VISION 360

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A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

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EDITORIAL

Vision 360: Settling In!

In this round-about of the pandemic, just like the previous year, things are looking better for the coming days! With the slow but gradual plans for re-opening of the economy, the Government seems to have laid down a well-guarded road-map for the eventual release of lock-downs throughout the Country. However, there is still a long way to reach the pre-COVID-19 days. Accordingly, there still exists a continuous need to provide reliefs amid the tough times.

In line with such reliefs, the Regulatory bodies have exempted IGST on import of Remdesivir, medical grade oxygen, oxygen related equipment and other COVID-19 vaccines till the prescribed date. Similarly, to solve the liquidity issues faced by a number of assessees, the CBIC has announced a 'Special Refund & Drawback Disposal Drive' for pending claims.

THE CBIC HAS ANNOUNCED A 'SPECIAL REFUND & DRAWBACK DISPOSAL DRIVE' FOR PENDING CLAIMS.

Even in the Direct Tax front, the CBDT has released a slew of reliefs by extending the compliance due dates of Audit Report, Income Tax Return, etc. In another such relief, the CBDT has exempted Hospitals, COVID care centers from Section 269ST upto May 31. It would also be worth to note that the Mumbai ITAT has held Morgan Stanley's income from IDRs to be exempt under Art. 22 of India-Mauritius DTAA. Given the current pandemic situation and the difficulties faced by the trade and industry, we have penned down an article on how to assess and manage the risks in relation to Financial Reporting, Accounting and Audit during the pandemic.

On the Indirect Tax front, the CBIC, similar to the reliefs provided by CBDT, has relaxed various GST compliance provisions including the extension of various due dates, late fee waivers, interest reductions, etc. which would substantially help the taxpayers to comply with the prescribed provisions. As for the judicial developments, the Delhi HC has quashed provisional attachment of bank account in absence of material for alleged transaction. In another important judgement, the Madras HC has held that refund cannot be denied on account of technical glitches on GSTN portal. This judgement of the Madras HC shall help the assessees, who have been facing similar issues in their refund applications.

Further, given various contradictory views of the perpetual issue of Intermediary services, which has transition from the Service Tax law, we have penned down an article on the said subject, with our insights, interpreting the judicial view vis-à-vis the law as laid down.

In the Regulatory news, it would be pertinent to note that the Apex Court has notably held that the mere possibility of alternate interpretation, is not sufficient to interfere with Arbitrator's 'reasoned' award. Although this judgement merely re-affirms the settled principle, it is contemplated that the Courts will now be cautious before interfering with the arbitration awards. In a similar fashion to that of CBDT and CBIC, the MCA has also extended various compliance reliefs on account of the resurgence of the COVID-19 pandemic.

Further, acknowledging the Social Responsibilities shown by various Companies, the MCA has issued a clarification on CSR expenditure qua eligibilities and PM Cares fund. It shall also be worthwhile to note that the SEBI has relaxed the rules for listing start-ups with a view to strengthen the Corporate Governance.

Undoubtedly, what first seemed to be a phase of our lives, seem to be turning into ways of our lives, especially the advent of Work From Home. However, this slow but gradual change in our lives seem to be growing on us in a positive way and we as a society seems to be settling rather well to this new way of life.

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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INTERNATIONAL DESK

SPARKLE ZONE

GST on Intermediary Services – Unsettled!

Background

Pursuant to the Budget of 1991 under the leadership of then Finance Minister, Dr. Manmohan Singh, the Government of India had opened up the economy for foreign investment, which led to the inevitable advent of Globalization in India. Thereafter, various Multi-National Companies had set-up their businesses in India and some of them witnessed tremendous growth. Following suit, a number of organizations began their operations in India, which inter alia involved working with intermediaries.

In order to ensure that no Revenue is lost, the Government had introduced the concept of intermediary services so with a view to tax cross-border transactions of services provided to persons situated outside India but performed within the territory of India. This concept was introduced in the Service Tax Regime. Under the said law, the term 'intermediary service' had been defined as a broker, agent or any other person, who arranges or facilitates a provision of a service or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account.

In order to provide a clarity regarding taxability qua Intermediary Service Provider, an Education Guide had been issued by the erstwhile CBEC, wherein, it had been clarified that an 'intermediary' is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Therefore, an intermediary is involved with two supplies at any one time:

A. The supply between the principal and the third party; and

B. The supply of the Agent's own service to his principal, for which a fee or commission is charged.

In light of the above explanation, it can be inferred that an intermediary arranges or facilitates a provision of a 'main service' between two more persons. Further, there are two differentiable services involved i.e., the supply between the principal and the third party; and the agent's supply of his own service to his principal, for which a fee or commission is usually charged.

GST Provisions

It would be pertinent to note that the definition of the term 'intermediary service' has been borrowed mutatis mutandis from the Service Tax regime. However, the IGST Act specifically excludes a person who supplies such goods or services or both or securities on his own account. Thus, a person arranging and facilitating supplies between two persons is covered by the definition and not independent suppliers of such supplies.

With the shift from the erstwhile law to the current GST regime, the disputes have also been carried-forward. The disputes majorly relate to supply of services such as marketing, support and agency services performed by Indian supplier towards supplier of main supplies sitting outside India.

The dispute mainly arises due to divergent views of various Judicial authorities and quasi-judicial authorities. It shall be noted that the Place of Supply ('POS') provisions under GST provides that in case of intermediary services provided to a person situated outside India, the same shall be treated as services performed in India despite location of recipient being outside India. In laymen terms, the supply does not qualify as export of services under the IGST Act.

The Dispute

In the erstwhile regime, the Mumbai Tribunal in the case of Vodafone Essar Cellular Limited **[2013-TIOL-566-CESTAT-MUM]** had held that a customer's customer is not one's customer. When a service is rendered to a third party at the behest of the customer, the service recipient is the customer and not the third party. For example, when a florist delivers a bouquet on your request to your friend for which you make the payment, as far as the florist is concerned you are the customer and not your friend.

Further, the New Delhi Service Tax AAR in the case of GoDaddy India Web Services Private Limited **[2016-TIOL-08-ARA-ST]** had ruled that business support services in the form of marketing and promotion, oversight of third-party call centers and payment processing, were not construed as intermediary services since they were provided as a main service by the service provider on his own account, even though third party customers benefitted from such services being provided to the service recipient.

Similarly, in the case of Universal Services India Private Limited **[2016-TIOL-09-ARA-ST]**, the New Delhi AAR had ruled that the payment processing services would not be considered intermediary services if the service provider was providing the services separately on his own account. It was reasoned that the payment processing services were themselves a main service and were separate from the web hosting services, which the service recipient was providing to third party consumers, and with which the payment processing service provider had no concern.

However, since then, many GST Advance Ruling authorities have taken a divergent view in this matter. In the case of Global Reach Education Services Private Limited **[2018-TIOL-2-AAAR-GST]**, the Applicant had been providing course promotion and recruitment services to various foreign Universities. The Applicant only provided services to such foreign universities and not to prospective students in India. Since the Applicant assisted Indian students with their recruitment, and in fee collection, it did not change the nature of the relationship between the Applicant and foreign universities. In such a situation, the third party is never the 'recipient of services' as far as the supplier of services is concerned.

In another GST Ruling, in the case of Thomas Joseph Nelissary [KER/37/2019], it had been ruled that management consultancy services provided by the Applicant to clients abroad falls under SAC Code 998311. The Management consulting and management services including financial, strategic, human resources, marketing, operations and supply chain management and such services do not in any way, facilitate or arrange supply of goods or services or both between two or more persons and will not fall within definition of term 'intermediary'.

In view of the above, it can be seen that there are various contradictory judgements on the subject matter. The CBIC with a view to streamline the issue, had issued Circular No. 107/26/2019 – GST dated July 18, 2021 in respect of ITES, clarifying that if a person provides a service independently on his own account and not as an agent of a third party, he would not come within the ambit of being an 'intermediary'.

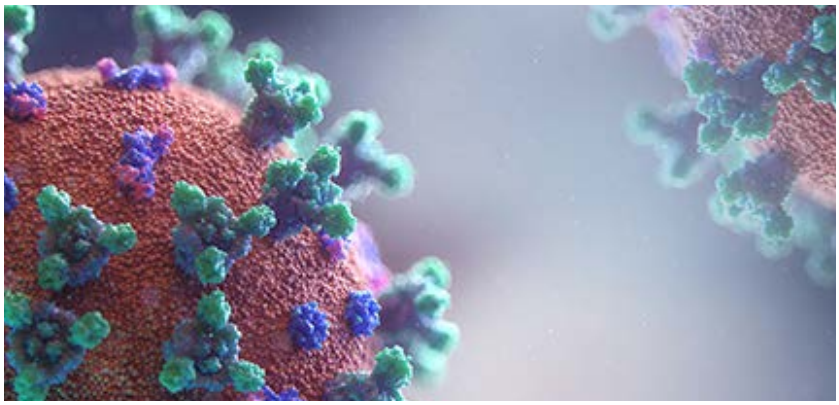
Authors' Note:

The Rajya Sabha in December of 2017 in its 139th Report had provided that intermediary services shall be treated as exports. It is high time that this report is brought into implementation. If treated as exports it could attract more investments and accelerate CFE earnings. Such implementation will put India at par with other countries where subject transactions are exempt from taxes and are treated as export as per WTO norms.

As the GST had been implemented with a view to ease the compliances, the Government shall streamline the taxation procedures, especially those, which have been matters of perpetual litigation, so as to ensure the tax policies are just and transparent.

Financial Reporting, Accounting and Audit during Pandemic: How to Assess and Manage the Risks

Since the Pandemic has developed over the world from early 2020, the accountants world over has gone back to basics of assessing accounting and auditing risks. The volatility caused by Covid-19 varies based on geography, industry segment and a number of other factors. Amidst such volatility, it becomes obtrusive to calculate, estimate and rely on accounting judgments which is a basic aspect of accounting and financial reporting especially under international accounting standards. Some of the key risks which accountants and auditors are required to evaluate under current circumstances are going concern, impairment, reliability of estimates and forecasts and technology being used to carry out work remotely. The future impacts of pandemic are not known and economic and operational uncertainties are ever changing these days. In such scenario, one may look at a company's ability to meet their obligations on the basis of most current business information and updated projections. There is a constant need to revise cash flows and profit & loss forecasts or to create multiple scenarios for each forecasts period. Another key area to look at is company's available liquidity and ability to access funds as previous estimates of cash flow generation and internal accruals are highly susceptible to change. Needless to say the future forecasts and cash flows estimates would play a key role in deriving conclusions on going concern assumptions which has become a key issue these days. The auditors are taking a view that a company must have sufficient cash flows and liquidity to meet its obligations for a period of at least one year from the report date. Moreover auditors are more diligent and cautious while reviewing the going concern assumptions and forecasts estimates. In past, companies were required to address only known issues while doing calculations for forecasts and cash flows, but economic issues surfacing due to pandemic have created an environment of umpteen precariousness and hence auditors are asking for more and more scenario analysis considering even hypothetical situations.



Another focus area is impairment as business scenario have changed for many companies, while some are witnessing significant reduction in volumes the others are seeing changes in their business models. This indicates requirement for reassessment of impairment testing and re-evaluation of factors considered for arriving at impairment conclusions in pre-pandemic scenario. While the impairment testing and going concern evaluation for any given company goes hand in hand, however the contours of assessment and conclusion vary. The impairment is more stressed on specific asset or class of assets, whereas the going concern is looked at more for company as a whole. Other key factors which required consideration are fraud risk assessment and technology risk assessment. Pandemic has surely pushed assumptions and have put pressure on KPI management which increases the vulnerability to fraud. The technology on the other hand is playing a key role in remote working from both accounting and auditing stand point, hence it is essential to evaluate and address technology related risks.

We have had more than a year's performance in pandemic era which has helped us to adapt to the environment and assess challenges and risks. Thus, despite added complexities the accountants and auditors must continue to focus on delivering high quality financial statement and reports that fully comply with standards for objectivity and professional skepticism.

Madhur Sharma

Chief Financial Officer,
Louis Dreyfus Company India Private Limited

Mr. Sharma shares his perspective on the commodity trading sector in an ever-changing economic, business and regulatory environment.

The country is currently going through a second wave of COVID-19, causing economic disruptions again. Though the government has not resorted to a complete lockdown, this is still impacting the economy to a great extent. In your view what is the impact on commodity markets?

Firstly, I would like to express my concern about the current situation in India, and my deepest sympathy to those affected by the pandemic. LDC as a company stands united to support the community at large, which is why we have put together a Covid-19 relief response that includes:

- securing 50 oxygen concentrators for hospitals in Kutch, Gurgaon and Bangalore,
- sourcing and delivering oxygen cylinders to Paradip,
- donating 3,000 rapid antigen testing kits to the Kutch district health authorities, and
- providing a free ambulance service in Koppa, Karnataka for the next 2 months.

That said, we are also mindful that as an agricultural commodities merchant, our responsibility to our customers – and to consumers globally – is to guarantee essential supply chain continuity despite the challenging situation.

This means ensuring that our operations continue despite the logistics disruptions caused by the virus, and to the related increase in volatility we observe in commodities markets. Thanks to the expertise, adaptability and dedication of our teams, we have navigated this context efficiently, reliably and profitably, while putting in place measures to help keep our people safe.

The indirect tax space is fast evolving over the last few years. What has been the impact of such changes on the economy and the commodity market? Do you believe that such changes are aligned with overall long-term growth objectives?

India like most of the progressive economies of the world have shifted to digitalization when it comes to tax compliances. The transparency that these procedures will bring about will ultimately lead to reduced tax evasion and smooth economy.

Government's continuous efforts in digitizing the indirect tax space are a welcome move in the right direction. Amendments such as the e-bill, e-invoicing , RFID tagging etc will bring in more transparency in the commodity market and eventually lead to an equal distribution of wealth and reduction in Black Money too.

While we welcome the changes introduced in the indirect tax space and recognize its role in maintaining India's economic growth in the long term, we are also aware of the challenges such changes bring to the tax payer in terms IT systems preparedness, educating and aligning the on ground team, ensuring timely and correct filing of monthly/annual tax returns.

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

Louis Dreyfus Company in India works with more than 1,000 suppliers in any given year. So it is an uphill task to ensure compliance by all our suppliers. Eventually, large companies like LDC face a situation where input credit

eligibility is lower, and we need to pay additional taxes from our funds.

This also applies on the direct tax front, as we need to ensure compliance with provisions for tax at source, which require us to monitor PAN card registrations and Aadhar linking status to arrive at the correct rate of deduction. We trust that the government recognizes these issues, faced by many taxpayers, and heeds the concerns raised by industry bodies.

Have you been facing any issues in Direct Tax assessments? Do you expect any changes that may help industry to ensure a better governance and compliance?

Following the path of other mature economies, the burden and compliance should fall on the taxpayer. The role of the tax authority would then be more to simplify the law, provide guidance on application of the law, and apply a risk-based approach to audits. This approach would further facilitate business, provide for more secure tax positions and reduce the audit burden on taxpayers.

The introduction of faceless assessments is a good step in this direction and will help companies with good tax governance to sail smoothly through the assessment process. In the past, our industry has faced various issues on account of cases being decided based on the perceptions of assessing officers, instead of on merit. Therefore, extending faceless assessment to TDS assessment and transfer pricing assessment would definitely help in the longer run.

