the four corners of law. It was further held that they should not take law in their hands.

Authors' Note:

With the increasing cases of GST frauds coming to the limelight in recent times, it has been seen that the Government has been rather proactive in curbing this menace. While the Government has empowered the authorities to ensure strict compliance of the GST provisions, it does not, in any way, empower them to resort to physical violence.

Recently, in the case of Agarwal Foundries Private Limited Rama Towers **[2020-TIOL-1898-HC-TELANGANA-GST]**, the Hyderabad HC had held that the Revenue authorities are not entitled to use physical violence against persons they suspect of being guilty of tax evasion while discharging their duties under the CGST Act.

AAR: Supply of un-assembled railway parts, not classifiable under chapter 86

JSL India Private Limited
Advance Ruling No. HAR/HAAR/R/2018-19/51

The Applicant, situated in Pathderi, Haryana, had been supplying un-assembled sub-assembles of railway components, to its additional place of business located in Chennai. The sub-assemblies were then being assembled completely and finally supplied to the ICF Chennai. Accordingly, the Chennai unit of the Applicant, would bill to its parent unit in Pathderi and ship the assemblies directly to ICF Chennai.

In view of the afore-stated background, the Applicant sought an Advance Ruling before the Haryana AAR to ascertain the tariff classification of sub-assemblies supplied

from Pathredi unit to Chennai unit as well as the IGST rate applicable.

Upon perusal of the invoice, the AAR observed that the items supplied by Pathredi unit to the Chennai unit were in fact parts and sub-parts of sub-assemblies. It was further observed that fabrication of sub-parts was to be done at the Chennai unit. The AAR remarked that fabrication is generally defined as the process of making something from semi-finished or raw materials rather than from ready-made components, hence, the process done at Chennai unit amounted to work process or manufacturing. The AAR further referred to the Explanatory Notes and the General Rules of interpretation, which provides that incomplete or unfinished articles presented unassembled or disassembled are to be treated as finished goods. However, it had been observed that in the instant case, parts which will are to be assembled in Chennai, are being assembled by adding some other components procured from other suppliers.

It was further observed that the Applicant would be undertaking the process involving in-house inspection, fabrication, welding, painting, leakage testing and final inspection. Accordingly, it can be said that assembly operation as well as addition of components was being undertaken to prepare the parent assembly in Chennai unit.

AAR further referred to Para 4 of Circular No. 30/4/2018-GST dated 25 January 2018, wherein it has been clarified that only the goods classified under chapter 86 supplied to the railways would attract GST at 5% with no refund of unutilized ITC and other goods would attract the general rates even if supplied to railways.

Basis the above observations, the AAR held that the goods supplied from Pathredi unit of the Applicant to Chennai unit cannot be classified under chapter 86 and would therefore attract the general rate applicable as per the classification of each item in their respective chapters.

Authors' Note:

Even after more than 45 years of the introduction of Tariff in India, the classification of parts of railway goods is still a major subject of dispute. Although the Haryana AAR has not touched upon the section notes to the Tariff, it would be pertinent to note that the instant dispute is majorly on account of two rather contradictory Notes. While Note 2 to Section XVII of the Tariff Act (which covers railway goods) provides that parts of general use, even if being used in railways, shall be classified in respective chapters other than 86, Note 3 provides that parts, being used solely and principally with Railways shall be remain classifiable under Chapter 86.

It would be pertinent to note that the matter relating to classification of goods, where assembly occurs at the site of supply, has been majorly litigated in the excise regime as well. In the case of Bharat Heavy Electricals Limited **[2018 (14) G.S.T.L. J74]**, it had been held that boiler parts cleared in unassembled form as incomplete boiler and assembled at site, are classifiable under sub-heading 8402 as boiler and not the sub-heading as parts. Taking note of the SC judgement, it seems that the instant AAR seems to have taken a different approach in this case.

Gujarat HC quashes GST registration cancellation order issued without SCN

Syed Jafar Abbas
2021-TIOL-543-HC-AHM-GST

Aggrieved by the order of the Revenue cancelling the GST Registration, without issuing any Show Cause Notice or affording an opportunity of being heard, the Petitioner had preferred a Writ before the Gujarat HC.

The Gujarat HC observed that the no SCN was issued to the Petitioner before ordering cancellation of GST Registration and the order cancelling the registration was bereft of any details. Accordingly, the HC allowed the writ petition and set aside the cancellation order, while remanding the matter back to the Commercial Tax Officer.

Authors' Note:

As a settled principle of law, there exists an inherent requirement of abiding by the principle of natural justice whenever an order having consequence on the taxpayer is concerned. In fact, the mere issuance of show cause notice does not suffice the requirement of law, but it is a settled law that the show cause notice in the prescribed form is required to be issued.

In the case of Turret Industrial Security Private Limited **[W.P.(T) No. 2661 of 2020]**, the Jharkhand HC had quashed a GST Registration cancellation order, which had been issued without a proper show cause notice in Form REG-17. As such, it was held that the cancellation of registration resulting from such an incomplete show-cause notice cannot be sustained being violative of principles of natural justice.

MP AAR denies ITC on Demo vehicles used for the purpose of furtherance of business

Khatwani Sales and Services LLP
2021-TIOL-49-AAR-GST

The Applicant an authorised dealer of KIA Motors had filed an application before the MP AAR to ascertain whether ITC on motor vehicles purchased for demo purpose can be availed. The Applicant had submitted that the said demo vehicles are used for furtherance of business, post payment of taxes and are capitalized in the books of accounts. The Applicant further referred to the exception provisions of sec 17(5)(a) of the CGST Act stating that ITC can be claimed if such vehicles are used for further supply of such vehicles.

It was observed by the AAR that ITC u/s 17(5)(a) can be claimed in respect to the vehicles when the same are supplied as such. However, in current scenario the vehicles are sold after one or two years after charging depreciation on it. Such transaction does not result in sale of vehicle on as such basis, even though such sales are treated as used / second hand vehicle and not a new vehicle.

It was further observed that, not claiming benefits under other provisions of the CGST Act, i.e., not claiming depreciation on capitalization in the books of accounts, does not result in being eligible for claiming ITC benefit as

per sec 17(5)(a) of the GST Act. Accordingly, it was held by the AAR that the Applicant's Demo vehicles are not eligible for ITC since the same are not covered under any exceptions.

Authors' Note:

It is imperative to note that while MP AAR has denied ITC on demo vehicles, its Maharashtra counterpart i.e., Maharashtra AAR in the case of Chowgule Industries Private Limited **[2020-TIOL-05-AAR-GST]** had taken a different view. In that case, it was ruled that as there is no time limit prescribed in the CGST Act for making supply of goods, it was held that the Applicant would be entitled to avail ITC charged on inward supply of Motor Vehicles which are used for demonstration purpose in the course of business of Supply of Motor Vehicle.

Accordingly, the disparity between the interpretation of the both the Ruling authorities is quite apparent. It seems that that an Appellate authority would have to step in this matter to settle the question of law once and for all.

Gujarat AAR denies inclusion of electricity charges under 'value of supply' when there is no express clause in rent agreement

Gujarat Narmada Valley Fertilizers and Chemicals Limited
2021-TIOL-56-AAR-GST

The Applicant had entered into a rent agreement with a Government authority wherein the rent amount was agreed at a fixed price for rent of premises and other internal infrastructure. Further, the rent agreement included a separate clause in respect to the electric power.

In respect thereto, the Applicant had sought an Advance Ruling before the Gujarat AAR to ascertain whether the liability of paying GST in respect to the electricity/incidental charges falls on tenant. The Applicant had further sought to ascertain whether the landlord would be considered as pure agent when such taxes are paid on receipt from their tenant.

Referring to sec 15(2) of CGST Act, the AAR observed that, the electricity charges would not be covered under the value of supply for the sole reason that the rate for renting of premises has been fixed at an amount and the electricity charges are to be borne by the lessee as per the actual usage of electric power by them in terms of the agreement.

It was further observed by the AAR that the agreement contains an inbuilt clause of actual payment of electric charges by the lessee directly to the electric company. However, due to lack of infrastructure on the part of the lessor, there is a silent agreement that the Applicant would collect the actual usage charges on the basis of the reading of the sub-meter and in-turn pay the same to the electric company. As the said arrangement had been on-going since a long time, the AAR held that there is a mutual understanding between both the parties and such mutual understanding is also an agreement. Accordingly, it was held that the Applicant is a pure agent in terms of Rule 33 as the electricity expenses were incurred on behalf of the lessee.

Madras HC judgement permitting inter-state purchase of HSD against Form-C stayed by SC

The Ramco Cements Limited
2021-TIOL-98-SC-VAT-LB

Recently, the Division Bench of the Madras HC had upheld a dealer's right to purchase High Speed Diesel at concessional-rate post-GST. The HC had further quashed a circular which sought to restrict the use of 'C' Forms for the inter-State purchases of certain commodities. It was further held that mere restriction of operation of CST Act to 6 commodities w.e.f. 01 July 2017 does not take away the right of such dealers to purchase such goods inter-state.
Aggrieved, the Revenue has challenged the said judgement of the Madras HC before the Apex Court. For the time being, the SC has stayed the operation of the Madras HC judgment till the next date of hearing.

SVLDRS application-rejection without attributing reasons 'not fair', remits matter for fresh consideration

EI Dupont India Private Limited
2021-TIOL-334-HC-AHM-CX

The Petitioner had been subjected to audit proceedings for the period June 2014 to June 2017 and consequently a notice dated 28 June 2019 had been issued, demanding the Petitioner to pay the tax liability along with applicable interest and penalty. The Petitioner filed an application against the said notice under SVLDRS, declaring the 50% tax liability as mentioned in the notice. The said declaration had also been accepted by the Revenue.

Subsequently, the Petitioner's application came to be rejected on the ground that the quantum of tax dues payable was not finalized before 30 June 2019, and, as a result, the Petitioner was ineligible to make a declaration under SVLDRS. Aggrieved, the Petitioner preferred a Writ before the Gujarat HC challenging the rejection order.

The HC observed that the communication dated 28 June 2019 would indicate that the Revenue had quantified the amount by way of written communication. Accordingly, the rejection letter, being dated before the cut-off 30 June 2019, it was held that the Petitioner had duly complied with the eligibility criteria. It was further observed by the HC the decision of rejecting the application by the Respondent was in violation of principles of natural justice, as no opportunity of being heard was afforded to the Petitioner.

Jharkhand HC to hear matter of Carlsberg India seeking refund of CVD paid on damaged beer

Carlsberg India Ltd
W.P (T) No. 378 of 2021

The petitioner filed a writ before the Jharkhand HC seeking refund of countervailing duty paid in advance to the Department on goods imported from other states on the premise that as per the law the incidence of levy is the removal of the goods from the warehouse and since the nationwide lockdown had been imposed, the petitioner could not remove them from the warehouse which caused the shelf life of the goods to expire making the petitioner entitled to refund of duty paid in advance in relation to the damaged goods.

HC allowing the writ asked the Department to file its counter affidavit by February 26, 2021 and listed the matter for further hearing on March 2, 2021.

Hearing has been commenced by Delhi HC in writ challenging denial of SEIS benefit on services provided to telecom sector

Ericcson India Global Services Ltd
W.P.(C) 13249/2019 & CM APPL. 53883/2019 & W.P.(C) 10146/2020 & CM APPL. 32318/2020

The petitioner filed a writ against DGFT's contention declaring 'Engineering Services' and 'Management Consultancy Services' provided by the petitioner ineligible for benefits under SEIS for being provided to the telecom sector which has been explicitly barred from receiving benefits under SEIS.

The petitioner contended that it was providing these services to its group entities in different sectors who may be providing them to companies in telecom sector. Merely providing services to companies in the telecom sector does not make the petitioner a service provider in this sector. At most. The petitioner can be termed a 'service provider to telecom sector'.

The petitioner also contended that such categorisation by the Department is ultra vires their jurisdiction.
HC heard the arguments for the petitioner on February 23, 2021 and further hearing has been scheduled on March 3, 2021.

Following is the summary of the key circulars and notifications issued in the month of February 2021:

Notification / Circular	Key Updates
Circular No. 04/2021 dated 16 February 2021	**CBIC extends time-limit for sanction of IGST refunds where records are not transmitted** The CBIC vide Circular No. 12/2018- Customs dated 27 August 2019 had extended interim solution pursuant to the mismatch between GSTR-1 and GSTR-3B and made it applicable for Shipping Bills filed during the period April 2018 to March 2019. The CBIC now has further extended the interim solution to verify IGST payment on account of mismatch between GSTR-1 and GSTR-3B for Shipping Bills filed till 31 March 2021, considering the fact that records were not been transmitted to ICEGATE due to such mismatch Further, prescribes that CA certificate evidencing no discrepancy between IGST amount refunded on exports and actual IGST amount paid on exports of goods for periods April 2019 to March 2020 and April 2020 to March 2021 shall be furnished by 31 March 2021 and 30 October 2021 respectively.
Press Release dated 28 February 2021	**Extension of GST Audit due date for F.Y. 2019-20** The Ministry of Finance has decided to extend the due date for filing Annual Return in Form GSTR-9 and Reconciliation Statement in Form GSTR-9C for the F.Y. 2019-20 till 31 March 2021 with the approval of Election Commission of India.
Circular No. 145/01/2021 – GST dated 11 February 2021	**CBIC issues SOP for Suspension of Registrations basis discrepancies** The CBIC vide Circular No. 145/01/2021-GST dated 11 February 2021 has issued a Standard Operating Procedure ('SOP') for implementation of the provision for suspension of registrations. As per Section 21(2A) of the CGST Act, registration shall be suspended, where upon comparison of the returns, it is indicated that there are significant differences or anomalies indicating contravention of the provisions of the Act or the Rules. The said Rule specifies that the registration of taxpayers shall be suspended and system generated intimation of suspension and notice of cancellation of registration shall be intimated vide Form GST REG-31. However, as the functionality of GST REG-31 has not been made operational yet, the CBIC has provided the following guidelines for implementation of the provision of suspension of registrations: • The notice / intimation of suspension of registration shall be made available to the taxpayer on their dashboard on common portal in Form GST REG-17;