The country is going through a phase where Government commitment to incentivise export is on a declining trend, whether owing to WTO decisions/rules or burden on Government treasury on account of various other reasons. How does this impact the Industry and export volumes?

Any incentive on Agri-commodities directly benefits Indian farmers, as it supports Indian prices and makes exports more competitive. As Commodity merchants we work for small margins, and the % of incentives doesn't affect us much as it ultimately gets passed to the farmer in buying price, or the buyer in selling price, or a combination of both. We would support any decision taken by the Government in terms of incentive schemes or announcement of applicable rates under newly introduced RoDTEP regime.

Recently Government has introduced farm laws to de-regulate the agricultural sector. What is your view on the government policies, and how it would help commodity trading in the country?

We welcome all laws that help increase farmers' incomes and diversify a sector that is key to both global food security and national economic growth. We have seen impressive growth in the agri-sector in the last few decades, contributing to total GDP in FY 2020-21 with almost 20% according to the Economic Survey 2020-21. This sector provides employment to over 60% of India's population but has rarely seen agrarian structural reforms. The 3 laws introduced by the government show an intent to liberalize the sector and attract more talent and investment.

What is your outlook on digitisation and what role would it play in better corporate governance and compliance?

We need to embrace innovation in order to meet the ever-evolving needs. There was a big impetus for digital technology in almost all industries and job functions during the pandemic. We see digitisation as a key pillar to improve governance and compliance, by driving greater security, transparency and efficiency in processes – and tax operations are no exception!

As noted earlier, the government has made significant strides in introducing digitisation in the indirect tax space, and we hope this continues. India has an advantage in that it can tap into its vast IT industry and expertise to deliver value-added solutions that ease the burden of compliance and generally improve/reduce audits in the future.

Government support to taxpayers in their digitisation journey would accelerate this process; the cost of which we believe would be repaid through transparency, governance, compliance and efficiency gains.

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

ITAT held no 'income from house property' could result in respect of unsold flats held by a builder as stock-in trade at the year-end

Kumar Properties and Real Estate Private Limited
2021-TIOL-950-ITAT-PUNE

The Assessee is a real estate developer having certain unsold flats/bungalows for ready possession at the year-end.

During the assessment the AO opined that the Assessee should have offered deemed notional rental income on such vacant flats/bungalows. The Assessee contended before the AO, that the flats/bungalows were its stock-in-trade, from which no income could be taxed under the head 'Income from house property'.

However, the AO disregarded assessee's submission and computed the annual letting value of the unsold flats u/s.23 of the IT Act and made consequent additions. This addition was later on confirmed by the CIT(A) as well.

Aggrieved by CIT(A) order, the Assessee approached the ITAT which observed that as per Section 22, an exception has been carved out which provides that any such property or its part, which is occupied by the Assessee for the purposes of any business or profession carried on by him, the profits of which are chargeable to income-tax, shall be excluded for computation of annual value of property.
Accordingly, as the term 'occupy' has not been defined under the Act, the ITAT placing reliance on the definition provided in the Oxford Law Dictionary concluded that the flats/bungalows were occupied by the Assessee owner and further, all the four conditions for exclusion from Sec. 22 were satisfied by the Assessee as Assessee was not only was the Assessee owner of the property, but was carrying on a business of property development, thus the occupation of the flats was for the purpose of business and the profits of such business were chargeable to income-tax.

Further, ITAT observed that the Finance Act, 2017 had inserted Section 23(5) according to which the annual value of the property that has been held as stock-in-trade and not let out during the previous year shall deemed to be nil from the end of FY in which the completion certificate of construction is obtained from the competent authority for one year, which was later extended to two years by virtue of the Finance Act, 2020.

Therefore, deleting the addition made, ITAT held that no income from house property could result in respect of unsold flats held by the builder at the year-end.

ITAT held beneficial rate as per India-Malaysia DTAA applicable on dividend paid to non-resident shareholder; rejects revenue's application of DDT rate under Section 115-O

Indian Oil Petronas Pvt. Ltd
2021-TII-72-ITAT-KOL-INTL

The Assessee is a manufacturer, trader and bottler of LPG who had filed cross objections before the ITAT with reference to dividend paid to one Petroliam Nasional Berhad which was a non-resident shareholder of the Assessee and a tax resident of Malaysia, contending that the tax payable by Assessee u/s 115-O should be at the rate prescribed under India-Malaysia DTAA.

There was a delay of 424 days in filing of the cross objections. The Assessee filed objections seeking condonation of the delay. The sum and substance of the condonation of delay petition was that the issues raised in cross objections were legal issues, which were not raised before the lower authorities earlier and consequent to certain judicial decisions that had been pronounced recently the Assessee became aware of the fact that these particular claims were legally allowable to the Assessee.

The ITAT condoned the delay and noted that as per Section 195 of the Act any person responsible for paying to a non-resident any income chargeable to tax under the Act, was to deduct TDS at the 'rates in force'. Further, as per Section 2(37A), the term 'rates in force' meant the rates specified in the Act or rates specified in the relevant DTAA, whichever was more beneficial to the Assessee.

Further, ITAT observed that the dividend income should be chargeable to tax in the hands of the shareholders as per Section 4 of the Act. However, for administrative convenience, the incidence of tax had been shifted to the resident company paying dividend income and as such, the company being the person responsible for distributing dividend income among the shareholders including the non-resident shareholders, the rate of tax to be paid on such dividend income would be governed by the tax rate specified in the DTAA (being more beneficial) and not the rate specified in section 115-O of the Act.

ITAT also observed that, as per the Act, dividend distribution tax (DDT) is a tax on dividend income and not on undistributed profits of the company. Until the company declares dividend, no portion of these profits can become the income of the shareholders, therefore, the dividend income constituting income in the hands of the non- resident shareholders, would be chargeable to tax at the rate specified in the DTAA (being more beneficial) and not Section 115-O.

ITAT further observed that, the four conditions needed to be satisfied for the applicability of DTAA rates to the rate of tax payable on dividend distributed to non-resident shareholders, namely, i) dividend should be paid to the non-resident shareholder, ii) dividend constitutes income in the hands of the non-resident shareholder, iii) the non-resident shareholder is the beneficial owner of the dividend, and iv) the non-resident shareholder should not have a PE in India, were all satisfied by the Assessee.

Thus, basis the above observations, ITAT remitting the matter to the AO for fresh adjudication held that the beneficial DTAA rate shall be applicable over DDT rate specified u/s 115-O.

ITAT held Technical assistance to AAI for air traffic flow management not liable to TDS under Section 195

Airports Authority of India
2021-TII-80-ITAT-DEL-INTL

The Assessee is an organisation under Ministry of Civil Aviation that entered into a technical assistance agreement with FAA, USA for the development of detailed quantitative requirements, detailed system architecture and specification and draft implementation plan on ATFM whereas an agreement was entered into between the Ministry of Civil Aviation and FAA Administrator agreeing for transactions on reimbursement basis.

The Assessee had paid a certain sum to FAA under the agreement which was taxed by the AO as FTS on gross basis under Section 115 of the Act, holding that the FAA did not enjoy sovereign immunity from being taxed in India and satisfied the 'make available' clause under Art. 12(4)(b) of the India-US DTAA.

Aggrieved, the Assessee approached the CIT(A) which further held that the entire sum paid to FAA was taxable as FTS under the DTAA and liable to TDS u/s 195 of the Act.

Aggrieved, the Assessee approached the ITAT contending that payments made by it are just reimbursements without any income element and are therefore not chargeable to tax in India and consequently not subject to withholding of tax under Section 195 of the Act.

ITAT observed that with regards to the nature of services that the concept of "make available" requires that the fruits of the services should remain available to the service recipient in some concrete shape such as technical knowledge, experience, skills, etc., the technical assistance provided by FAA were neither a licensed product nor exclusive patent of FAA, ATFM technology was not made available to the Assessee for perpetual use, it was a case of assistance and technical cooperation between the Assessee and FAA with no commercial interest of FAA. Therefore, based on the manner of transacting, agreements, services provided, reimbursement received, make available clause, under Art. 12(4)(b) of the India-US DTAA was not applicable to the present case and the services provided were not in the nature of FTS.

Further, with regards to TDS liability agreeing the sum paid by the Assessee to be a reimbursement, ITAT observed that reimbursement was neither reward nor compensation nor income for income tax purpose, the liability to deduct TDS under Section 195 of the Act arose only when the payee was a non-resident and the amount payable to him was chargeable to tax in India, since the payment on cost-to-cost basis did not involve any profit element, the sum paid by the Assessee was not chargeable to tax in India and was a reimbursement that was not liable to TDS. Thus, allowing the Assessee's appeal, ITAT held technical assistance received from FAA to be beyond the scope of FIS.

HC directs personal hearing; Quashes faceless assessment order passed without considering Assessee's objections

KBB Nuts Private Limited
2021-TII-32-HC-DEL-TP

The Assessee was subjected to scrutiny assessment and was served a SCN along-with a draft assessment order dated April 19, 2021, which was received by the Assessee via email on April 20, 2021, requiring the Assessee to respond by April 21, 2021.

Since the time for compliance was short, Assessee, filed an application via the e-portal, seeking a day's adjournment, i.e., till April 22, 2021. However, since no response was received qua the request for adjournment, the objections to the aforementioned SCN were filed on April 22, 2021 at 15:22 hours and the assessment order under Section 143(3) read with 144B was also passed on the same day.

Aggrieved, the Assessee preferred a writ petition before the HC contending a breach of the principles of natural justice as the objections filed on April 22, 2021 were not taken into account by the Revenue before passing the assessment order.

The Revenue on the other hand contended that the Assessee should not have assumed that adjournment was granted and should have furnished reply on April 21, 2021 instead of April 22, 2021 as the Revenue waited till April 22, 2021 to pass the assessment order.

HC rejecting Revenue's contention opined that Revenue's argument would have jelled if the assessment order was passed on April 22, 2021, albeit, after 23:59 hours.

Therefore, setting aside the order of the Revenue, HC directed the Revenue to pass a fresh assessment order after taking into account the objections filed by the Assessee qua the SCN dated April 19,2021 by issuing a fresh notice via email to the Assessee and granting a personal hearing.

ITAT held non-taxable capital receipt, gains on repayment of forex loan given to NR relative

Aditya Balkrishna Shroff
2021-TII-88-ITAT-MUM-INTL

The Assessee is an individual. During the course of scrutiny assessment proceedings, the AO noticed that as per capital account of the Assessee he was in receipt of INR 1,12,35,326.

When the AO probed this entry further, it was explained by the Assessee that on March 29, 2010, the Assessee had extended a personal interest free loan of US $ 2,00,000 to his cousin in Singapore. The remittance so made was under LRS issued by the Reserve Bank of India. As on that date, the prevailing exchange rate for purchase of one USD was INR 45.14, and, therefore, the Assessee had to pay INR 90,30,758 for this remittance of US $ 2,00,000. The borrower, paid back this amount of US $ 2,00,000 to the Assessee on May 24, 2012. On that day, while converting the USD into Indian Rupees, the exchange rate for purchase of one USD was INR 56.18. Accordingly, the amount credited to the assessee's account was INR 1,12,35,326.

However, the AO was of the view that while entry was explained, the difference, in terms of Indian Rupees, on account of this transaction was of income nature.

It was explained by the Assessee, that the loan account was purely personal, it was not in the nature of a business transaction, and that there was no motive of economic gains in this transaction. It was explained that the loan transaction was in terms of the LRS of the Reserve Bank of India inasmuch as it was a permitted transaction, and specifically on capital account.

It was further explained by the Assessee, that the transaction was in capital field and that, therefore, the gain was in the nature of capital receipt and hence not offered for taxation.

However, the AO not impressed held the gain on loan arising out of foreign exchange fluctuation as taxable under the Head 'Income from Other sources' and made an addition of the excess amount gained. Aggrieved, the Assessee approached the CIT(A) which confirmed the order of the AO causing the Assessee to approach the ITAT.

ITAT observed that, that the loan was given by the Assessee on capital account and was not given in the course of business of the Assessee and the accretion of money, in rupee terms, was on account of increase in the value of the US Dollars advanced as a capital transaction. A capital receipt, in principle, is outside the scope of 'income' chargeable to tax and a receipt cannot be taxed as income unless it is in the nature of a revenue receipt or is specifically brought within ambit of 'income' by way of specific provisions of the Act.

ITAT further remarked that the Revenue erred in "putting the cart before the horse" by deciding the head under which the income is to be taxed without even deciding whether it was in the nature of income or not and mixed up the concept of 'income' with the concept of 'gains' when all 'gains' are not covered by the scope of 'income' in terms of the IT Act.

Thus, noting that none had appeared for the Assessee, ITAT allowing Assessee's appeal ex parte, held that the addition made in the hands of Assessee on account of forex gains arising from repayment of personal forex loan is a capital receipt and is not chargeable to tax.

ITAT held Morgan Stanley's income from IDRs exempt under Art. 22 of India-Mauritius DTAA

Morgan Stanley Mauritius Co Ltd.
2021-TII-85-ITAT-MUM-INTL

The Assessee is a company incorporated and fiscally domiciled in Mauritus and is an investor in the IDR by SCB-India with the underlying asset in the form of shares in SCB-UK held by the depository's custodian, i.e., BNY-US.

The Assessee had received a certain sum from SCB-India, in respect of dividends for the underlying shares relatable to the IDRs in which the assessee had invested.

A SCN was issued to the Assessee as to why the receipt in question not be taxed as a dividend income in the hands of the Assessee.

The Assessee contended before the AO that as the dividends were in respect of SCB-UK, and were received by BNY-US, they neither accrued or arose in India nor were received or deemed to be received in India and therefore were not taxable in India.

The Assessee further contended that, SCB-India was a bare trustee (i.e., akin to a nominee) under the English law for the IDR holders and subsequent remittance of the dividend to the IDR holders in an Indian bank account would not trigger receipt-based taxation as per the provisions of the Act.

The Assessee also contended that, in terms of the India Mauritius DTAA, as these payments did not meet the requirements of the definition of dividends under Article 10, such receipts could only be subjected to tax under article 22 which was in the domain of exclusive taxation in the residence jurisdiction, i.e., Mauritius.

However, the AO not convinced with any of these contentions of the Assessee, observed that so far as the IDR holders were concerned, the first point of receipt of dividend was when it was deposited in the bank accounts of the IDR holders in India, and, therefore, it could not be said that the income in question is received outside India.

The AO further observed that that the money continued to be in the possession of the person who was to pay the same, i.e., SCB-UK, and that, in reality as also in substance, the payment was made in India in the Indian bank accounts of the IDR holders.

The AO thus, proceeded to tax these dividends under section 115(1)(a) @ 20% plus applicable surcharge and cess.

Aggrieved, the Assessee approached the DRP which confirmed the action of the AO and the AO thus, proceeded with the proposed draft assessment order, and brought the IDR dividends to tax in the hands of the Assessee.

Aggrieved, the Assessee approached the ITAT which observed that none of the payments could be treated as by an Indian resident whether the person making the payment to the Assessee was considered to be SCB-UK or SCB-India, as the former was a company incorporated in, and fiscally domiciled in the UK and the latter an Indian branch office and PE of a company, incorporated or fiscally domiciled in the UK.

The ITAT further observed that, Assessee's income was not covered by the definition of dividends under Article 10 as the dividends were not paid by an Indian company to the Mauritian tax resident which was a pre-condition for the applicability of Article 10.

Moreover, as no other provision of the DTAA could cover the Assessee's income and it did not even fall under the exclusion of Article 22(2), ITAT allowing Assessee's appeal held the Assessee's income to be treaty-protected inasmuch as it could not be taxed in the hands of the Assessee, in India, by virtue of Article 22(1).

Taxpayers held by Eastern High Court of Denmark to be ineligible for withholding tax exemption; Look Through Approach accepted while applying Beneficial Ownership Criteria

NetApp Denmark ApS
13. afd. nr. B-1980-12

There were two taxpayers viz., NETAPP Denmark ApS and TDC A/S.

NETAPP Denmark Aps had made dividend distributions to its parent company in Cyprus, which had redistributed certain amount to its parent company in Bermuda. The Bermudan entity thereafter, distributed almost the entire amount to its parent company in USA.

Similarly, TDC A/s had made distributions to its parent company in Luxembourg, which redistributed a certain amount to its parent company located in Luxembourg itself. The Luxembourg entity thereafter, distributed almost the entire amount to companies controlled by equity funds that were likely located outside the European Union (EU).

Both the taxpayers claimed that they are entitled to withholding tax exemption on distribution of dividends under the EU Parent Subsidiary Directive. However, the tax authorities denying their claim held that they were not the beneficial owners and thus, the exemption was not available as the tax authorities/ Danish Tax Board did not agree with the view of the taxpayers.

Aggrieved, the taxpayers approached the Danish National Tax Tribunal which allowed the appeal of the taxpayers.

Aggrieved, the tax authorities approached the Eastern HC of Denmark. The issue before which was whether the recipients were the beneficial owners and thus eligible for exemption from withholding tax on dividends distributed by Danish subsidiaries to foreign parent companies under the Parent Subsidiary Directive / tax treaty.

With reference to NETAPP Denmark Aps, the Eastern HC of Denmark observed that, the Cyprus entity did not have authority to actually dispose the dividends received as the amount was redistributed immediately and thus the arrangement was entirely artificial to achieve the withholding tax exemption. Accordingly, the Court held that the Cyprus entity could not be regarded as the beneficial owner and was therefore, not eligible for beneficial treatment under the Denmark-Cyprus tax treaty.

The High Court placing reliance on paragraph 12.2 of OECD 2003 commentary, further observed that, inasmuch as the dividend was ultimately distributed to the USA parent, the benefit of Denmark-USA tax treaty could be availed and no withholding tax was required on the same. However, this did not tantamount to conferring undue benefit / abuse of law, as the dividends could have been directly distributed without withholding of tax.

With reference to TDC A/S, the Eastern HC of Denmark observed that no information/documentation with respect to the decision regarding dividend redistribution was made available. Accordingly, the HC concluded that the interposed entities did not have any independent function apart from distribution of dividends in the chain and ultimately to the equity funds/investors and therefore were not eligible for exemption from withholding tax.

The Court also noted that the taxpayers did not put forth the argument that exemption would have been available had the dividends been directly distributed to the equity funds and thus, the question of exemption either under Parent Subsidiary Directive or tax treaty did not arise.

ITAT upheld TP-adjustment on interest on delayed AE-receivables at 12% interest rate

HBL Power Systems Limited
2021-TII-162-ITAT-HYD-TP

The Assessee was before the Tribunal challenging the ALP adjustment made by the DRP on account of interest on delayed AE receivables at 12%.

The Assessee contended before the Tribunal that the DRP has erred in law and on facts in making impugned ALP adjustment at 12% interest rate without benchmarking it with the corresponding comparables and also such receivables do not form an international transaction within the meaning of Section 92B of the Act.

Supporting the ALP adjustment made, the revenue quoting Explanation (c) to Section 92B, contended that such a transaction involving receivables was covered under the statutory expression "over receivable" or any other debt arising during the course of business only.

The Tribunal found that during the previous year's assessment, the TPO had adopted the interest rate at 14% and it was at the request of the Assessee that the interest rate was computed at 12%. Therefore, the adjustment made by the DRP was based on the computation submitted by the Assessee during the assessment proceedings.

Further, placing reliance on their decision in Bechtel India Pvt. Ltd. **[2017-TII-186-ITAT-DEL-TP]** wherein interest on delayed realisation on receivables was held to be an international transaction in itself, the Tribunal upheld the TP adjustment made by the DRP on account of interest on delayed AE receivables adopting 12% as the interest rate.

ITAT held protective TP-adjustment basis BLT unsustainable for AMP expenses; Holds RPM as MAM for benchmarking transaction

Luxottica India Eyewear Pvt Ltd
2021-TII-154-ITAT-DEL-TP

The Assessee is a subsidiary of a foreign company engaged in the business of trading of sunglasses and spectacle frames in India. For benchmarking the international transactions with regard to the AMP expenses, the Assessee had opted for RPM whereas the AO had resorted to TNMM as the MAM.

Further, the AO had enhanced Assessee's income by making a TP adjustment by holding AMP expenses as excessive and had applied the BLT approach for computing TP adjustment for AMP expenses on a protective basis. These findings of the AO were also confirmed by the DRP.

Aggrieved, the Assessee approached the Tribunal refuting such adjustment on various grounds, key being, AMP expenses were a regular business expense and were not a "transaction" let alone an "international transaction" and hence did not warrant any TP adjustment given that Assessee's adoption of RPM for benchmarking the import of goods was considered appropriate in the previous years.

The Tribunal relying on the decision in Assessee's own case in previous years held RPM as the MAM and relying on the ruling of a coordinate bench of this Tribunal held TP adjustment for AMP expenses made by applying BLT to not be sustainable even on protective basis and thereby allowed the appeal of the Assessee.

ITAT allows reduction of US company's royalty income basis Advance Pricing Agreement signed by its Indian AE

Gemological Institute of America Inc
2021-TII-77-ITAT-MUM-INTL

The Assessee is a US based company that had entered into an international transaction with its Indian AE and had received royalties from its Indian AE which were accordingly offered to tax by the Assessee under Article 12 of the India-US DTAA.

However, the revenue authorities contended that since the Assessee had a permanent establishment in India, the royalties so offered to tax were liable to be taxed on a net basis under Article 7 of the India-US DTAA.

While the assessment of income was yet to reach finality, the Indian AE approached the CBDT for an Advance Pricing Agreement under Section 92CC, in terms of which if payment of royalty to the Assessee exceeded the ALP determined under the Advance Pricing Agreement, the same was to be recovered by way of invoices raised by the Indian AE and subsequently, be offered to tax by the Indian AE in the revised returns of respective years. Thus, requiring the royalties which were received by the Assessee from its Indian AE to be partially refunded back to the Indian AE.

The revenue authorities holding that the amount of royalty received cannot be decreased in the hands of the Assessee on the basis of Advance Pricing Agreement since the Advance Pricing Agreement proceedings were entirely independent and therefore, could not be imported into the computation of taxable royalty in the hands of the Assessee passed an order.

Aggrieved, the Assessee approached the Tribunal, the main issue before which was whether the quantification of royalty income in the hands of the Assessee would stand reduced by the refund granted by the Assessee in terms of the Advance Pricing Agreement that the Indian AE had entered into with CBDT.

The Tribunal accepting Assessee's contention that the royalty amount refunded to its Indian AE basis the Advance Pricing Agreement could not be treated as income in the hands of the Assessee held that there can be no way in which an Assessee can be taxed in respect of that part of receipt of an income which the Assessee has bona-fide refunded to the person from whom such an income was received. As is the well-settled legal position, in order that an income is taxed in the hands of an Assessee, it must be a real income, which the Assessee has actually earned in reality, and not a mere hypothetical income which Assessee could have earned.

The Tribunal further held that the reduction in the quantum of royalty income was on account of actual reduction in income, and that was a reality and whether it happened on account of the agreement, or it was to happen otherwise, the fact remained that there was a reduction of royalty income in the hands of the Assessee. And, if there was a reduction in royalty income, only the actual, i.e., reduced, royalty income could be brought to tax.

However, the Tribunal remitted the matter back to the AO for verification of the factual elements embedded in the claim of the Assessee including the quantum of actual refunds of royalties by the Assessee which had not been examined at any stage.

ITAT excludes Hartron-Communications for BPO comparables; Directs adoption of 0.92% as corporate-guarantee ALP

Sutherland Healthcare Solutions Private Limited
2021-TII-179-ITAT-HYD-TP

The Assessee is a BPO services provider that had entered into international transactions with its overseas AEs in relation to which the TPO had made an ALP adjustment selecting Hartron Communications Ltd. as a comparable. Further, the TPO had made an ALP adjustment @ 13% on the shareholders' corporate guarantee provided to the bank.

Aggrieved by the adjustments made by the TPO, the Assessee approached the ITAT which placing reliance on the decision of its coordinate bench in S&P Capital IQ (India) Pvt. Ltd. vs. Dy. CIT (Hyderabad) observed with respect to the selection of Hartron Communications Ltd. as a comparable that its financial results could not be considered for the reason that it had witnessed increase/decrease in revenue generation and exceptional performance during the relevant previous year. Moreover, this company had been excluded by the TPO itself in Assessee's own case for succeeding AY.

Further, in respect of the ALP adjustment made by the TPO on the shareholders' corporate guarantee provided to the bank @ 13%, ITAT observed that, co-ordinate bench in Assessee's own case in the previous AYs had directed the TPO to adopt 0.92% only as the corporate guarantee commission.

Thus, directing the TPO to exclude Hartron Communications Ltd. as a comparable and adopt 0.92% as the corporate guarantee commission as had already been done by TPO in previous AYs, ITAT remitted the matter to the AO/TPO maintaining judicial consistency by adopting the course of action taken previously.

HC grants Assessee 30 days to file DRP-objections treating erroneously passed final-order as draft assessment order

Alcatel Lucent India Ltd
2021-TII-34-HC-DEL-TP

The Assessee had filed a writ petition before the HC stating that a final assessment order was erroneously passed by the TPO instead of a draft assessment order, even though the title of the order read as draft assessment order under Section 143(3) read with Section 144C of the Act, the Assessee contended that a plain reading of the order showed that contrary to its title, it was a final assessment order. In the order passed under Section 143(3) read with Section 144(0) (instead of 144C erroneously), AO had levied interest under Section 234A, 234B, 234C and 234D, issued demand notice, issued notice under Section 274 read with Section 270A as well as initiated penalty proceedings under Section 270A.

HC observed that there was a violation of the provisions of the Act as the AO was required to pass an order under Section 144C (1), which would have enabled the Assessee to file, if so aggrieved, its objections with the DRP.

On the other hand, Revenue contended that it did not have any instructions in the said matter and that the timeline for passing the draft assessment order has expired.

Accordingly, HC directed Revenue to revert with instructions and clarified that in case it receives instructions to resist the petition, it will file a counter-affidavit before the next date of hearing. In the interim, HC granted stay on the operation of the order dated March 26, 2021 and listed the matter for hearing on May 17, 2021.

Accordingly, on May 17, 2021, Revenue reverted with instructions to convey to the Court that the assessment order be treated as a draft assessment order and that the consequential notice of demand and notice for initiation of penalty proceedings, stand withdrawn. Agreeing to this, as provided under the statue, Assessee requested for a period of 30 days to file its objections with the DRP.

HC disposing of the writ petition, directed that the assessment order be treated as a draft assessment order, the Assessee be given a time of 30 days from the date of the receipt of a copy of this order to file its objections with the DRP, the notice of demand and notice for initiation of penalty proceedings be withdrawn and the Assessee be given liberty to assail the order passed by the DRP as per law if found to be adverse to the interest of the Assessee.

CBDT notifies non-requirement of PAN for eligible foreign investors

Notification No. 42/2021
May 04, 2021

CBDT has notified Income tax (14th Amendment) Rules, 2021, wherein it has amended Rule 114AAB to provide that eligible foreign investors would not require PAN.

Accordingly, CBDT has clarified that provisions of Sec. 139A will not apply to a non-resident who is an eligible foreign investor, listed on a recognised stock exchange located in any International Financial Services Centre and has made transaction only in a capital asset referred in Sec. 47(viiab), having furnished the information prescribed by the CBDT to the stock broker through which the transaction is made where the consideration on transfer of such capital asset is paid or payable in foreign currency.

CBDT notifies Rules for cash allowance in lieu of LTC effective April 1, 2021

Notification No. 50/2021
May 05, 2021

CBDT has notified Income-tax (15th Amendment) Rules and has amended Rule 2B for LTC exemption effective April 1, 2021.

Accordingly, certifying that no person would be adversely affected due to retrospective effect to the Rules, CBDT has clarified that for AY beginning on April 1, 2021, where an individual avails any cash allowance from his employer in lieu of any travel concession or assistance, the amount exempt under Section 10(5) shall be lesser of INR 36,000 or 1/3rd of the specified expenditure, subject to specified conditions;

Further applying Department of Expenditure's clarification in OM dated October 12, 2020, CBDT has stated that all future clarifications shall apply mutatis mutandis to the amended Rules.

CBDT exempts Hospitals, COVID care centres from Section 269ST upto May 31

Notification No. 56/2021
May 07, 2021

CBDT has exempted Hospitals, Dispensaries, Nursing Homes, Covid Care Centres or similar other medical facilities providing Covid treatment to patients for the purpose of Section 269ST of the Income-tax Act,1961 for

the payment received during April 1,2021 to May 31, 2021.

Section 269ST was introduced by the government with a view to promote digital economy. Accordingly, this section prohibits any person from receiving an amount of INR 2 lakh and above in cash, in a single transaction, aggregate from a person in a day, or in respect to transactions relating to one event or occasion from another person.

Violation of Section 269ST makes the violator-recipient liable to pay a penalty equal to the amount received in cash.

CBDT notifies Rule 11UAE for FMV calculation in slump sale

Notification No. 68/2021
May 24, 2021

CBDT has notified the Income Tax (16th Amendment) Rules, 2021, wherein it has inserted Rule 11UAE for computation of fair market value of capital assets in slump sale under Section 50B in the IT Act.

Section 50B of the IT Act deals with the provision for computation of capital gains in case of slump sale transactions.

Prior to amendment by Finance Act, 2021, the full value of consideration, in case of a slump sale, was taken as the actual consideration received or accrued on account of transfer of the division or undertaking, as the case may be.

The Finance Act, 2021 has made an amendment to the above provision and accordingly the amended provision of section 50B(2)(ii) provides that the Fair Market Value (FMV) of the capital assets as on the date of transfer shall be deemed as the 'full value of the consideration' received or accruing as a result of the transfer of such capital asset and such FMV of the capital assets shall be calculated "in the prescribed manner".

Accordingly, such manner of computing FMV has been provided vide this circular

It is pertinent to note that the amendment has been made effective retrospectively, i.e. from 1 April 2020 i.e. tax year 2020-21 onwards.

CBDT notifies online procedure for withdrawing application pending before ITSC

Notification No. 68/2021
May 24, 2021

CBDT has notified the online procedure for withdrawing application pending before Income Tax Settlement Commission by giving intimation in Form No. 34BB.

Accordingly, CBDT has prescribed a two-step procedure to be undertaken by the assessees following the form available on www.nic.in, the link of which will be made available on the new e-filing portal from June 7, 2021. Accordingly, the assessees are required to provide the requisite details on the form at www.nic.in by June 15, 2021 and thereafter, upload scanned printout of Form No. 34BB online on e-filing portal of the Department.