	• The taxpayers, whose registrations are suspended would be required to furnish reply in Form GST REG-18 to the jurisdictional tax officer within 30 from the receipt of such notice, and shall furnish the details of compliances and the reasons as to why their registration should not be cancelled; • Post examination of the response, the Officer may pass an order either for dropping the proceedings for suspension/ cancellation of registration in Form GST REG-20 or for cancellation of registration in Form GST REG-19. Based on the action taken by the proper officer, the GSTIN status would be changed to 'Active' or 'Cancelled Suo-moto' as the case maybe.
Circular No. 146/02/2021-GST dated 23 February 2021	**CBIC clarifies applicability of QR Code on B2C invoices** NN. 14/2020 is applicable to tax invoices issued to an unregistered person by a registered person whose annual aggregate turnover exceeds Rs. 500 Cr in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued in following cases: • Where the supplier is: o an insurer or a banking company or a financial institution, including NBFC; o GTA supplying services in relation to transportation of goods by road in a goods carriage; o supplying passenger transportation service; o supplying services by way of admission to exhibition of cinematograph in films OIDAR supplies made by any registered person, who has obtained registration under section 14 of the IGST Act 2017, to an unregistered person. As e-invoices are required to be issued in respect of supplies for exports, treating them as B2B supplies, NN. 14/2020 is not be applicable to them. • Following information is required to be captured in QR Code: o Supplier GSTIN number; o Supplier UPI ID; o Payee's Bank A/c number and IFSC; o Invoice number & invoice date; o Total Invoice Value and o GST amount along with breakup i.e., CGST SGST, IGST, CESS, etc. If the supplier has issued invoice having QR Code for payment, the said invoice shall be deemed to have complied with the requirements. In cases where the supplier, has digitally displayed the QR Code and the customer pays for the invoice: - o Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier

	provides a cross reference of the payment on the invoice; or o In cash, without using QR Code and the supplier provides a cross reference of the amount paid in cash, along with date of such payment on the invoice. In cases where supplier makes available to customers an electronic mode of payment or similar other modes of payment, through mobile applications, where though QR Code is not displayed, but the details of merchant as well as transaction are displayed, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of QR Code. However, if payment is made after generation of invoice, the supplier shall provide Dynamic QR Code on the invoice. If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of QR Code. In cases other than pre-paid supply, the supplier shall provide Dynamic QR Code on the invoice. The provisions of NN. 14/2020 shall apply to each supplier separately, if such person is liable to issue invoices with QR Code for B2C supplies. In case, the supplier is making supply through the E-commerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of QR Code. In cases other than pre-paid supply, the supplier shall provide Dynamic QR Code on the invoice.
Instructions No. 01/2020-21 (GST Investigation)	**CBIC issues guidelines to be adhered to during search operation** CBIC re-iterates instructions contained in the Central Excise Intelligence and Investigation Manual (2004) under GST Regime for compliance by DGGI/field formations, after considering specific instances whereby proper procedures have apparently not been followed during search proceedings or during recording panchnamas / statements. The guidelines inter alia include: • The Officer search should have proper authorisation issued by authority along with a valid and justifiable reason; • The search warrant should be issued in the name of the person who is in charge of the premises and not on some other person; • A lady officer shall be necessarily be part of search team in case of search of a residence; • The search shall be made in the presence of two or more independent witnesses and they should be informed about the purpose of the search and their duties. • During the start and conclusion of the search the officer in charge and the independent witnesses shall offer personal search and should also contain their personal ID;

	• The body of the search authorization should have the signature along with date and time of the person in charge of the premises and the independent witnesses. • The person from whom the documents are seized, can be allowed to take photo copies or extracts of same, however, if there are chances that sharing the documents will affect the investigation then the same cannot be provided.

Authors' Note:

The GST Audits due date for the F.Y. 2019-20 had earlier been extended till 28 February 2021. However, due to various difficulties faced by the taxpayers and the tax practitioners alike, the Goods and Services Tax Practitioners Association and Another **[2021-TIOL-487-HC-MUM-GST]** had preferred a Writ before the Bombay HC requesting the Court to direct the Revenue to extend the due date of GST Audit for F.Y. 201-20. However, the HC had out-rightly dismissed the Petition without entertaining the Petitioner's prayer.

It was only on the eleventh hour, that the MoF vide a press release finally heard the prayers of the taxpayers and tax practitioners and extended the due date till 31 March 2021. It would be pertinent to note that the impact of the COVID-19 pandemic is still there in many parts of the country, which has restricted GST compliances. Even then, the MoF has only marginally extended the due date. Nonetheless, we are hopeful that the said deadline will be met effectively this time.

Notifications	Key Updates
Notification No. 16/2021-Customs dated February 05,2021	**CBIC amends former notifications to mark the imposition of Agriculture Infrastructure and Development Cess (AIDC)** CBIC has amended the explanations of notification Nos. 96/2008-Customs, 57/2009-Customs, 101/2007-Customs and 50/2018-Customs along with the preamble of notification No. 96/2008-Customs as a consequence of the imposition of AIDC in the current budget.
Notification No. 08/2021- Customs (ADD) dated February 19,2021	**Anti-Dumping Duty on Aniline extended for 5 years** The levy of ADD on Aniline has been extended for 5 years from July 29, 2020.

Notifications	Key Updates
Notification No. 09/2021- Customs (ADD) dated February 25,2021	**Anti-Dumping Duty on Tiles extended till June 28, 2021** The ADD on Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption has been extended till June 28, 2021.
Notification No. 10/2021- Customs (ADD) dated February 25,2021	**Anti-Dumping Duty on Melamine extended till March 31, 2021** The levy of ADD on Melamine imported or originating from China PR has been extended up to March 31, 2021 from February 28, 2021.

Circulars	Key Updates
Circular No. 03/2021-Customs dated February 03,2021	**Clarification with regards to execution of Bond B-17 with proprietor as surety** CBIC has clarified that a proprietor of a proprietorship firm cannot himself be a surety for the purposes of execution of a B-17 Bond and a separate legal entity is required as surety unlike Directors of limited companies who are considered to be distinct legal entities from the companies.
Circular No. 04/2021-Customs dated February 16,2021	**Extension of Circular no. 12/2018-Customs for sanction of pending IGST refund claims.** CBIC has extended the already existing mechanism for situations where the records have not been transmitted to ICEGATE due to GSTR-1 and GSTR-3B mismatch error to the periods of April, 2019 to March, 2020 and April, 2020 to March, 2021 to dispense pending IGST refund claims. The corresponding CA certificate evidencing that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period April, 2019 to March, 2020 is required to be furnished by March 31, 2021 and for April, 2020 to March, 2021 is required to be furnished by October 30, 2021. List of GSTINs who have availed benefit but have not yet submitted the certificate will be published within 15 days from the due dates.
Circular No. 05/2021-Customs dated February 17,2021	**Clarification regarding alternative measure for resolving invoice mismatch errors and genuine errors of data entry causing hold up of IGST refunds** To prevent the hold up of IGST refunds due to invoice mismatch errors or genuine errors in data entry, CBIC has decided as a measure of trade facilitation to keep the Officer Interface available on permanent basis to resolve such errors.