Online submission of the form on the new e-filing portal shall be treated as submission before the AO under Section 245M(1) of the IT Act.

CBDT extends deadlines in respect of certain compliances in light of pandemic

Circular No. 09/2021
May 20, 2021

In view of the severe pandemic situation, CBDT has extended various due dates in respect to the compliances tabulated below:

Compliance	Period	Original Due-Date	Revised Due-Date
Statement of Financial Transactions (SFT) under Rule 114E of the Income Tax Rules, 1962 ('IT Rules')	Financial Year 2020-21	May 31, 2021	June 30, 2021
Statement of Reportable Account under Rule 114G of the IT Rules	Calendar Year 2020	May 31, 2021	June 30, 2021
Statement of Deduction of Tax under Rule 31A of the IT Rules	4th Quarter of Financial Year 2020-21	May 31, 2021	June 30, 2021
Certificate of TDS – Form No. 16 under Rule 31 of the IT Rules	NA	June 15, 2021	July 15, 2021
TDS/TCS Book Adjustment Statement – Form No. 24G under Rule 30 and 37CA of the IT Rules	May 2021	June 15, 2021	June 30, 2021
Statement of Deduction of Tax from contributions paid by trustees of approved superannuation fund under Rule 33 of the IT Rules	Financial Year 2020-21	May 31, 2021	June 30, 2021
Statement of Income paid or credited by investment fund to unit holder – Form 64D under Rule 12CB of the IT Rules	Previous Year 2020-21	June 15, 2021	June 30, 2021
Statement of Income paid or credited by investment fund to unit holder – Form 64C under Rule 12CB of the IT Rules	Previous Year 2020-21	June 30, 2021	July 15, 2021
Return of Income under Section 139(1) of the Income Tax Act, 1961 ('IT Act') – where Tax Audit is not applicable*	Assessment Year 2021-22	July 31, 2021	September 30, 2021

Compliance	Period	Original Due-Date	Revised Due-Date
Report of Audit	Previous Year 2020-21	September 30, 2021	October 31, 2021
Report from Accountant by persons entering international transactions or specified domestic transactions under section 92E of the IT Act	Previous Year 2020-21	October 31, 2021	November 30, 2021
Return of Income under Section 139(1) of the IT Act – where Tax Audit is applicable*	Assessment Year 2021-22	October 31, 2021	November 30, 2021
Return of Income under Section 139(1) of the IT Act – where Transfer Pricing provisions are applicable*	Assessment Year 2021-22	November 30, 2021	December 31, 2021
Belated/ Revised Return of Income under section 139(4) / 139(5) of the IT Act	Assessment Year 2021-22	December 31, 2021	January 31, 2022

Clarification (*) - Where the amount of net tax payable exceeds one lakh, the extension shall not apply to Explanation 1 to Section 234A of the IT Act thereby the interest of 1% per month or part thereof under Section 234A shall apply considering the original due date.

CBDT issues clarification on time-limit extension for filing of appeals before CIT(Appeals) pursuant to SC order

Circular No. 10/2021
May 25, 2021

Taking cognizance of difficulties faced in legal filings due to second wave of COVID-19, the Hon'ble Supreme Court vide order dated April 27, 2021 had restored its earlier order dated March 23, 2020, directing the period(s) of limitation, as prescribed under any General or Special Laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, to be extend till further orders.

With this in backdrop, CBDT has clarified that for the purpose of counting the period(s) of limitation for filing of appeals before the CIT(Appeals) under the Act, the taxpayer is entitled to a relaxation which is more beneficial to him and hence the said limitation stands extended till further orders as ordered by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 vide order dated April 27, 2021.

AAR: Liaison office connecting business in India with Dubai HO, an 'Intermediary', liable to register

Dubai Chamber of Commerce and Industry
GST-ARA-35/2019-20/B-14

The Applicant, a non-profit organization, was engaged in supporting the business community in Dubai and promote Dubai as a business hub. The Applicant represented Dubai Chamber of Commerce and Industry ('DCCI') in seminars and conferences and connected Indian business partners with UAE business partners. The Applicant inter alia organized events and interactions with Indian stakeholders for sharing information about Dubai. All expenses incurred by the Applicant were reimbursed by DCCI on cost-to cost basis. In view of the above, the Applicant had sought an advance ruling to ascertain the applicability of GST on the Applicant's activities.

The Maharashtra AAR observed that in the above transaction, the Applicant connects businesses in India with businesses in Dubai, and the same is supply of services. Further, referring to Section 2(13) of the CGST Act, it was observed that the said supply qualifies as an intermediary service as the Applicant is acting as a liaison office on behalf of DCCI and facilitating connection between Indian business partners and UAE business partners for supply of services. In light of the above observations, the AAR held that the Applicant is providing intermediary service which is liable to GST.

Authors' Note

It seems that the Maharashtra AAR has taken a divergent view vis-à-vis its counterparts. In the matter of Takko Holding GmbH, **[2018-TIOL-216-AAR-GST]**, the TN AAR had held that liaison activities being undertaken by the Applicant, when strictly in line with the conditions specified by RBI permission letter, do not amount to 'supply' under the CGST and SGST Act. Similar view was taken by the Rajasthan AAR in the case of Habufa Meubelen BV **[2018-TIOL-97-AAR-GST]**.

Delhi HC quashes provisional attachment of bank account in absence of material for alleged transaction

Roshni Sana Jaiswal
2021-TIOL-1126-HC-DEL-GST

The Petitioner was acting as a director and also shareholder of the Company 'Milk Food Ltd'. The Respondent presumed that the Company was availing ITC against fake invoices and upon investigation u/s. 67 of the CGST Act consequently ordered seizure of bank accounts of the Petitioner. Aggrieved, the Petitioner filed a Writ contending that the proceeding u/s. 83 of the CGST Act is without jurisdiction and the taxable person in the said matter is the Company and not the Petitioner in his capacity as a director.

Referring to the provisions of Section 83 of the CGST Act, the HC observed that the Respondent's act was without any jurisdiction. It was further observed that only that person can be a taxable person who is registered or liable to be registered under the CGST Act. However, in the

instant case, the Petitioner was neither registered nor liable to be registered as taxable person and does not fall under ambit of taxable person.

In light of the above observations, the HC discerned that Respondent was unable to place any material fact, that the provision had to be taken recourse to, in order to protect the interest of the Revenue. Accordingly, it was held that the action concerning provisional attachment of the Petitioners bank accounts was unsustainable.

HC quashes order passed without giving an opportunity of being heard

Rimi Sales Agency
WP(C) No.1185 of 2018

The Petitioner had placed orders for certain goods to a Kolkata based Company. During the transit of the goods, the Respondent had intercepted the vehicle on the grounds of certain E-Way Bill provision discrepancies. Accordingly, the Respondent issued a notice requiring the Petitioner to show cause as to why demand shall not be created along with interest and penalty. Further, a hearing opportunity was granted. However, on the same date of issuance of notice, the Respondent, confirmed the demand.

Aggrieved, the Petitioner preferred a Writ before the Tripura HC. It was observed by the HC that order issued by the Respondent suffers from grossest possible violation of principles of natural justice. It was held that passing the order without giving an opportunity to file a reply or appear, was wholly impermissible. Accordingly, the HC quashed the order and allowed the Petitioner to file a reply within the prescribed time..

Authors' Note

It is rather unfortunate to see that the authorities pass orders without affording the assessees an adequate opportunity to be heard, even though the Apex Court has amply emphasized on this principle. In the case of CCE v. ITC Ltd. [1995] 2 SCC 38], the SC had held that an assessee should be asked to show cause as to why he should not be visited with higher tax before such levy. He must be given an opportunity of meeting those grounds. This is a requirement of the principles of natural justice.

It may be said that if the Government imposes certain liabilities on the tax authorities for issuance of non-speaking orders or issuing orders without giving an opportunity of being heard, then such cases might possibly reduce.

Madras HC holds that Refund cannot be denied on account of technical glitches on GSTN portal

Tvl. Mehar Tex
W.P.(MD)NO.22996 OF 2019

The Petitioner had made zero-rated sales during the months October 2017, November 2017 and February 2018 by way of exports. Accordingly, the Petitioner had been entitled to corresponding refund of ITC. However, upon filing of the refund applications under CGST, SGST and IGST, the entire claim got consolidated and figured under the head of SGST alone. While considering the refund applications, the Respondent restricted the refund claim to the extent of the Petitioner's liability for the respective months only under the head of SGST and rejected the refund claims made in respect of the other heads.

Aggrieved, the Petitioner filed a Writ before the Madras HC challenging the rejection of the refund claim. The Madras HC observed that the only question for consideration was whether the claim for refund on CGST and IGST can be denied on the ground that his claim got consolidated under one head due to system error.

It was further observed by the HC that If the Petitioner was otherwise eligible to refund, on the ground of technical glitches and error having occurred due to auto-population, the Petitioner ought not to be denied relief. Nothing can be more unfair. In view of the above, the Madras HC set-aside the refund rejection order and remitted the matter back to the Respondent for fresh consideration.

Madras HC allows TRAN-1 while condoning inadvertent error

Carlstahl Craftsman Enterprises Private Limited
2021-TIOL-1053-HC-MAD-GST

While filing Form TRAN-1, the Petitioner had inadvertently claimed a lower amount of credit vis-à-vis what was available to them. The Petitioner had made another error by updating the difference in table 7d instead of the prescribed form 7b. In order to rectify the said errors, the Petitioner had made a request for extension, which had been rejected by the Revenue on the ground that several opportunities were extended to taxpayers for rectification of errors.

Aggrieved, the Petitioner challenged the rectification rejection order before the Madras HC. The HC observed that the error was inadvertent in nature. It was further observed that the era of GST is nascent and therefore, a rigid view should not be taken in procedural matters. It was further observed that the consequence of such transition is only the availment of the credit and not the utilization itself.

In view of the above, the HC allowed the Petition and consequently directed the Revenue to enable the modification and transition.

Calcutta HC disallows rectification of Form GSTR-1

Abdul Mannan Khan
2021-TIOL-1197-HC-KOL-GST

The Petitioner had inadvertently reported sales in incorrect column as unregistered sale. Upon realization, the customer intimated its inability to claim ITC due to inadvertent mistake on part of the Petitioner. Accordingly, the Petitioner requested for rectification of GSTR-1. The said application was rejected on the ground of limitation as the same was due to be filed after the last date of filing GSTR-3B of September 2018.

Aggrieved, the Petitioner filed a Writ before the Calcutta HC challenging the rejection of rectification application. The Calcutta disallowed the Writ while holding that condoning such delay would make the provision otiose and open the floodgates for similar cases.

Authors' Note

It would be pertinent to note that in a similar case before the Madras HC in Sun Dye Chem **[2020-TIOL-1858-HC-MAD-GST]**, the Petitioner was allowed to rectify the return. The Madras HC had reasoned that it was nobody's case that the error was deliberate and intended to gain any benefit, and in fact, by reason of the error, the customers of the Petitioner will be denied credit which they claim to be legitimately entitled to, owing to the fact that the credits stand reflected in the wrong column.

Madras HC sets aside detention order passed on perverse grounds and without application of mind

Vijay Metal
2021-TIOL-1084-HC-TELANGANA-GST

The Petitioner, situated in Secunderabad had purchased certain stainless-steel pipes from a supplier located in Dadara and Nagar Haveli. Accordingly, the Petitioner had hired a GTA for transportation of the goods. The GTA had another booking for transporting certain goods of much lesser quantity from the same supplier to another buyer in Adoni, Kurnool District. Therefore, 2 EWBs were generated, one from Dadra and Nagar Haveli to Secunderabad and the other from Dadra and Nagar Haveli to Adoni.

During the transit of the goods, the vehicle had been intercepted by the Respondent at a place between Secunderabad and Adoni. The Respondent alleged that the goods were transported without valid documents as envisaged u/s. 129 of the CGST Act. It was the contention of the Respondent that as Secunderabad came before Adoni, the Petitioner's goods should have been unloaded before resuming the transit to Adoni.

The Petitioner contended that as their goods were of much higher quantity, the transporter loaded them first and on top of such it, the goods of the Adoni buyer had been placed. Accordingly, the GTA would first unload the goods at Adoni and then procced to transport the Petitioner's goods at Secunderabad. However, the Respondent held that the goods were being transported without valid documents and ordered detention of the vehicle and the Petitioner to pay tax along with penalty.

Aggrieved, the Petitioner preferred a Writ before the Madras HC. It was observed by the HC that naturally for operational convenience, the transporter would load the lesser quantity last and the larger quantity first and it would be convenient for the transporter to offload the lesser quantity first and then the larger quantity next. The HC further held that Respondent shockingly did not understand and simply went by the point that Secunderabad comes first and Adoni comes later ignoring the operational convenience of the transporter. It was further held that the view of the Respondent was utterly perverse and cannot be accepted.

In view of the above observations, the HC allowed the Writ Petition and set aside the order passed by the Respondent. It was held that the action of the Respondent was arbitrary, illegal and violative of Articles 14 and 300A of the Constitution of India.

Madras HC forbears Revenue from auctioning seized watches pending appeal disposal by CESTAT; Disposes writ petition

Vikram Jain
2021-TIOL-1041-HC-MAD-CUS

The Petitioner had been subjected to a search by the DRI where 163 imported branded watches had been seized. Parallelly, the residential premises of the Directors had also been searched wherein 15 imported watches and a sum of INR 19 lacs, was seized.

Thereafter, proceedings for adjudication had been taken up, culminating in an order-in-original imposing penalty and granting an option to redeem the watches on payment of redemption fine and differential customs duty under Section 125(2) of the Customs Act, 1962

Against the order-in-original, the Petitioner filed a first appeal and the first appellate authority, ordered absolute confiscation of the watches and also confirmed the penalty imposed originally.

Against the aforesaid order, the Petitioner approached the CESTAT. The appeal was filed belatedly and the CESTAT condoned its delay, listing it for hearing on May 5, 2021.

In the meantime, the Petitioner received communication from the Assessing Authority threatening disposal of the goods pending appeal.

Aggrieved, the Petitioner preferred a writ petition before the HC seeking a mandamus forbearing the respondent from auctioning the watches seized pending disposal of its appeal before the CESTAT.

The HC placing reliance on Circular No.1053/2/2017-CX dated March 10, 2017 and Section 129E of Customs Act, 1963 noting the categoric statement of the Board to the effect that no coercive action shall be taken for recovery of any balance of disputed dues, once the pre-deposit is made, observed that the present communication from the Assessing Authority had no legs to stand and accordingly forbearing Revenue from auctioning seized watches pending appeal disposal by CESTAT, disposed the writ petition.

HC holds appeal remedy exhaustion of 'paramount important' for 'effective adjudication'; Dismisses writ petition

Mahaveer Foods & Beverages
2021-TIOL-1069-HC-MAD-CX

The assessee is a sole proprietorship that procures tea from registered tea suppliers, herbs & spices from dealers in powder form and permitted food colours and mixes all the said items together to produce "Herbal Sherbat Granules". It is only a flavoured tea and not a ready to drink or instant tea item containing around 90% of tea. Revenue classifying the product under subheading No.2101 2090 passed an order against the assessee.

Aggrieved, the assessee preferred a writ petition before the HC contending that the matter be remanded back to Principal Commissioner of GST & Central Excise for non-consideration of grounds raised by assessee as well as the absence of report from Central Food Technologies Research Institute regarding appropriate classification of the product as tea.

HC emphasizing on need for effective adjudication, observed the bypassing of the appellate remedy by the assessee to not be preferable in such circumstances as any finding in a writ proceeding may cause prejudice to either of the parties.

HC further observing that it is not empowered to venture into the adjudication of certain intricacies in the facts and circumstances and other technical aspects opined that if an efficacious appellate remedy is available before the Appellate Tribunal, then the HC need not go into those facts unnecessarily as the institutional respects are to be maintained and the statutory appeals are to be exhausted in all circumstances.

Therefore, dismissing the writ petition HC held the petitioners bound to exhaust the appellate remedy by filing an appeal before the Appellate Authority in a prescribed form and by complying with the provisions of the Act within a period of 30 days from the date of receipt of a copy of this order and requiring the Appellate Tribunal to adjudicate the matter on merits and in accordance with law by affording opportunity to all the parties concerned in the event such appeal is filed by the assessee.

CESTAT rebukes Appellant for not giving opportunity to be heard; Holds Appellant's appeal an abuse of process of law

Overseas Warehousing Pvt Ltd.
2021-TIOL-284-CESTAT-CHD

The Respondent was appointed as Custodian responsible for receipt, storage, delivery, dispatch or otherwise handling of imported goods and export of goods in terms of section 45 of Customs Act, 1962. One importer, namely, M/s. Golden Enterprises filed two bills of entry declared to be Pressed Distillate Oil. A case was booked and the said imported goods were detained, seized and confiscated.

After prolonged litigation the matter was finally decided against the department. Accordingly, a Detention Certificate was issued by department under Regulation 6(1)(l) of Handling of Cargo in Customs Areas Regulations, 2009 for waiver of ground rent or demurrage for the period the goods remained detained, seized and confiscated.

Aggrieved against the refusal of department to aggressively pursue the matter of waiver of detention/demurrage and the refusal of the custodian to accept the detention certificate, the importer preferred a writ petition before the HC.

During the pendency of said petition, the Respondent disposed of goods which caused the importer to also move a contempt petition before the HC wherein the HC directed the department to freeze the bank account of the Respondent.

Aggrieved, the Respondent preferred a writ petition before the HC wherein the HC directed the Respondent to put INR 25 lakhs in escrow account, requiring the department to determine the question of admissibility of interest and its rate, if any, after adjudicating the recovery of duty from the Respondent after giving the Respondent an opportunity of hearing.

The Appellant determined the interest payable by the Respondent and demanded interest from the Respondent without affording the Respondent an opportunity to be heard and approached the Commissioner (Appeals) who accordingly set aside the adjudicating order demanding interest from the Respondent.

Aggrieved, the Appellant approached the CESTAT which observed that, it is the duty of the Appellant to determine the dispute with regard to recovery of duty from the Respondent if any, giving the Respondent an opportunity to be heard and thereafter, decide the issue of admissibility of interest and its rates. The CESTAT further noted that, when the goods were in the custody of the custodian in terms of section 47 of the Act then the duty was payable by the custodian but no such notice had been issued to the Respondent by the appellant to determine the liability on the Respondent.

CESTAT further observed that, it was a fact on record that the appellant had enjoyed duty paid way back in 2013 by the importer on the goods in question. Therefore, as the duty had already been enjoyed by the appellant themselves the demand of interest from the Respondent without determining liability was unwarranted.

Thus, not finding any infirmity in the order of the Commissioner (Appeals), CESTAT found the Revenue's appeal to only be an abuse of process of law as the Commissioner (Appeals) had also determined duty liability against the Respondent. However, as the duty had been enjoyed by appellant themselves, the demand of interest from the Respondent was devoid of any merit.

HC held seizure of goods in contemplation of confiscation is a drastic measure needing prompt adjudication

Mbility Services
2021-TIOL-1169-HC-MUM-CUS

The Assessee, an exporter and domestic seller of information technology and electronic products, received a purchase order from a UAE company for supply of 5000 LED monitors.

To complete the order, Assessee procured the goods from a domestic supplier who imported the goods from China to India and paid the IGST and prepared two consignments by filing the respective shipping bills against which export orders were issued.

The Assessee was apprised by the Customs Superintendent that the first consignment was put on hold on suspicion of overvaluation, mislabelling and export compliance issues and alleged intention to claim an ineligible IGST refund claim. Subsequently, the Superintendent of Customs issued summons to the Assessee and also issued a letter so that the Assessee could submit request letter for provisional release of the export consignment. However, owing to financial constraints, Assessee requested the authorities for release of goods.

However, the subject goods were seized vide a seizure memo on grounds that Assessee was trying to export the consignment to avail undue export benefits and in contravention of the Customs Act.

Subsequently, by an internal communication, Assessee was allowed to provisionally release the goods subject to submission of bond and bank guarantee. However, the export incentives/rewards of the Assessee were held back due to pending enquiry.

Aggrieved, the Assessee preferred a writ before the HC which observed that an adjudicatory process in which principles of natural justice are required to be followed is the pre-requisite in every case of confiscation or penalty and before initiation of such adjudicatory process show-cause notice is required to be given to the owner or to the concerned person mentioning therein the grounds of proposed confiscation or penalty whereafter an opportunity of making representation is required to be given followed by the reasonable opportunity of hearing.

HC, further observed that if within six months (extendable by another six months), no notice is given post-seizure, the goods shall be returned to the person from whose possession they were seized. However, the aforesaid rigor of law would not be applicable when the seized goods are provisionally released.

Further, as already a lot of time had elapsed from the issuance of the seizure memo, HC held that such a construction would not be a reasonable one because a seizure of goods in contemplation of confiscation is a drastic measure and is required to be adjudicated promptly.

HC further opined that it would be just and proper if the impugned seizure is adjudicated by the adjudicatory authority and relegating the petitioner to the forum of adjudicatory authority, directed the Principal Commissioner of Customs to authorize an appropriate officer of the customs department to adjudicate on the impugned seizure memo disposing of the writ petition.

CESTAT quashing Revenue's order as "inconclusive" holds True UP payments irrelevant for invoice value

Volvo Auto India Private Limited
2021-TIOL-314-CESTAT-DEL

The Assessee, a subsidiary of M/s. Volvo, Sweden is an importer and seller of CBU units of motor vehicles, manufactured by the parent company.

Customs duty was chargeable on most goods including motor vehicles on ad valorem basis. The value of goods for the purpose of calculation of Customs duty is the transaction value as per Section 14 of the Customs Act provided the buyer and seller are not related persons and as per this section, Rules can be framed to determine when they are deemed to be related persons and if they are related persons, how the valuation should be done.

An Order in Original was passed by the Deputy Commissioner, Special Valuation Bench (SVB), New Delhi holding that the importer and the foreign supplier were related, however, the invoice value of the goods imported by the importer from the foreign supplier were NOT influenced by their relationship. The Deputy Commissioner further held that the transaction value may be accepted as per Rule 3(3)(a) and that the order was valid for period of three years from the date of issue and that the decision was subject to occasional review/ a final review after a period of three years.

After three years, The Deputy Commissioner affirmed the Order in Original passed.

Aggrieved by the same, Revenue filed an appeal before the Commissioner (Appeals), who setting aside the order in original allowed the appeal filed by the department, neither remanding the matter to the original authority with directions to pass a de novo order nor modifying the order in original indicating how the valuation should be done. Consequently, no further orders appeared to have been passed by the original authority.

Aggrieved by the order of the Commissioner (Appeals), the Assessee approached the CESTAT contending among others that True UP payments were payments received by it from its parent company, not for sale or purchase of the imported cars but as subvention payments to recoup the losses and other expenses incurred by the Assessee, which being made to it by the parent company were in the nature of capital receipts and not revenue receipts.

Assessee further contended that as a bulk buyer and distributor, it needed to take responsibility for its own stocks and also needed to promote sales for its own business, which however did not mean that it was incurring these expenses on behalf of the parent company and neither were any extra payments made by the assessee to the parent company.

The Revenue contended that the original authority had failed to examine and verify the quantum of losses incurred by the appellant which was equal to the amounts of True up amounts received by them and submitted that as per Rule 10(1) (e) of Valuation Rules, if the advertising and marketing costs are relatable to the imported goods, they are includable in the assessable value and it didn't matter whether True up amounts were in the nature of capital expenses or revenue expenses for the purpose of customs, the only thing which mattered was whether it was includible in the transaction value.

Hearing both the parties, CESTAT observed, that the parent company had only paid the True UP payments to the Assessee to make up for the losses and these amounts were not in the nature of transfer of funds from the parent company to the Assessee as contended by the Revenue. Moreover, it did not matter whether they were recorded under capital receipts or revenue receipts.

CESTAT further elaborated, that what was relevant was the invoice price and if there was any additional consideration flowing from the importer to the foreign supplier so that the correct transaction value could be determined, in the present matter, the True UP payments were flowing not from the Assessee to the foreign supplier but the other way round, therefore, if these were reckoned to arrive at the transaction value, the invoice value will have to be lowered which would not advance the case of the Revenue at all.

CESTAT further stated that, such True UP payments were not mandated by any law and could not influence the transaction prices, as the losses incurred by the Assessee had no bearing on the invoice value whether the losses were recouped by the parent company in the form of True Up payments or not.

CESTAT emphasized that, if the Assessee was responsible for certain activities such as customs, taxability, inventory costs, distribution and sales promotions including advertising and marketing for its entire business in India, it could not be called a payment to their parent company but would be managing affairs related to its own business. The expenses pertaining to imports, taxes, sales, advertising, etc, could not be termed as expenses incurred on behalf of the parent company although they would also indirectly benefit if the Assessee's business improved.

Further CESTAT setting aside the order of the Commissioner (Appeals), held the order of the Commissioner (Appeals) to be inconclusive stating, that the Order in Original held the relationship between the importer and their foreign supplier to not have affected the transaction price and therefore, the same was to be accepted as while setting it aside the Commissioner (Appeals) had neither holding that the relationship affected the price, determined the method of valuation nor remanded the matter for a re-decision.

Chennai Tribunal holds that dispatch not akin to communication of order

Hari Babu
2021-TIOL-252-CESTAT-MAD

The Appellant had filed an Appeal before the Commissioner (A), which came to be rejected on the grounds of limitation. Aggrieved, the Appellant preferred an Appeal before the Tribunal. It was argued that the Respondent had computed the limitation from the date of dispatch of the order and not the date of service of the order. It was further submitted that even if the date of dispatch is considered, the Appellant had submitted the Appeal within the period of condonation.

The Tribunal observed that in terms of Section 128 of the Customs Act, an appeal has to be filed within 60 days from the date of communication to him of such decision or order. The word 'communication' implies that the order has to be put to knowledge of the aggrieved person. Mere dispatch of the order cannot be communication of the order. It was further observed that even if the date of dispatch is reckoned for computing 60 days, the delay is less than 30 days and within the condonable period prescribed in the statute.

In view of the above, the Tribunal held that the Appellant cannot be deprived of the remedy of appeal in a hyper-technical manner. Such ways adopted to increase disposals is deprecated. The HC remanded the matter back to the Commissioner (A) for adjudication.

Authors' Note

It is a well settled law that the date of dispatch is to be excluded while computing the limitation. However, the Revenue authorities often include the dispatch date while computing the limitation and refuse to entertain the Appeal. Such a narrow view, only adds to the pressure on the already over-burdened judiciary and quasi-judiciary authorities. Recently, the Bombay HC in the case of Skoda Auto Volkswagen India Private Limited **[2021-TIOL-616-HC-MUM-ST]** had held that the limitation of 3 months is different from 90 days.

Karnataka HC quashes 3-times penalty of the tax-amount

Continental Coffee and Food Grain
2021-TIOL-791-HC-Kas R-VAT

The Commercial Tax Officer had intercepted the vehicle of the Petitioner and proposed to levy a penalty three times the amount of tax payable in respect of the goods which were being transported, on allegation of no documents being found in proof of the goods under transport. Although the penalty was reduced by the Jt. Commissioner of Commercial Taxes, it was once again enhanced to the proposed penalty by the Revisional authority. Aggrieved, the Petitioner preferred a Writ before the Karnataka HC.

The HC observed that consequences of contravention of the VAT Act are provided therein. It was further observed that Commercial Tax Officer has discretion in the matter of imposition of penalty and the question of imposition of penalty is not automatic. It was observed that the contravention of the VAT Act in as much as the prescribed documents were not accompanied with the transporter, was on account of reasonable facts known to the Commercial Tax officer.

In view of the above observations, the HC held that the Revisional Authority had exceeded its power in interfering with the concurrent findings of fact recorded by the Commercial Tax Officer in imposing three times the penalty on the amount of tax, merely on the ground that the assessee had contravened the provisions of the Act.

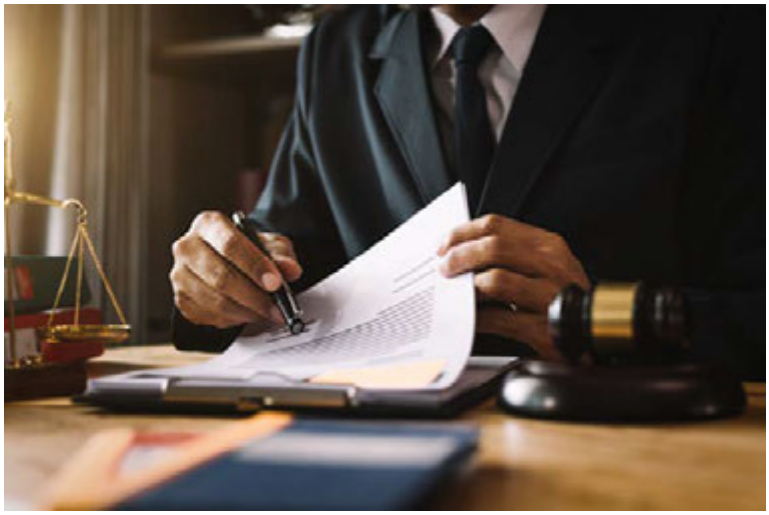
Bangalore Tribunal allows refund of advance tax paid under GST transitional provisions

Cochin International Airport Limited
2021-TIOL-168-CESTAT-BANG

The Appellant had filed a refund application for service tax advance deposit in January 2018. The refund application came to be rejected by the Respondent on the grounds of limitation u/s. 11B of the Excise Act as the prescribed intimation had not been given. The Respondent had further held in the rejection order that claim of refund of balance under ST law is not subject to the time limit stipulated in section 11B(1), in view of section 142(5) of the CGST Act.

Aggrieved, the Appellant preferred an Appeal before the Tribunal. Relying upon previous judgements, the tribunal observed that time bar of Section 11B of the Excise Act is not applicable to advance/deposits, etc. which are not in the nature of taxes or duties. It was further observed that the requirement to file an intimation is merely procedural and therefore, the same cannot be a ground for denial of substantive benefit.

Lastly, the Tribunal observed that Section 142(1) of CGST Act, provides for cash refund in situations specified in Section 11B of the Excise Act and the Appellant's case is squarely covered by Clause B of proviso to Section 11B (2) which provides for cash refund of balance in current account.



Delhi Tribunal allows credit on subscription of Club Membership & Insurance for employees

Rajratan Global Wire Limited
2021-TIOL-315-CESTAT-DEL

The Appellant, a manufacturer of wire of non-alloy steel and had availed CENVAT credit under CCR on certain Insurance Services, Subscription of Club Membership etc. The Respondent had dis-allowed credit on the said services alleging that they were not specified categories of input services. The Appellant reiterated their submissions, post which credit on all aforementioned services were accepted except for the credit on Membership of Club Service and Health Insurance Service on the ground that the services are specifically excluded from the definition of input service as amended, w.e.f. 1 July 2012. In connection thereof, the Appellant filed an Appeal with the CESTAT.