Circulars	Key Updates
	The exporter may avail the facility of correction of Invoice mismatch errors (error code SB-005) in respect of all past shipping bills, irrespective of its date of filling subject to the payment of INR 1000 as fee towards such rendering of service by Customs Officers for correlation and verification of the claim.
Circular No. 07/2021-Customs dated February 22,2021	**Clarification regarding payment of Agriculture Infrastructure and Development Cess (AIDC) by EOUs** In certain instances where EOUs are denied the benefit of exemption of BCD (e.g., sale to DTA), CBIC has clarified that EOUs shall also be required to pay AIDC along with BCD.

Notifications/Trade Notices/Public Notices	Key Updates
Trade Notice No. 40/2020-2021 dated February 4, 2021	**Online e-Tariff Rate Quota System for Imports introduced** A new module has been introduced by DGFT for dealing with applications pertaining to Tariff Rate Quota scheme. All applications for TRQ are to be submitted to this new module from February 8, 2021. All the applications for FY 2021 -22 that have already been submitted prior to February 8, 2021 but have not been processed, will be migrated to this new module. Requests for amendment of the TRQ licenses are also required to be submitted on this module. TRQ license will only be issued electronically and paper copies of the same will not be issued from February 8, 2021.
Trade Notice No. 41/2020-2021 dated February 15, 2021	**Online e-Certificate Management System for Imports introduced** An online e-Certificate Management System for Imports has been introduced by DGFT. From February 22,2021 onwards, applications for I Cards, Free Sale and Commerce Certificate, End User Certificate and Status Holder Certificate have to be made to this management system which would issue the certificates electronically. The certificates so issued shall consist of a QR code and UDIN for electronic verification.

Notifications/Trade Notices/Public Notices	Key Updates
Trade Notice No. 42/2020-2021 dated February 19, 2021	**Issuance of Certificate of Origins (Non-Preferential) through Common Digital Platform (CDP)** DGFT has proposed to issue Certificate of Origin (Non-Preferential) on payment of a nominal fee of INR 100 from April 1, 2021. Applicants can only choose to avail the certificate in manual mode till March 31, 2021 following which all applications for the certificate will be accepted in online mode only.
Trade Notice No. 43/2020-2021 dated February 23, 2021	**Electronic filing and Issuance of Preferential Certificate of Origin (CoO) for India's Exports under India-Mercosur PTA and India-Thailand EHS** With effect from February 25, 2021 application for the Preferential Certificate of Origin under the two trade agreements are required to be made online. Exporters should keep in mind that: • Digital Signature Certificate (DSC) would be required for the purpose of electronic submission. The digital signature would be the same as used in other DGFT applications; • The digital signature may be Class II or Class III and should have the IEC of the firm embedded in the DSC; • Any new applicant exporter would be required to initially register at the portal. The password would be sent on the email and mobile number of the IEC holder. In case the IEC holder desires to update their email on which communication is to be sent, the same may be done by using the 'IEC Profile Management' service on the DGFT website https://dgft.gov.in • Once registration is completed, the IEC branch details would be auto-populated as per the DGFT-IEC database. Applicant is required to ensure that updated IEC details are available in the DGFT system. Necessary steps may be taken to modify the IEC details online, whenever required.
Notification No. 57/2015-2020 dated February 10, 2021	**Food Import Entry Points notified to ensure safe food imports to India** The General Notes regarding Import Policy in ITC (HS) 2017 has been amended to provide for 150 Food Import Entry Points for safe food imports to India, The FSSAI has notified the authorised officers required to handle food imports listed against 1515 HSN codes at these entry points.

Notifications/Trade Notices/Public Notices	Key Updates
Notification No. 58/2015-2020 dated February 12, 2021	**Importer-Exporter Code (IEC) related provisions under the FTP 2015-2020 amended** The provisions pertaining to IEC have been amended to ensure appropriate and timely online updation of the details. Failure to do so may result in deactivation of IEC.
Public Notice No. 39/2015-2020 dated February 15, 2021	**Para 2.104 (c) of Handbook of Procedures, 2015-2020 amended to include provision for verification of the exporters declaration (self-certification basis) on the Rules of Origin under GSP Scheme** The provision relating to verification of the exporters declaration (self-certification basis) to avail benefit under the GSP Scheme has been added to Para 2.104 (c) of Handbook of Procedures, 2015-2020.
Public Notice No. 40/2015-2020 dated February 25, 2021	**Amendment in Appendix 1B, Hand Book of Procedure 2015-20** The town of Noida in Uttar Pradesh has been notified as a town of Export Excellence for Apparel products

NCLAT held insolvency proceedings as not tantamounting to recovery proceedings; Mere obligation to pay under settlement agreement not enough to constitute 'financial debt' in terms of the I&B Code

Amrit Kumar Agrawal vs Tempo Appliances Pvt. Ltd.
Company Appeal (AT) (Insolvency) No. 1005 of 2020

The appellant had advanced a loan to the principal borrower who in order to discharge the liability issued two cheques which bounced when presented for encashment leading to filing of a case under the Negotiable Instruments Act against him.

While the case filed was pending determination, a Settlement Agreement was arrived at between the appellant and the respondent where the respondent agreed to pay the amount pending along with interest and therefore issued two cheques which also got dishonoured later.

Aggrieved, the appellant approached the NCLT for the initiation of the insolvency proceedings which stating that the default in payment in terms of the Settlement Agreement to not constitute financial debt in terms of the I&B Code, did not agree to initiate insolvency proceedings. Aggrieved, the appellant approached the NCLAT which concurring with the views of the NCLT, held that the mere obligation to pay does not bring the liability within the ambit of 'financial debt' as defined in the I&B Code and thereby initiation of insolvency proceedings was unwarranted as insolvency proceedings cannot tantamount to recovery proceedings and hence it was advisable for the appellant to exhaust other remedies available under law for the recovery of the payment due.

Authors' Note:

This judgment demarcates recovery proceedings from insolvency proceedings and clarifies that the definition of financial debt as per the I & B code has to be satisfied for initiation of CIRP. A mere obligation to pay cannot be used to trigger insolvency proceedings. The above clarification was much needed as it would prevent instances where insolvency proceedings are initiated against the corporate debtor as an intimidation tactic. This judgment would thus prevent the abuse of the I&B code by individuals and corporations who are at daggers dawn with the corporate debtor.

SC held collusive transactions between the corporate debtor and its related parties to not constitute 'financial debt' in terms of I&B Code

Phoenix Arc Pvt. Ltd. vs. Spade Financial Services Ltd. & Ors.
2021-TIOLCORP-06-SC-IBC-LB

CIRP was initiated against the corporate debtor on an application filed by operational creditors M/s Phoenix Arc and Yes bank Limited. During the CIRP, claims were invited by the IRP and the Committee of Creditors (CoC) was constituted. The IRP rejected the claim of the respondents as financial creditors, on the ground that the claim was not

in the nature of a financial debt in terms of the I&B Code and also on the ground that one of the claim as a financial creditor was filed after the expiry of the time period for filing such a claim.