Referring to the amended definition of 'input services' w.e.f. 01 July 2012 as per sec 2(l) of CCR, the Tribunal observed that the inclusion part of the definition though nothing is specifically mentioned, has a wider scope wherein any service can be input service if it is used in relation to final product. It was further observed that vide the exclusion part, only those services were excluded, which are primarily used for personal used or consumption of any employee.

It was further observed that, the credit of input services availed by the Appellant in respect to the Club membership and insurance service were neither for the personal use nor for consumption of any one employee, but for the welfare of the employee at large. Accordingly, the Tribunal allowed the credit on the input service and set aside the order passed by the Respondent.

Notification / Circular	Key Updates
Notification No. 15/2021 – Central Tax dated May 18, 2021	**Amendment to CGST Rules, 2017** **Revocation of cancellation of registration** The following officers have been empowered to grant extension in filing revocation application: ▸ Additional Commissioner / Joint Commissioner ('AC/DC') – Extend time limit by 30 days ▸ Commissioner – Extend time limit by another 30 days **Refund Claims – Limitation** Rule 90 of the CGST Rules is amended to exclude the time period between filing of refund claim and communication of deficiency memo from period of 2 years period prescribed under Section 54(1) of the CGST Act for any refund claim filed after curing deficiencies. **Withdrawal of Refund Claims** Rule 90 of the CGST Rules has been amended to allow taxpayers to withdraw refund claim upon filing of application in GST RFD-01W before issuance of following: ▸ Provisional refund sanction order in Form GST RFD-04; ▸ Final refund sanction order in Form GST RFD-05; ▸ Refund withhold order in Form GST RFD-07; and ▸ Notice in Form RFD-08
Circular No. 148/04/2021-GST dated May 18, 2021	**SOP – Time limit to apply for revocation of cancellation of registration** Till the time an independent functionality for extension of time limit for applying in FORM GST REG-21 is developed on the GSTN portal, it has been clarified that: ▸ Request for extension may be made through letter or email to Proper Officer; ▸ Proper Officer shall forward the request to the jurisdictional Officer where request for extension of time limit is between 30 days to 60 days; ▸ Concerned Officer shall take decision and grant personal hearing if it anticipates rejection of application ▸ Similar procedure will apply for application before Commissioner where extension sought is between 60 to 90 days.
Notification No. 16/2021 – Central Tax dated June1, 2021	**Retrospective amendment of Interest provision** June1, 2021 appointed as the date of amendment of Section 50 of the CGST Act, which inter alia provides for payment of interest on net cash basis
Notification No. 17/2021 – Central Tax dated June1, 2021	**GSTR-1 Extension** Extends the due date for furnishing Form GSTR-1 for the month of May 2021 by 15 days.

Notification / Circular	Key Updates
Notification No. 18/2021 – Central Tax dated June1, 2021	**Interest Rate** Prescribes interest rate of 9% for the first 15 days from the due date and 18% thereafter on late filing of GSTR-3B for the months of March, April and May 2021 for taxpayers having an aggregate turnover of more than INR 5 crores in the preceding F.Y. For taxpayers having an aggregate turnover up to INR 5 crores in the preceding F.Y.: ▸ Prescribes NIL interest for the first 15 days from the due date and 9% for the next 45 days and 18% thereafter on late filing of GSTR-3B for the months of March 2021; ▸ Prescribes NIL interest for the first 15 days from the due date and 9% for the next 30 days and 18% thereafter on late filing of GSTR-3B for the months of April 2021; ▸ Prescribes NIL interest for the first 15 days from the due date and 9% for the next 15 days and 18% thereafter on late filing of GSTR-3B for the months of May 2021. For taxpayers having an aggregate turnover up to INR 5 crores in the preceding F.Y liable to file quarterly return.: ▸ Prescribes NIL interest for the first 15 days from the due date and 9% for the next 45 days and 18% thereafter on late filing of GSTR-3B for the months of March 2021; ▸ Prescribes NIL interest for the first 15 days from the due date and 9% for the next 30 days and 18% thereafter on late filing of GSTR-3B for the months of April 2021; ▸ Prescribes NIL interest for the first 15 days from the due date and 9% for the next 15 days and 18% thereafter on late filing of GSTR-3B for the months of May 2021. Prescribes NIL interest for the first 15 days from the due date and 9% for the next 45 days and 18% thereafter on late filing return for the quarter ending March 2021 for taxpayers having an aggregate turnover up to INR 5 crores in the preceding F.Y. who have opted for composition levy.
Notification No. 19/2021 – Central Tax dated June1, 2021	**Late Fee Waiver** Waives off late fee payable for taxpayers having an aggregate turnover of more than INR 5 crores in the preceding F.Y. for the period of 15 days from the furnishing of GSTR-3B for the months of March, April and May 2021; ▸ For taxpayers having an aggregate turnover up to INR 5 crores in the preceding F.Y.: ▸ Waives off late fee payable for the period of 60 days from the furnishing of GSTR-3B for the months of March 2021; ▸ Waives off late fee payable for the period of 45 days from the furnishing of GSTR-3B for the months of April 2021; ▸ Waives off late fee payable for the period of 30 days from the furnishing of GSTR-3B for the months of May 2021; For taxpayers having an aggregate turnover up to INR 5 crores in the preceding F.Y. waives off late fee payable for the period of 60 days from the furnishing quarterly return for the quarter ending March 2021;

Notification / Circular	Key Updates
	Waives off late fee in excess of INR 500/- for taxpayers who failed to furnish the GSTR-3B return monthly/quarterly for period July 2017 to April 2021 by due date but furnishes the same between June1, 2021 to August 31, 2021; Waives off late fee in excess of INR 250/- for taxpayers whose tax payable is NIL and who failed to furnish the GSTR-3B return monthly/quarterly for period July 2017 to April 2021 by due date but furnishes the same between June1, 2021 to August 31, 2021; Waives off late fee in excess of INR 250/- for taxpayers whose tax payable is NIL and who failed to furnish the GSTR-3B return monthly/quarterly by due date for the period June 2021 onwards; Waives off late fee in excess of INR 1000/- for taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding F.Y. who failed to furnish the GSTR-3B return monthly/quarterly by due date for the period June 2021 onwards; Waives off late fee in excess of INR 2500/- for taxpayers having an aggregate turnover more than 1.5 crores but of up to rupees 5 crores in the preceding F.Y. who failed to furnish the GSTR-3B return monthly/quarterly by due date for the period June 2021 onwards;
Notification No. 20/2021 – Central Tax dated June1, 2021	**Late Fee Waiver** Waives off late fee in excess of INR 250/- for taxpayers having NIL outward supplies in the period June 2021 and failed to furnish the GSTR-1 return monthly/quarterly by due date for the period; Waives off late fee in excess of INR 1000/- for taxpayers having aggregate turnover up to INR 1.5 crores in the preceding F.Y. and failed to furnish the GSTR-1 return monthly/quarterly by due date for the period June 2021 onwards; Waives off late fee in excess of INR 2500/- for taxpayers having aggregate turnover more than 1.5 crores and up to 5 crores in the preceding F.Y. and failed to furnish the GSTR-1 return monthly/quarterly by due date for the period June 2021 onwards.
Notification No. 21/2021 – Central Tax dated June1, 2021	**Late Fee Waiver – GSTR-4** Waives off late fee in excess of INR 250/- for taxpayers whose tax payable is NIL and who failed to furnish the Form GSTR-4 return by due date for F.Y. 2021-22 onwards; Waives off late fee in excess of INR 1000/- for taxpayers other than whose tax payable is NIL who failed to furnish the Form GSTR-4 return by due date for F.Y. 2021-22 onwards.
Notification No. 22/2021 – Central Tax dated June1, 2021	**Late Fee Waiver – GSTR-7** Waives off late fee in excess of INR 25/- for every day, for any taxpayer who fails to furnish the Form GSTR-7 by due date for the period June 2021 onwards; Waived off late fee in excess of INR 1000/- for any taxpayer who fails to furnish the Form GSTR-7 by due date for the period June 2021 onwards.

Notification / Circular	Key Updates
Notification No. 23/2021-Central Tax dated June1, 2021	**E-Invoicing Requirement** Excludes a Government Department, a local authority from the requirement of issuance of e-invoice
Notification No. 24/2021-Central Tax dated June1, 2021	**Time Limit for Compliances** Time limit for completion or compliance of any action, during the period from the April 15, 2021 to June 29, 2021, has been extended up to the June 30, 2021 including for the purposes of: ▸ Completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval; ▸ Filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record. For the purpose of verification of the registration application and where the approval falls during the period of from May 1, 2021 to June 30, 2021, then, the time limit for the same has been extended up to July 15, 2021; Where the notice has been issued for rejection of refund claim and the time limit for issuance of order falls during the period of from April 15, 2021 to June 29, 2021 then the time limit for issuance of order shall be extended to the later of: ▸ 15 days after the receipt of reply to the notice from the registered person or ▸ June 30, 2021
Notification No. 25/2021-Central Tax dated June1, 2021	**Extension GSTR-4** Extends the due date for filing of Form GSTR-4 i.e., Annual Return for the FY 2020-21 for taxpayers who have opted for the composition scheme from April 30, 2021 to July 31, 2021. The notification shall be deemed to have come into force with effect from May 31, 2021.
Notification No. 26/2021-Central Tax dated June1, 2021	**Extension ITC-04** Extends the time period for furnishing declaration in Form ITC-04 i.e., details of goods/capital goods sent to job worker and received back to June 30, 2021 for quarter January to March 2021. The notification shall be deemed to have come into force with effect from May 31, 2021.
Notification No. 27/2021-Central Tax dated June1, 2021	**CGST Rules Amendment** Notifies CGST (Fifth Amendment) Rules, 2021 in the following manner: ▸ Amends Rule 36(4) of the CGST Rules to provide that the condition of availment of 105% of eligible visible ITC from Form GSTR-2B, is to be seen cumulatively for the period April, May and June 2021; ▸ Amends Rule 59(2) of the CGST Rules to provide that for dealers who have opted for quarterly filing of Form GSTR-1 and were eligible to file monthly B2B sales till 13th of succeeding month to pass on the ITC to the recipient using Invoice Furnishing Facility ('IFF') can now furnish details using IFF for the month of May 2021 till June 28, 2021.

Notifications	Key Updates
Ad hoc Exemption Order No. 04/2021 dated May 3, 2021	**CBIC exempts IGST on import of Remdesivir, medical grade oxygen, oxygen related equipments and Covid -19 vaccines till June 30, 2021** CBIC has exempted IGST on import of Remdesivir Injection and active pharmaceutical ingredients as well as other materials used in manufacture of Remdesivir, medical grade oxygen, oxygen related equipments and Covid -19 vaccines till June 30, 2021 subject to the following conditions: ▸ The said goods are imported free of cost for the purpose of Covid relief by a State Government or, any entity, relief agency or statutory body, authorised in this regard by any State Government. ▸ The said goods are received from abroad for free distribution in India for the purpose of Covid relief. ▸ Before clearance of the goods, the importer produces to the Deputy or Assistant Commissioner of Customs, a certificate from a nodal authority, appointed by a State Government, that the imported goods are meant for free distribution for Covid relief, by the State Government, or the entity, relief agency or statutory body, as specified in such certificate. ▸ The importer produces before the Deputy or Assistant Commissioner of Customs, at the port of import within a period of six months from the date of importation, or within such extended period not exceeding nine months from the said date, a statement containing details of goods distributed free of cost duly certified by the said nodal authority of the State Government.
FAQ dated May 07, 2021 to Ad hoc Exemption Order No. 04/2021 dated May 03, 2021	**CBIC releases FAQs on Ad-hoc IGST exemption on import of COVID-19 relief-material** CBIC has released FAQs on IGST exemption given to the import of specified COVID-19 relief material under Ad-hoc Exemption Order 4/2021 - Customs dated May 3, 2021. In the FAQs, CBIC has clarified that any 'relief agency' authorised by a state can make free distribution of goods so imported anywhere in India, however, in case any corporate buys it and even gives it for free, such exemption will not be available. Further, CBIC has also provided the format for said authorization for import, procedure for certification of statement containing details of goods distributed free of cost, authorization by nodal authority, issuance of certificate for multiple consignments among others.
Notification No. 29/2021-Customs (ADD) dated May 07,2021	**Anti-dumping duty on seamless tubes, pipes and hollow profiles of iron, alloy or non-alloy steel originating in/ exported from China extended till October 31, 2021** CBIC has extended anti-dumping duty till October 31, 2021 on Seamless tubes, pipes and hollow profiles of iron, alloy or non-alloy steel (other than cast iron and stainless steel), whether hot finished or cold drawn or cold rolled of an external diameter not exceeding 355.6 mm or 14" OD originating in, or exported from the People's Republic of China.

Notifications	Key Updates
Notification No. 30/2021-Customs (ADD) dated May 24, 2021	**Anti-dumping duty on 1,1,1,2-Tetrafluoroethane or R-134a originating in or exported from China PR, extended till January 10, 2022** The levy of anti-dumping duty on the import of 1,1,1,2-Tetrafluoroethane or R-134a originating in or exported from China PR has been extended till January 10, 2022
Notification No. 31/2021-Customs (ADD) dated May 29, 2021	**Anti-dumping duty on 'Methyl Acetoacetate' originating in or exported from China PR for a further period of five years** The levy of anti-dumping duty on the import of 'Methyl Acetoacetate' originating in or exported from China PR has been extended till May 19, 2026.
Notification No. 50/2021-Customs (NT) dated May 31, 2021	**Sea Carriers to continue delivering Cargo declaration as per old Regulations till June 30, 2021** CBIC has amended Regulation 15 of the Sea Cargo Manifest and Transhipment Regulations 2018 thereby extending the time period for authorised sea carrier to continue delivering the cargo declaration as per the Import Manifest (Vessels) Regulations, 1971 and Export Manifest (Vessels) Regulation, 1976 from May 31, 2021 to June 30, 2021.
Notification No. 31/2021-Customs read with Notification No. 32/2021-Customs & Ad-hoc Exemption Order 5/2021 dated May 31, 2021	**CBIC notifies customs exemption on 'Amphotericin-B and extends exemption on IGST on import of Remdesivir, medical grade oxygen, oxygen related equipments and Covid -19 vaccines till August 31, 2021** Pursuant to the decision of the GST Council, CBIC has extended the customs duty and health cess exemption on import of 'Amphotericin-B' (Black Fungus drug) as well as the date of exemptions provided to medical oxygen, oxygen related equipment and Covid vaccines under Notification No. 28/2021-Customs from July 31, 2021, to August 31, 2021. Further, CBIC has also extended the IGST exemption on COVID-19 related donations from abroad including the import of Remdesivir, medical grade oxygen, oxygen related equipments and Covid -19 vaccines from June 30, 2021, to August 31, 2021, subject to the following conditions: ▸ The said goods are imported free of cost for the purpose of Covid relief by a State Government or, any entity, relief agency or statutory body, authorised in this regard by any State Government. ▸ The said goods are received from abroad for free distribution in India for the purpose of Covid relief. ▸ Before clearance of the goods, the importer produces to the Deputy or Assistant Commissioner of Customs, a certificate from a nodal authority, appointed by a State Government, that the imported goods are meant for free distribution for Covid relief, by the State Government, or the entity, relief agency or statutory body, as specified in such certificate.

	Key Updates
	▸ The importer produces before the Deputy or Assistant Commissioner of Customs, at the port of import within a period of six months from the date of importation, or within such extended period not exceeding nine months from the said date, a statement containing details of goods distributed free of cost duly certified by the said nodal authority of the State Government.
Circulars/Instructions	**Key Updates**
Instruction No. 09/2021-Customs dated May 03, 2021	**Instructions on exemption from IGST on imports of specified COVID-19 relief material donated from abroad, up to 30 June, 2021** CBIC has issued the followings instruction with regards to Adhoc Exemption Order No. 04/2021 dated May 03, 2021 granting the IGST exemption on imports of specified COVID-19 relief material donated from abroad, up to June 30, 2021. Accordingly: ▸ State Governments shall appoint a nodal authority in the State for the purpose of this exemption. As per section 2 (103) of the Central Goods and Services Tax Act, 2017, state include a Union territory with Legislature. ▸ The Nodal authority so appointed shall authorise any entity, relief agency or statutory body, for free distribution of such Covid-relief material. ▸ The said goods can be imported free of cost by a State Government or, any entity/relief agency/ statutory body, authorized in this regard for free distribution anywhere in India. ▸ The importer shall before clearance of goods from Customs produce a certificate from the said nodal authorities that goods are meant for free distribution for Covid relief. ▸ After imports, the importer shall produce, to the Deputy or Assistant Commissioner of Customs at the port within a period of six months from the date of importation or within such extended period not exceeding nine months, a simple statement containing details of goods imported and distributed free of cost. This statement shall be certified by the said nodal authority of the State Government. The exemption order shall apply to all the such consignments pending clearance from Customs as on date of issue of order, i.e., May 3, 2021.
Circular No. 09/2021-Customs dated May 08, 2021	**CBIC restores facility of acceptance of an undertaking in lieu of bond till June 30, 2021** In light of the ongoing pandemic causing delays or disruptions in EXIM trade and in order to facilitate the customs clearance process, CBIC has restored the facility of acceptance of an undertaking in lieu of bond by customs formations till June 30, 2021. Importers/Exporters availing this facility are required to ensure that the undertaking issued in lieu of bond is duly replaced with a proper bond by July 15, 2021.

Circulars/Instructions	Key Updates
Instruction No. 10/2021-Customs dated May 13, 2021	**CBIC announces 'Special Refund & Drawback Disposal Drive' for claims pending as on May 14, 2021** In order to provide immediate relief to the business entities, especially MSMEs by timely disposal of pending refund/duty drawback claims, CBIC has decided to conduct a "Special Refund and Drawback Disposal Drive" from May 15 to May 31, 2021 with the objective of priority processing and disposal of pending refund and drawback claims pending as on May 14, 2021. Accordingly, CBIC has directed the Principal Chief Commissioners/ Chief Commissioners to closely monitor the performance on this front on a daily basis and, wherever required, suitably guide the officers concerned to maximize the disposal, and ensure coordination of this Special Drive with the major trade and industry associations for their assistance including submission of required documents from their members. The officers are therefore required to liquidate the pending refund and drawback claims by May 31, 2021, and also ensure the success of the Special Drive by: ▸ Conducting proper due diligence before granting the refunds and drawback. ▸ Conducting all communication over email for the facilitation of exporters, wherever email id of the applicant is available. ▸ Reviewing all deficiency memos and considering refund / drawback on merit. ▸ Widely publicizing the Special Drive.
Instruction No. 11/2021-Customs dated May 16, 2021	**Instruction on the revision in the import policy of Tur/Pigeon Peas, Moong and Urad** The Department of Commerce vide Notification dated May 15, 2021 had revised the import policy of Tur/Pigeon Peas, Moong and Urad from "Restricted" to "Free" with immediate effect, for the period up to October 31, 2021. Further, import consignments of these items with Bill of Lading issued on or before October 31, 2021 were not to be allowed by Customs beyond November 30, 2021. Accordingly, CBIC has directed all officers to be immediately sensitised about the above-mentioned changes in the import policy and ensure expeditious clearance of such imports upon arrival.
Circular No. 10/2021-Customs dated May 17, 2021	**CBIC highlights changes introduced through the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021** CBIC has highlighted the major changes brought about by the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021 to the ICGR Rules 2017 which inter alia relates to job work, import and clearance of capital goods and the existing end use exemptions under the ambit of ICGR Rules, 2017 and summary of procedure to be followed by the importer to avail concessional rate of duty as set out under the IGCR Rules, 2017. Further, it has clarified that penalty may be levied under the ICGR Rules, 2017 for the contravention of its provisions in addition to any other action taken under the Customs Act, 1962 for recovery of duties and has also proposed to route all the intimations and other communications specified under the IGCR Rules, 2017 to the Customs Officers concerned

	while the process of automating and facilitating online submission of compliances prescribed in the rules through the ICEGATE portal is underway.
Circulars/Instructions	**Key Updates**
Instruction No. 12/2021-Customs dated May 25, 2021	**Instructions regarding procedural relaxations for import of oxygen cylinders** CBIC has directed every foreign manufacturer/importer to apply for import permission through Petroleum and Explosive Safety Organization (PESO) online system for the import of oxygen cylinders. In case the importer has applied through online application to PESO and the decision is pending with PESO, the exemption allows them to bring oxygen cylinders on urgency for COVID relief activities in India. However, in case the importer has not applied through online application to PESO, the exemption allows them to bring cylinders for urgent use for enhancing oxygen distribution logistics in India. Further, making the consignee responsible for adherence of the prescribed procedure as per the relaxed conditions, prior to the filling of the medical oxygen in these cylinders at refillers/ filling plants, CBIC has urged Customs to give necessary clearances without PESO approvals for such items received at the ports/ airports for COVID relief works, and requested that the officers under its jurisdiction be sensitised about the same changes, and ensure that customs clearance of such imports are expedited on arrival.

FROM THE LEGISLATURE
FOREIGN TRADE POLICY

Notifications/Trade Notices/Public Notices	**Key Updates**
Public Notice No. 04/2015-20 dated May 4, 2021	**M/s Mats Fareast Ltd. has been notified as Pre-Shipment Inspection Agency in terms of Para 2.55 (d) of HBP 2015-20** M/s Mats Fareast Ltd. has been notified as Pre-Shipment Inspection Agency and thereby has been recognised for Pre-Shipment Certificate for a period of 3 years and accordingly, is required to update their membership certificate of MRAI/ISRI/IFIA along with their office address and contact details within 30 days.
Notification No. 05/2015-2020 dated May 10, 2021	**Amendment in import policy of Electronic Integrated Circuits** The import of processors and controllers, memories, amplifiers and other such parts of electronic integrated circuits has been made free subject to the compulsory registration of such imports under the Chips Imports Monitoring System from August 1, 2021.

Notifications/Trade Notices/Public Notices	Key Updates
Trade Notice No. 03/2021-2022 dated May 10, 2021	**Issuance of Export Authorization for Restricted Items (Non-SCOMET) for new online Restricted Exports IT Module with effect from May 17, 2021** As part of IT Revamp of its exporter/importer related services, DGFT has introduced a new online module for filing of electronic, paperless applications for export authorizations with effect from May 17, 2021. All applicants seeking export authorization for restricted items may apply online by navigating to the DGFT website (https://www.dgft.gov.in) -> Services -> Export Management Systems -> License for Restricted Exports. Accordingly, applications for issuance as well as for amendment/re-validation of export authorization will need to be submitted online as per the above link and export authorizations for restricted items (Non-SCOMET) will continue to be issued from DGFT HQ, Udyog Bhawan, New Delhi through new module with effect from May 17, 2021. It may further be noted that all pending applications will be migrated to this new system and will be processed at DGFT(HQ).
Trade Notice No. 04/2021-2022 dated May 10, 2021	**Extension of validity of Registration cum Membership Certificate (RCMC) beyond March 31, 2021** In view of the current situation due to the COVID-19 pandemic, DGFT has decided that its Regional Authorities will not insist on valid RCMC (in cases where the same has expired on or before March 31, 2021) from the applicants for any incentive/authorizations till September 30, 2021.
Trade Notice No. 05/2021-22 dated May 19, 2021	**DGFT introduces online e-EPCG Committee module for accepting applications seeking relaxation in Policy/Procedure in terms of para 2.58 of FTP 2015-20** DGFT has introduced an online e-EPCG Committee module for accepting applications seeking relaxation in Policy/Procedure in terms of para 2.58 of FTP 2015-20. Accordingly: ▸ The application for seeking relaxations in terms of para 2.58 of FTP 2015-20 under the EPCG committee would be accepted through online mode only. No manual submission of application for the same would be allowed. ▸ The member of the trade can login to the portal, fill the requisite of details in the form, upload the necessary documents and submit the application after paying requisite fees. ▸ The System will generate a file number which can be used for the tracking purposes through the portal. ▸ The Directorate would issue online deficiency letters calling by any additional information required and the exporter would be able to reply to the deficiency letter online.

Notifications/Trade Notices/Public Notices	Key Updates
	▸ The entire processing of the application and communication of the decision of the committee would be in online mode only. The members of trade can file applications to e-EPCG Committee module through following navigation — https://dgft.gov.in/ > Login using registered user credentials for the IEC holder > Services > EPCG > Apply for EPCG Committee.
Trade Notice No. 06/2021-22 dated May 25, 2021	**Mandatory recording of information about transfer of DFIA (Duty Free Import Authorization) Scrips and Paperless issuance of DFIA Scrip** In order to enable electronic, paperless transactions and facilitate trade, DGFT has notified the creation of a facility on the DGFT website to record the information about transfer of DFIA scrips. The recording of given information would allow the transferee to apply for ARO/Invalidation against the said DFIA Scrip online. The transfer of DFIA scrips, shall be recorded under the relevant module on the DGFT website. Accordingly, the issuance of paper copies of DFIA scrips (for EDI Ports) shall be discontinued with effect from June 7,2021 whereas the Security Paper copies of DFIA Scrips shall continue to be issued for Non-EDI Ports. Any transfer of DFIA Scrips issued on or after this date shall be mandatorily recorded in the online system. The record of such transfers shall be mandatory for EDI ports as well as non-EDI Ports. Where the DFIA scrip was issued prior to June 7, 2021 and an ARO/Invalidation is to be requested against the DFIA Scrip, the details of transfer of the said scrip (if any) would also be required to be recorded in the DGFT online system. Where the ARO/invalidation is being requested by the original scrip owner no such record of transfer would be required. However, where scrips were issued prior to June 7, 2021 and no request for ARO/Invalidation is to be made as on this date or after, the recording of any transfer of the given scrip shall not be mandatory. Further, the DFIA scrip owner shall 'transfer' the scrip to another IEC in the same manner as was being done by them earlier i.e. as per the independently negotiated terms & conditions between the buyer and the seller. However, the information about the new owner (transferee) has to be recorded on the DGFT website by the original owner (transferor), before the new owner (transferee) can utilize the scrip to obtain any ARO/ Invalidation. It is mandatory for both transferor and transferee to ensure that information regarding transfer is recorded. After the information is confirmed on the DGFT e-platform, the old owner cannot re-record the transfer, and only the new owner can record and further transfer/retransfer. The new owner (transferee) will not be able to utilize the scrip unless recorded on DGFT website, therefore, the new owner (transferee) has to ensure that the scrip is recorded in his favour by the old owner (transferor). DGFT/Customs shall not be responsible for any lapse by the old or new owner or any dispute in this regard. Furthermore, applicants will continue to apply for DFIA as per online procedure and the Regional Authorities will continue to issue the DFIA scrips in online module. The applicant would also continue to apply for ARO/Invalidation as per online procedure. The applicant for ARO/Invalidation shall be the current owner of the scrip as recorded in the DGFT online system.

Notifications/Trade Notices/Public Notices	Key Updates
Trade Notice No. 07/2021-22 dated May 26, 2021	**DGFT disables IEC services from June 1, 2021 to June 6, 2021 due to non-availability of PAN validation services** Owing to the launch of new e-filing portal of the Income Tax Department, DGFT has disabled Import-Exporter Code ('IEC') Services from June 1, 2021, to June 6, 2021, due to non-availability of PAN Validation Services. Accordingly, the following services shall not be available during the said time period: ▸ Application for a new IEC, ▸ Application for Amendments/Modification in an IEC, ▸ One-time linking of Aadhaar for e-sign purposes Stakeholders have therefore been advised to plan their activities accordingly for the said period.
Public Notice No. 05/2015-20 dated May 27, 2021	**Application fee per certificate for submission of Certificate of Origin has been fixed at INR 200** The fee per certificate for submission of Certificate of Origin has been fixed at INR 200 from any fee prescribed by agency not exceeding INR 200.
Notification No. 06/2015-2020 dated May 31, 2021	**Extension of Time provided to DRI for the export Red Sanders wood** DRI has been allowed time till December 31, 2021 to complete the process of export of allocated quantities of Red Sanders wood.
Notification No. 07/2015-2020 dated June 1, 2021	**Amendment in Export Policy of Amphotericin - B Injections** The export of Amphotericin - B Injections has been restricted with immediate effect.

NCLAT holds Balance confirmation letters executed by Corporate Debtors' Guarantors as 'acknowledgement of debt'

Lakshmi Narayan Sharma vs. Punjab National Bank & Anr
Company Appeal (AT) (CH) (Insolvency)No.01 of 2021

The Appellant was a promoter of the Corporate Debtor who was governing the majority of shareholdings of the corporate debtor through a holding company. The corporate debtor was an SPV incorporated for a PPP project to develop and operate a Four-Star Hotel on 'Build Operate Transfer' (BOT) Basis with National Institute of Tourism and Hospitality Management under Andhra Pradesh Infrastructure Development Enabling Act, 2001.

The Respondent bank had sanctioned certain loans as per a Consortium Agreement dated August 11, 2021. The Appellant defaulted on the payment of all the loans advanced by the respondent and therefore the Respondent bank preferred an application under Section 7 of the IBC before the NCLT which accepted the application of the Respondent bank.

Aggrieved, the Appellant approached the NCLAT contending that the application filed by the Respondent bank was barred by limitation as it had been filed 111 days from the date of default and 19 days from the date of declaration of the appellant's account as NPA if either of the dates were taken to compute the limitation period. Therefore, being barred by limitation NCLT had no right to accept the Respondent bank's application.

NCLAT observed that that the Guarantors had executed two documents ('Balance and Security Confirmation Letters') with reference to Corporate Debtor's account and that Corporate Debtor had also made a part payment against the amount due, thus, the application filed by the Respondent bank was within the limitation period as there was an 'acknowledgement of debt' under Section 18 and 19 of the Limitation Act.

Therefore, rejecting the Appellant's contentions and upholding NCLT's acceptance of the Respondent bank's application, NCLAT held the Sec. 7 application filed by the Respondent bank was perfectly maintainable and well within the period of Limitation as the respondent bank had proved the existence of 'Debt and Default' vide documents filed along with the Application under Section 7 of the Code against the 'Corporate Debtor'.