Aggrieved by the rejection of their claim as financial creditors, the respondents filed applications before the NCLT to be included in the CoC. The NCLT by its order allowed the applications directing the IRP to consider their claims as financial creditors, however, none of the other financial creditors including the appellant, were parties to these proceedings.

Thereafter a meeting of the CoC took place which was attended by the appellant, as well as the respondents who were the newly approved financial creditors. Following the meeting, the appellant filed applications in the NCLT for the exclusion of the Respondents from the CoC on the ground that they are parties related to corporate debtor and the individual who controls respondent companies was involved with corporate debtor in various capacities in past. Therefore, NCLT concluded that transactions entered into between the corporate debtor and respondent were collusive in nature and entered through a web of companies to showcase an independent relationship, whereas the sole purpose is to create a financial creditor and to provide the promoters of corporate debtor a back door entry into the CIRP proceedings.

Aggrieved by this, the respondents approached the NCLAT which held that the respondents are "admittedly" financial creditors of the corporate debtor, however are related parties of the corporate debtor and therefore have been rightly excluded from participation in the CoC to prevent the corporate debtor from trying to gain a backdoor entry into the CoC through these related parties.

Aggrieved by the NCLAT's approval of the respondents as financial creditors, the appellant approached the Supreme Court which set aside the NCLAT order, holding the commercial arrangements between the respondents and the corporate debtor to be collusive in nature, and therefore not constituting a financial debt in terms of the I&B Code, thus, disqualifying the respondents to be considered as financial creditors.

Authors' Note:

This judgment will bring transparency in CIRPs by ensuring that related parties of the corporate debtor do not slip in to the CoC to benefit the corporate debtor from its restructuring. This would help resolution professionals to optically examine the nature of financial creditors participating in meeting of creditors so that they can ensure the independence of the process and it does not become a mere formality whereas in essence the entire process is indirectly run by the promoters of the company under liquidation.

SC upheld validity of section 10A suspending all insolvency processes where default occurred post March 25, 2020

Ramesh Kymal vs. Siemens Gamesa Renewable Power Pvt. Ltd. 2021-TIOLCORP-08-SC-IBC

The appellant was a former MD and Chairman of the respondent. During his tenure in the respondent, he had entered into several employment/incentive agreements with the respondent. Subsequently, the appellant submitted his letter of resignation and claimed upwards of INR 1 Crore as due to him from the respondent. The

respondent acknowledged receipt of the letter of resignation 8 days later and required the appellant to provide services for the notice period of an additional 60 days.

The appellant was served a termination letter at the end of the 60 days and he subsequently filed a demand notice two days later which specified the date of demand notice as the date of default. Almost two weeks later, the appellant filed an application under the I&B Code to initiate insolvency proceedings before the NCLT on the ground of default in payment of his operational dues.

On June 5,2020, section 10A was added to the I&B Code that suspended all applications for initiation of insolvency proceedings for up-to 6 months and at max 1 year from March 25,2020, the day from which the national lockdown was implemented.

The respondent taking support of this section filed an application before the NCLT to dismiss the application filed by the appellant. The NCLT allowed the application of the respondent.

Aggrieved, the appellant approached the NCLAT which affirmed the NCLT's decision and dismissed the appeal.
Aggrieved, the appellant approached the SC which held that even though the application was filed by the appellant before June 5,2020, section 10A had a retrospective effect from March 25,2020, therefore any default that had taken place on or after March 25,2020 would be covered by this section even if application was filed before June 5,2020 as otherwise it would leave a whole class of corporate debtors where the default has occurred on or after March 25,2020, outside the pale of protection because the application was filed before June 5, 2020.

SC also held that this section however does not dissolve the debt owed by the corporate debtor or the right of the creditors to recover the debt.

Authors' Note:

The legislative intent in the insertion of Section 10A was to deal with the outbreak of Covid-19 pandemic, so as to salvage the Indian economy from the aftermath of the nationwide/state-wide imposed lockdowns which led to widespread financial distress faced by corporate entities causing many of them to be liquidated. This stern measure was taken by the Parliament to prevent massive liquidation of corporate entities. Moreover, had this provision not been inserted a lot many corporate entities would no longer be going concerns.

SC held pledging of shares by corporate debtor not sufficient to qualify as financial creditor for the purposes of CIRP

Phoenix Arc Pvt. Ltd. vs. Ketulbhai Ramubhai Patel
2021-TIOLCORP-07-SC-IBC-LB

The parent company of the corporate debtor had entered into a facility agreement with a finance company as a result of which the corporate debtor had pledged some of its shareholding in another company to the finance company. Subsequently, the finance company assigned all of its rights, titles and interest in the financial facility to the appellant. The parent company of the corporate debtor failed to pay the amount and therefore the appellant

recalled the financial facility.

A petition was filed by a bank before the NCLT to initiate the CIRP of the corporate debtor which was admitted and the CIRP was initiated. The respondent was appointed as the RP. The appellant filed its claim with the respondent which was rejected by the RP stating that the liability of the corporate debtor qua the claim was restricted to the shares pledged.

Aggrieved, the appellant filed an application before the NCLT requesting it to direct the respondent to admit the claim of the appellant as a financial debt with all consequential benefits including voting rights in the Committee of creditors of the corporate debtor. The NCLT dismissed the application of the appellant for lack of evidence with regards to its status as financial creditor in terms of the I&B Code.

Aggrieved, the appellant approached the NCLAT which dismissed the appeal holding that the pledge of shares by the corporate debtor does not amount to disbursement of any amount against the consideration for the time value of money and therefore does not satisfy the criteria for classification as financial debt as per the I&B Code.

Aggrieved, the appellant approached the SC which upheld the view of NCLT and stated that the pledge agreement followed by the assignment of the rights makes the appellant at best a secured creditor and not a financial creditor of the corporate debtor.

Therefore, affirming RP's decision, the SC held that the parent company of the corporate debtor had promised to repay the loan and undertaken to discharge the liability towards the finance company. The Pledge Agreement nowhere contains any contract obliging the corporate debtor to perform the promise, or discharge the liability of its parent company. The liability of the corporate debtor therefore stands restricted to the shares pledged.

Authors' Note:

As rightly held by the SC, the liability to pay the loan was of the parent company of the corporate debtor and not the corporate debtor itself. The want of the appellant to be treated as financial creditor where there is no contract binding the corporate debtor to discharge the liability in full is absurd in light of the pledge agreement which restricts it to the shares pledged. This paves the way where no unwarranted benefits shall be derived from I&B code.

NCLAT directs department to not deduct TDS on sale of property of company under liquidation

Om Prakash Agarwal, Liquidator vs. Chief Commissioner of Income Tax (TDS) & Anr 2021-TIOLCORP-11-NCLAT

The appellant filed an application before the NCLT for issuance of direction to the Respondents for non deduction of 1 % TDS from the sale consideration of the assets of the corporate debtor on the premise that Income Tax dues can be recovered by the department as per mechanism set out under Section 53 of I&B Code, furthermore, the provision of deduction of TDS under the IT Act is inconsistent with Section 53 of the Code and by virtue of Section 238 of Code, Section 53 of Code has over-riding effect.

The NCLT not convinced with this contention of the appellant dismissed the application holding that the

deduction of tax at source under the IT Act does not mean assessment and raising demand for collection of Tax by the Department. Collection of tax will arise only after passing orders under the IT Act subsequent to filing of Income Tax Return by the assesse. The deduction of TDS does not tantamount to payment of Government dues in priority to other creditors because it is not a tax demand for realization of tax dues. It is the duty of the purchaser to credit TDS to the Income Tax Department.

Aggrieved, the appellant approached the NCLAT which taking note of an SC judgment that stipulated the Income Tax Department to be treated as a secured creditor and is given priority in liquidation proceedings. NCLAT also held that this is substantially different from Sec. 53 of I &B Code, which assigns the 5th position to govt. dues (including Income Tax dues) in order of priority.

Thus, observing the incongruence in the two laws, reference was made to Sec. 238 of I&B Code basis which Sec. 53 of I &B Code was found to override the provision for TDS enshrined in the IT Act.

NCLAT also held that on account of absence of any provision under the IT Act or I&B Code or the Liquidation Regulations for filing of Income Tax Return, the Liquidator of a company in liquidation under I&B Code is not required to file Income Tax Return and therefore the question of TDS does not arise.

Authors' Note:

This judgment will ensure quick and efficient liquidation of companies as the necessity to get tax deducted at source while liquidating a bankrupt company has been explicitly negated.

Non-service of Auction Sale Notice would vitiate the auction sale under SARFAESI Act

Lalit Mohan Aggarwal And Anr vs. Andhra Bank And Ors LSI-102-HC-2021(DEL)

Auction purchaser (Petitioner) had challenged, before HC, the order of Debt Recovery Appellate Tribunal, which set aside the auction process on the ground of non-serving the auction sale notice under rule 8(6) of Securities Interest (Enforcement) Rules, 2002.

Mortgager (Respondent) had filed a securitization application before Debt Recovery Tribunal to challenge the auction sale of the mortgaged property under SARFAESI Act. However, Debt Recovery Tribunal has rejected the contention of mortgager and held that 30 days' notice under rule 8(6) was duly served by the bank and publication was also made in the newspaper.

Debt Recovery Appellate Tribunal has reversed the said order passed by Debt Recovery Tribunal and has agreed with the contention of the mortgager and held that the auction sale process is vitiated.

HC took note of the submissions made by the petitioner that mortgager had been issued repeated notices to inform him of proposed auction sale and that the date, time and

other particulars of the said auction. In pursuance of the said notices, publication was affected in two newspapers. However, HC had drawn its attention to these notices and found that neither of these notices informed the mortgagor of the specific date or place the auction in compliance of rule 8(6).

HC had held that publication of notice about the auction in newspaper is not a sufficient notice to the borrower in terms of rule 8(6) as the purpose of this rule is twofold. Firstly, to enable the borrower to redeem the mortgage and secondly, to ensure that in case of his inability to redeem the mortgage, he has opportunity to bring genuine and serious buyers at the auction so that his property is sold at the highest possible price and thus HC dismissed the petition.

Authors' Note:

This judgment has clearly reinforced the view that a notice to the borrower under rule 8(6) of the Security Interest (Enforcement) Rules, 2002 is a mandatory requirement laid down by the statute, and failure to issue such a notice would vitiate the auction itself. Mere publication of auction notice in newspaper would not be sufficient requirement in terms of rule 8(6). Notice under rule 8(6) should be served 30 days before the auction and should clearly state the date and place for holding sale auction.

Fast track process of mergers extended to start-ups

MCA has extended the fast track process of merger to startup companies as well. On 1st of February, 2021, MCA has notified amendment by inserting a sub rule (1A) into rule 25 of Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 thru the notification no. G.S.R. 93 (E).

Earlier this scheme of merger or amalgamation was available for merger between small companies or a holding and wholly owned subsidiary company. However, this scheme is now available for merger between two or more startup companies or one or more startup companies with one or more small companies.

For the purpose of this notification, definition of Startup Companies has derived from a notification dated 19th February, 2019 issued by DPIIT. Notification dated 19th February, 2019 issued by DPIIT provides that a Company shall be considered as start-up company:

- Up to 10 years from the date of incorporation under Companies Act, 2013
- Turnover for any of FY up to 10 years shall not exceed 100 crores;
- Such company shall be working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Authors' Note:

This move is towards providing opportunities for the startups to grow. Fast track process of merger and amalgamation is available under section 233 of Companies Act, 2013. Section 233 has also given power to government to notify class of company or companies to avail the benefit of this merger scheme. Seeing the difficulties for startup companies and to give them an impetus to achieve inorganic growth, central government has taken this step to extend this benefit to Startup Companies so that they can save time and effort on any restructuring exercise.

Application of certain provisions of Companies Act on LLP

MCA has issued a public notice dated 19th February, 2021 thru which it has informed the stakeholders that certain provisions of Companies Act, 2013 with modification and adaptation will be applicable to LLPs. Section 67(1) of LLP Act, 2008 empowers the CG to extend the application of any provision of Companies Act, 2013 to the LLPs. Detailed notification for this effect shall be issued soon. These certain provisions of Companies Act shall be as follows:

Register of significant beneficial owner in a LLP

Significant beneficial owner as defined in section 90 shall make a declaration of his beneficial interest in the company to that company only, specifying the nature of his interest and other particulars. Also, company shall maintain the register of interest declared by every individual. Same will be applicable to partner of LLP to file the declaration of his beneficial interest and the LLP to maintain the register of beneficial interest declared by partner.

Grounds for disqualification of partners

Section 164(1) and 164(2) provide for grounds of disqualification of director. These provisions will be

extending for provisions of disqualification of partners.

Threshold for holding number of partnerships

Sections 165(1), (3) to (6) are applicable for number of directorship one can hold in various companies at the same time. These sections will restrict the partner also to specified number of partnership he can hold at the same time.

Grounds for vacating the office of partner

Sections 167(1) to (3) deal with grounds for deeming the vacation of a director. These sections shall be made applicable to provide the grounds for vacation of the office of the partner.

Power of inspector to inspect the books of the LLP

Section 206(5) provides that CG may direct an inspector to inspect the books of the company and section 2017(3) empowers the inspector to exercise all the powers of a civil court as vested under the Code of Civil Procedure, 1908.

Appeal to tribunal against dissolution order passed by registrar

Section 252(1) to (3) provides for right to appeal to tribunal against order of dissolution of registrar.

Offences to be Non-Cognizable

Section 439 provides that every offence committed under CA, 2013 shall be deemed to be non-cognizable except offences referred to in section 212(6).

Authors' Note:

In a move aimed at improving the compliance of LLPs and to better regulate designated partners this is a positive step taken by Central Government. It would help curb bad practices and increase governance standards in LLPs as well.

No official notification has been released so far regarding application of Companies Act, 2013. However same is expected soon.

Producer Companies Rules, 2021

Producer Companies are body corporate having objects or activities such as production, harvesting, procurement or other activities related to agriculture produce. Earlier, producer companies were regulated by Companies Act, 1956, however when Companies Act 2013 was introduced, there were no provisions for such companies, later vide Companies Amendment Act 2020, the provisions for regulation of Producer companies have been introduced. In pursuance of these provisions MCA has notified new Producer Companies Rules, 2021. These rules have been notified with regards to "Change in place of registered office from one State to another state" and "Investment of general reserves".

Salient features of such rules are as follows:

Change of place of registered office from one State to another

Pursuant to this notification, Rules 27, 30 and 31 of the Companies (Incorporation) Rules, 2014 which deals with provision for change in registered office from one state to another, shall be applicable to producer companies as well.

Previously, Companies (Amendment) Act, 2020 had notified new provisions for regulating the producer companies; wherein provisions for change in memorandum

in relation to change of registered office from one state to another was notified, however the rules for procedure for change were not notified at that stage which have not been introduced vide aforesaid regulation.

Mode of Investment of general reserves

Provisions relating to the investment out of general reserve were also provided under Companies Amendment Act, 2020 in case of producer companies; wherein limited options of investment out of general reserves were provided.

However, thru amendment notification, MCA has specified various other options to invest out of general reserve in any one or in combination of the following, namely:

(a) In approved securities, fixed deposits, units and bonds issued by the CG or SG or Co-operative societies or scheduled ; or

(b) In a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or

(c) with any other scheduled bank; or

(d) In any of the securities specified in section 20 of the Indian Trusts Act, 1882 (02 of1882); or

(e) in the shares or securities of any other inter-State co-operative society or any co-operative society; or

(f) In the shares, securities or assets of public financial institutions specified under clause (72) of section 2 of the Act.

Authors' Note:

This move is in continuation of new producer company provisions as inserted into Companies Act, 2013 by Companies (Amendment) Act, 2020. These new rules have provided the clarification on some of unclear positions created by Companies (Amendment) Act, 2020. Government may come up with further rules also which will bring clarity on other unclear positions created by such Companies (Amendment) Act, 2020.

Reduced timeline for acceptance of right issue

Through the notification G.S.R. 113(E) dated 11th of February, 2021, MCA has reduced the timeline for acceptance of the offer of the right issue from earlier 15 days to 7 days. Companies (Amendment) Act, 2020 has reduced the timeline from 30 days to 15 days to expedite the process of right issue.

In continuation of previous reduction made through Companies (Amendment) Act, 2020, this amendment notification has been released.

Now the present situation is that offer of right issue for acceptance shall not be less than 7 days and not exceed 30 days from the date of the offer, within which if offer is not accepted then such offer shall deemed to be declined.

Authors' Note:

This move is to expedite the process of right issue so as to ease the compliance and avoid the unwarranted delay. Right issue has been promoted by government by issuing various notification relating to right issue in recent past months.

Relaxed scope of Listed Company

Thru the notification no G.S.R. 123(E) dated 19th of February, 2021, MCA liberalised the definition of 'Listed Company'.
Prior to this notification, a company with any of its securities listed on a stock exchange was counted as a listed company and had to comply with Sebi's Listing Obligations and Disclosure Requirements Regulation, 2015.

An insertion of proviso to the definition of listed company has been made by Companies (Amendment) Act, 2020, which has already provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed, shall not be considered as listed companies.

In pursuance of above inserted proviso, in the Companies (Specification of definitions details) Rules, 2014, after rule 2, another rule of 2A has been inserted, which provides that following classes of companies shall not be considered as listed companies, namely:-

(a) Public Companies:

(i) Which have not listed their equity shares on a recognised stock exchange but have listed their-

- Non-convertible debt securities issued on private placement basis;
- Non-convertible redeemable preference shares issued on private placement basis;
- Both of above categories.

(ii) Which have not listed their equity shares on a recognised stock exchange but whose equity shares are listed on permitted stock exchanges in permissible foreign jurisdictions or other jurisdiction.

(b) Private Companies which have listed their non-convertible debt securities on private placement basis on a recognised stock exchange.

Authors' Note:

The Centre has taken the next big step towards deepening of corporate bond market by changing the definition of "listed companies". Such a move would help deepen the corporate debt market and enable ease of doing business. This relaxed criteria for a listed company, a long awaited industry ask, would give needed compliance relief to those private and closely held public companies which have got only non-convertible debentures/redeem-able preference shares listed and currently being treated on the same footing as other equity listed companies for the purpose of compliance.

The central government has been following the approach of reducing the rigors of compliance in genuine cases, while stepping up the disclosure requirement and technology deployment for compliance management.

Revised Scope of Small Company

In continuation of proposal made in the budget for relaxing the provision of Small Company and to cover more entities within the definition of Small Company, (we also covered in our Vision 360 Union Budget edition), MCA has made such proposal effective thru the notification no G.S.R. 92(E) dated 01st of February, 2021. Definition of small company has been relaxed by increasing the threshold limit of small company which is as follows:

Particulars	Old Provision	New Provision
Definition (Small Company)	Paid-up capital ≤ INR 50 Lakh and Turnover ≤ INR 2 Crore	Paid-up capital ≤ INR 2 Crore and Turnover ≤ INR 20 Crore

Author's Note:

The CA, 2013 provides many privileges to small company in terms of compliance requirements. Some of those benefits or privileges are: no requirement of preparation of Cash flow statements, holding 2 board meetings instead of 4, and reduced amount of penalties etc. This extension of limit will incentivize more than 2 lakh companies in easing their compliance burden and would help start-up and MSME sector to operate in Company framework with lesser burden of compliances.

Relaxed Provisions of One Person Company

To give effect to the proposal made in budget regarding the key changes in provisions relating to One Person Company (OPC), MCA has notified the amendments into corresponding provisions of Companies Act, 2013.

OPC concept was introduced in the past to facilitate small businesses to operate in company form with one member instead of usual requirement of at least 2 members. Apart from this, there are numerous other benefits in terms of lesser compliances which are available to OPC. In this Union Budget, the provisions with respect to such companies have been further relaxed to help the small businesses. The key changes are as follows:

Particulars	Old Provision	New Provision
NRI to set up OPC	Only resident Indian citizen were allowed to set up an OPC	Now, NRI can also set up an OPC

Particulars	Old Provision	New Provision
Reduced residency limit	An individual shall be deemed to be resident in India if he stays in India for at least 182 days during the last financial year	Now the limit of minimum 182 days stay in India has now been reduced to 120 days
Removal of the restrictions on conversion of OPC into Private Company	**Restriction on limit of Turnover and capital:** If paid-up share capital of OPC and its average turnover during the preceding of 3 consecutive years exceed INR 50 lakh and INR 2 crores respectively then it will lose the status of OPC. **Restriction on time period:** Minimum 2 years have been elapsed to covert voluntarily into any other type of company which will be subject to above condition.	As per proposed amendments, an OPC can convert itself into any type of company without any restriction of turnover and paid-up capital. Conversion can be done by OPC voluntarily at any time.
Voluntary Conversion of Private Company into OPC	Private Company having paid-up share capital of INR 50 lakh or less and its average turnover of INR 2 crores or less during the preceding of 3 consecutive years may convert itself into OPC	Now this restriction has also been removed and now any private company can convert itself into OPC without being subjected to any threshold.

Author's Note:

In India, the concept of OPC came into existence in 2005. This concept helps in giving a spotlight to single person economic entities such as small traders. An OPC enjoys many benefits such as relaxation in compliance with board meetings, financial statement inclusions, quorum, and mandatory rotation of auditors. Over the years, OPCs have ventured into other sectors including construction, mining and quarry, and electricity, etc. Hence, this move will give more relief to start ups and innovators. Also, it will ease the entry of the Indian diaspora into the market.

Apart from the relaxations proposed in budget for OPC, where budget proposed to give freedom to OPC to convert itself into private company at any time and without restricted to any turnover, notification has provided relaxation by removing threshold for conversion from private company to OPC.

Global consensus-based solution to be achieved by G20 on digital economy by mid-2021

G20 Finance Ministers and Central Bank Governors met for the first time in 2021 to discuss the need to reform the current system so as to face the challenges posed by globalization and digitization of the economy. A global consensus- based solution on the rapid digitalization of the economy is sought to be achieved by the G20 by mid-2021.

A dedicated discussion took place in the first meeting of the year, on the role that the accelerating pace of digitalization in payments and other financial services is playing in enhancing or endangering the financial inclusion of the most vulnerable and underserved groups.

A broad consensus was achieved on the need to identify the related gaps that may have emerged as a consequence of the COVID-19 crisis and to share country-specific experiences and policy responses in the field of digital financial awareness.

Reference:
https://www.g20.org/first-meeting-of-the-g20-finance-ministers-and-central-bank governors.html

New peer review process agreed upon by OECD to foster transparency on tax rulings

The process for the BEPS Action 5 peer review of the transparency framework for the years 2021 to 2025 was approved by the OECD/G20 Inclusive Framework on BEPS. This framework groups over 135 countries and jurisdictions on an equal footing for multilateral negotiation of international tax rules.

So far 36,000 exchanges on more than 20,000 tax rulings have taken place in the years 2017 to 2020 in the 124 peer reviewed jurisdictions in the first phase of peer reviews alone.

The latest peer review undertaken by the Inclusive Framework on BEPS, found that 81 jurisdictions are fully compliant with the minimum standard.
With the renewed peer review process being approved, the results of the 2021 review in relation to the year 2020 are expected later this year.

Reference:
http://www.oecd.org/tax/beps/oecd-agrees-new-peer-review-process-to-foster-transparency-on-tax-rulings.htm

Singapore Budget 2021 announced extending COVID-19 rehabilitation measures to support businesses

The Minister of Finance, Mr. Heng Swee Keat presented the budget for FY 2021-22 announcing a COVID-19 resilience package with an outlay of $11 billion to address public health and safe re-opening of the economy, support workers and businesses and target support to stressed sectors of the economy.

With emphasis on the motto of emerging stronger together, 250% tax deduction was extended to qualifying donations made till end of 2023.

Having regards to the growing digital economy GST levy has been expanded to imported low value goods and non-digital imported B2C services from January 1, 2023

Reference:
https://www.mof.gov.sg/singaporebudget/budget-speech

Payment for Software not taxable as royalty. End of a long debate!

A. Backdrop of Controversy

Given the multiple interpretations involved, the classification of consideration received for use of software as 'Royalty' is one of the extensively contested topics in the taxation domain. The controversy is almost two decades old wherein revenue kept contending that consideration received for granting use of software amounts to 'Royalty' and required deduction of tax at source.

Further, various aspects such as intangibility, transfer of use, licensing, royalty and so on make every contention different from others, making the classification and taxability of software more difficult. Through this time, taxpayer's kept contending that it is business profit of sellers and cannot be subjected to tax in absence of a business presence or PE in India.

B. Recent ruling by the Supreme Court

The Apex court of India has recently passed a landmark judgement to put an end to wide range of litigations involving classification of software, deduction of withholding tax and other related issues. SC has held that consideration for license to use computer software do not constitute "royalty" under international tax treaties signed by India with various countries and are in the nature of normal business profits which can be subject to tax only when seller has PE in India.

SC had grouped various appeals into four categories as follows:

1. Computer software was purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer;

2. Resident Indian companies acted as distributors or resellers, by purchasing computer software from foreign suppliers or manufacturers and then reselling the same to resident Indian end-users;

3. Foreign Distributor, who is a non-resident vendor, after purchasing software from a foreign, non-resident seller, resold the same to resident Indian distributors or end-users; and

4. Computer software was affixed onto hardware and was sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users.

SC has observed that the section 14 of the Copyright Act makes it clear that "copyright" means the "exclusive right" and only when the owner of copyright in a literary work assigns wholly or in part, all or any of the rights contained in section 14(a) and (b) of the Copyright Act, in the said work for a consideration, the assignee of such right becomes entitled to all such rights comprised in the copyright that is assigned, and shall be treated as the owner of the copyright of what is assigned to him.

However, upon scrutiny of End-user service agreement, it was found that 'what' was granted to the distributor was merely a non-exclusive, non-transferable license to resell the computer software, it was expressly stipulated that no copyright in the computer program is transferred either to the distributor or to the ultimate end-user.

Further, the SC stated that passing on a right to use for which the owner has a copyright is not the same thing as transferring or assigning rights in relation to the copyright. The enjoyment of some or all the rights which the copyright owner has, is necessary to trigger the 'royalty' definition.

Thus, a non-exclusive and non-transferable licence enabling the use of a copyrighted product cannot be construed as an authority to enjoy any or all of the enumerated rights ingrained in a copyright.

Further relying on its earlier judgement in case of TCS vs State of AP in context of sales tax, it has been held that 'what' is licensed by the foreign, non-resident supplier to the distributor and resold to the resident end-user, or directly supplied to the resident end-user, is in fact the sale of a physical object which contains an embedded computer programme, and is therefore, a sale of goods.

SC remarked that the definition of 'royalty' under the IT Act has wider scope than that covered under DTAA. Thereby, the wider scope of royalty under section 90(2) of the IT Act would have to be ignored, as it is wider and less beneficial to the Assessees than the definition contained in the DTAA.

Further, placing reliance on the OECD commentary, it was observed that as the Contracting States to which the persons deducting tax/Assessees belong, can conclude business transactions on the basis that they are to be taxed either on income by way of royalties for parting with copyright, or income derived from licence agreements which is then taxed as business profits depending on the existence of a PE in the Contracting State.

Accordingly, it was held that the charging and machinery provisions contained in Section 9 and Section 195 of the IT Act are interlinked and deduction of tax is to be made only when the amount is taxable.

The Sparkle ...

Certainly, the judgement by the Hon'ble SC will boost trust of foreign investors in the taxation system and judiciary of India and also provides relief to the corporates from one of the recurring issues under the Income Tax Act. Henceforth, the payment for use of software would require analysis from equalisation levy perspective as the scope was widened enough to cover services made available through online mode.

GLOSSARY

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

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