Authors' Note:

Section 18 of the Limitation Act, 1963 does not enjoin that an acknowledgement has to be in any particular form or to be express. It must be borne in mind that an 'acknowledgement' is to be examined resting upon the attendant circumstances by an admission that the writer owes a debt. In the instant case, part payment of the amount due to the Respondent bank coupled with the execution of 'Balance and Security Confirmation Letters' with reference to Corporate Debtor's account was therefore held by the NCLAT to be sufficient acknowledgment of debt.

NCLAT holds lease of land between developing authority, builder, not "financial lease"; Dismisses appeal of developing authority

New Okhla Industrial Development Authority vs. Anand Sonbhadra. Company Appeal (AT) (Ins) No.1183 of 2019

The Appellant, a statutory developing authority, filed Form 'B' as Operational Creditor for dues outstanding against lease of plot granted in favour of the Corporate Debtor. The Representative of the Appellant even attended COC (Committee of Creditors) as Operational Creditor.

Later, the Appellant filed claim in Form 'C' seeking its status as Financial Creditor. As there was no response by the RP (Respondent), the Appellant entered into correspondence with the NCLT which passed Orders and sent the matter to the RP but still when the Appellant was not treated as Financial Creditor, an application was filed claiming that RP had disobeyed earlier directions and that Appellant deserved to be treated as Financial Creditor and should be permitted to participate in COC with voting rights.

This was taken up before the NCLT which after hearing both the sides came to the conclusion that the lease deed concerned was not a financial lease as per the terms laid down under the guidelines of "Indian Accounting Standards".

Aggrieved, the Appellant approached the NCLAT which observed keeping in view the "Indian Accounting Standards" that when lease involves real estate (like land in present matter) with a fair value different from its carrying amount, the lease can be classified as a finance lease if it transfers ownership of the property to the lessee by the end of the lease term or there is bargain purchase option. However, there was no clause of transfer of ownership at the end of lease term.

On the contrary, the Appellant, even after creating the lease, kept with itself, all the rights to control and monitor the project which was to come up. The lessee of course, had the liberty to construct and transfer the flats by way of sublease. However, this was mixed up by the Appellant in his argument with transfer of ownership of land and therefore such argument lacked substance.

NCLAT thus observed that merely giving the lessee the right to fix the price of the dwelling units to be constructed, by itself was not sufficient to say that the lease of the land was a financial lease.

Accordingly, dismissing the appeal, NCLAT held that just to be part of COC, the lease of land between developing authority and the builders cannot be considered or treated as a financial lease.

Authors' Note:

A Lease Deed from a development authority has the object of developing the township and for this purpose wants to control the manner in which the constructions of housing come up. In the instant case, even after the lease was created by the Appellant, the acts which could be performed by the lessee, were fully controlled by the Appellant. Thus, while risks and liabilities were transferred to the lessee, the rewards incidental to ownership were not transferred and therefore, the NCLAT rightly held such a lease to not be a financial one as such a lease does not fit in with the requirements of Indian Accounting Standards.

NCLAT holds Annual returns, balance-sheets cannot be ignored while deciding acknowledgement under Limitation Act

Sandeep Jindal vs. State Bank of India.
2021-TIOLCORP-85-NCLAT

The Respondent bank had filed an application in the year 2018, before the NCLT under Section 7 of IBC against the Corporate Debtor for its failure to pay the several tranches of loans taken from the Respondent bank after declaring the account of the Corporate Debtor as NPA.

The Corporate Debtor on the other hand, filed an application contending that the application filed by the Respondent bank was time-barred as the account of the Corporate Debtor had been declared NPA in 2012. The NCLT hearing both sides and considering the precedent set by SC, considered the balance-sheets available on record and found that there were acknowledgments of debts under Section 18 of the Limitation Act, 1963 and therefore, rejected the application filed by the Corporate Debtor and admitted the application of the respondent bank under Section 7 of IBC.

The CIRP was thus initiated, aggrieved by which the Director of the Suspended Board of Corporate Debtor (Appellant) approached the NCLAT contending that that the Limitation under IBC is only three years which is triggered from date of default. While assuming Section 18 of Limitation Act was applicable, the concerned documents were required to be stated in the application under Section 7 itself, arguments could not be allowed to be developed to extend period of limitation and as per the larger bench of this Tribunal in V. Padmakumar vs. Stressed Assets Stabilisation Fund (SASF) & Anr, balance-sheet could not be relied on for acknowledgment under Section 18 of Limitation Act.

NCLAT observed that Annual Returns/Audited Balance Sheets, one-time settlement proposals, proposals to restructure loans, by whatever names called, cannot be simply ignored as debarred from consideration and in every given matter, it would be a question of applying the facts to the law and vice versa, to see whether or not the specific contents, spell out an acknowledgement under the Limitation Act.

NCLAT also observed that 'Debt', 'Due', 'Default' and within 'Limitation' all have been proved to exist in this case.
Accordingly, dismissing the appeal, NCLAT placing reliance on various SC judgments held Section 18 of the Limitation Act read with Article 137 to be ab initio applicable to Section 7 of IBC.

Authors' Note:

IBC is not adversarial litigation but a beneficial legislation to put a dying Corporate Debtor back to its feet. There has been a shift in the legislative policy from the concept of "inability to pay debts" to "Determination of default" due to the "cause of default" becoming irrelevant, this however, does not in any way affect the applicability or inapplicability of provisions of Limitation Act.

NCLAT allows reduction of Company's equity share capital, quashes NCLT's dismissal on "untenable grounds"

Brillio Technologies Pvt. Ltd. vs. Registrar of Companies, Karnataka & Ors.
2021-TIOLCORP-84-NCLAT

The Appellant company is a wholly owned subsidiary of a foreign company that holds 95.88% of its shares and is engaged in the business of publishing multimedia website for companies, corporations, institutions, individuals and entities.

The Appellant company had received requests from the non-promoter shareholders to provide them with an opportunity to dispose of their shareholding. As per the Articles of Association, the appellant was allowed to reduce its capital and/or its securities premium in any manner permitted by law from time to time, by a special resolution. Therefore, the Board of Directors of the Appellant decided to reduce their equity share capital.

Accordingly, the Appellant company under Section 66 of Companies Act, 2013 approached NCLT which directed the Appellant Company to issue a notice of such reduction to the creditors of the company, thereby the Appellant issued the notice as directed.

The NCLT observed that no objection had been received from any of the creditors against such reduction. However, instead of permitting said reduction, the NCLT observed that selective reduction in equity share capital to a particular group involving non-promoter shareholders and bringing the company as a wholly owned subsidiary of its current holding company and also return excess of capital to them was an arrangement between the Appellant company and shareholders or a class of them and hence, was not covered under Section 66 of the Companies Act, 2013 but could be covered under Sections 230-232 of the Act and therefore as the Appellant Company failed to make out any case under Section 66 of the Act, dismissed the petition filed by the Appellant Company.

Aggrieved, the Appellant company approached the NCLAT which setting aside the NCLT order allowed the reduction of equity share capital resolved by a special resolution of the Appellant Company and observed that the reduction of equity share capital had been dismissed on untenable grounds.

The Respondent contended that no genuine reason was given for reduction of share capital and the Financial Statements did not show any kind of accumulated loss. To which the NCLAT opined that there is no law that a company can reduce its capital only to reduce any kind of accumulated loss and therefore, it could not be said that the Appellant Company had not given any genuine reason for reduction of capital.

Further, taking note of the NCLT's observation that no objections were received from creditors, NCLT observed that since after service of last notice by the Company, no representation had been received from the creditors within 3 months, as per proviso to Section 66(2) of the Act, it was presumed that they had no objection to the reduction.

Accordingly, placing reliance on various HC judgments, NCLAT observed that selective reduction is permissible if the non-promoter shareholders are being paid fair value of their shares and as none of the non-promoter shareholders of the Appellant Company had raised objection about the valuation of their shares, the proposed reduction could not be considered unfair or inequitable.

Authors' Note:

Sec. 66 makes provision for reduction of share capital simpliciter without it being part of any scheme of compromise and arrangement. Accordingly, the reason of the Appellant Company for reduction of equity share capital was bonafide. The NCLT in the instant case had therefore erroneously held that the application for reduction of share capital was not maintainable under Section 66 of the Act.

SC holds mere possibility of alternate interpretation, insufficient to interfere with Arbitrator's 'reasoned' award

NTPC Ltd. vs. Deconar Services Pvt. Ltd.
Civil Appeal No. 6483 of 2014

The Appellant had issued two tenders for the construction of certain quarters in which the respondent had participated. After negotiations between both parties, the Appellant decided to award both contracts to the respondent on the basis of an offer by the respondent of 16% rebate on the prices for completing the first project, in the event he was awarded both contracts.

The two letters of award were issued on the same day to the respondent. However, there was some delay in the handing over of sites by the appellant, which resulted in a delay in the completion of the construction of quarters in both projects.

This led to disputes between the parties regarding the final payment due to the respondent and accordingly the respondent sought arbitration under the dispute resolution clause, and an Arbitrator was appointed. The learned Arbitrator granted relief to the respondent under both of the contracts along with interest.

Aggrieved, the Appellant approached the HC which dismissed the objections of the Appellant, however agreeing to modify the rate of interest, passed an order. Aggrieved by the order, the Appellant approached the division bench of the HC, which affirmed the order of the single bench.

Further aggrieved, the Appellant approached the SC contending that the award was passed contrary to the terms of the contract between the parties, and thus, HC should have interfered with the award. The Appellant also contended before the SC that the rebate was granted merely for the awarding of both sets of contracts to the respondent and the arbitrator interpreted it to be a conditional one.

SC dismissing the contentions of the Appellant and refusing to interfere with the findings of the Arbitrator, observed that merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the Court as the Court does not sit as an appellate court over the decision of an arbitrator, and cannot substitute its views for that of the Arbitrator as long as the Arbitrator had taken a possible view of the matter.

Further observing that the Appellant had neither been able to point out any error apparent on the face of the record or otherwise made out a case for interference with the award by the Arbitrator, SC found the Arbitrator's reasoning on the interpretation of the contract between the parties to be clear.

Authors' Note:

It has been held by the SC in a catena of judgements that for the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. Further, it is also a settled proposition that where the arbitrator has taken a possible view, although a different view may be possible on the same evidence, the Court would not interfere with the award. SC has therefore rightly held that merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the Court as the Court does not sit as an appellate court over the decision of an arbitrator, and cannot substitute its views for that of the Arbitrator.

NCLAT allows dispensation of the meeting of equity shareholders and creditors of Ambuja Cements Ltd; sets aside NCLT order

In the matter of Ambuja Cements Ltd.
2021-TIOLCORP-49-NCLAT

The Appellant company is a Public Ltd. company with its equity shares listed on Bombay Stock Exchange, National Stock Exchange of India and Luxembourg Stock Exchange. In order to meet its growing infrastructure requirements, a scheme of amalgamation had been devised between the Appellant company and its wholly owned subsidiary which was approved by the Board of Directors of the Appellant company.

Accordingly, a dispensation of the meeting of the equity shareholders and the creditors of the company was sought by the Appellant company, for which they approached the NCLT.

However, the NCLT denied dispensation of such a meeting for the want of written consent by way of 'Affidavit' from the large no. of shareholders and creditors of the Appellant company towards the scheme of amalgamation.

Aggrieved, the Appellant company approached the NCLAT contending that as the transferor was its wholly owned subsidiary, no need of issuing any shares to the shareholders arose and accordingly, there was no reorganization in either its shareholding or its debt position, because shareholders of the holding company were nothing but the shareholders of the subsidiary company.

Further, as the scheme did not call for any compromise or arrangement with the shareholders or creditors and there was no sacrifice of any amounts due to creditors, the scheme did not prejudicially affect its creditors or shareholders.

NCLAT on perusing the scheme, observed that the liabilities of transferor were undertaken by the Appellant company and there was no dilution in the shareholding of the Appellant company.

NCLAT further observed that, the Bombay HC in Mahaamba Investments Ltd [2001 SCC Online Bom 1174], had already allowed Transferor's application by dispensing with the meeting of shareholders and creditors and had even held that the filing of separate petition by the transferee company was not necessary as it was a wholly owned subsidiary of the Appellant company.

NCLAT also noted that, the bench of the NCLT which had passed the impugned order had dispensed with the meeting of the shareholders and creditors in the matter of Vodafone Idea Ltd. [CA (CAA) No. 96 of 2019] and the facts in the matter of Vodafone Idea Ltd [CA (CAA) No. 96 of 2019], were fairly similar to the present case.

In light of the above, NCLAT held that the NCLT ought to have taken into consideration the order of the coordinate bench and also the order passed by it in 'Vodafone Idea Ltd.' wherein similar facts were involved. The SC has also held that a coordinate bench of a court cannot pronounce judgement contrary to declaration of law by another bench and therefore, the NCLT had erred in not following its own order passed in 'Vodafone Idea Ltd.'

Thus, setting aside the order of the NCLT, NCLAT allowed the dispensation of the meeting of equity shareholders and the creditors of the Appellant company.

Authors' Note:

It was in Gammon India Ltd. vs. Commissioner of Customs Mumbai in [2011) 12 SCC 499] that the SC had held that a coordinate bench of a court cannot pronounce judgement contrary to declaration of law by another bench, to show that the precedent law must be followed by all concerned, deviation from the same should be only on a procedure known to law. Accordingly, the reliance of the NCLAT was very apt given that the facts of the Vodafone Idea Ltd. case were nearly identical to the instant case.

Extension of various relaxations by MCA amidst the second wave of Covid-19

On account of the resurgence of COVID-19 pandemic, requests have been received from the stakeholders to give relaxation on various statutory timelines falling due during intermittent period. These requests and representations have been examined by the MCA and following relaxations have been provided.

- Extension of gap between holding of two board meetings
- Relaxation on levy of additional fees in filing of certain forms under Companies Act, 2013 and LLP Act, 2008
- Extension of period for filing forms related to creation or modification of charge under Companies Act, 2013

Relaxations	Original Requirement	Relaxed Requirement
Extension of gap between holding of two board meetings	Gap between two board meeting can not be more than **120 days**.	This gap has been extended to **180 days** for the quarters- April-June 2021 and July–September 2021.
Relaxation on levy of additional fees in filing of certain forms under Companies Act, 2013 and LLP Act, 2008	Payment of additional fees on late filing of forms required to filed under Companies Act, 2013 and LLP Act, 2008.	No requirement of payment of additional fees on filing of any such form (other than CHG-1, CHG-4 and CHG-9) up to **July 31, 2021**. If due date of such forms is falling between April 2021 to May 2021.
Extension of period for filing forms (CHG-1 and CHG-9) related to creation or modification of charge under Companies Act, 2013	Company is required to file application for registration of charge with 120 days from the creation of charge. If application for registration of charge is applied after 30 days, then it is required to pay additional fees.	Following relaxation is in relation to the payment of additional fees and timely filing of the forms: **Scenario-1:** If date of creation of charge is before April 1, 2021, period from April 1, 2021 to May 31, 2021 shall not be counted for the calculation of 120 or 30days. **Scenario-2:** If date of creation falls between April 1, 2021 to May 31, 2021, then period from the date of creation till May 31, 2021 shall not be taken into consideration for the purpose of counting 120 or 30 days. This relaxation is not applicable in following cases: - Forms filed before May 3, 2021. - Timeline of 120 or 30 days has expired before April 1, 2021. - Filing of form CHG-4 for satisfaction of charge.

Authors' Note:

In view of difficulties arising due to resurgence of Covid-19 and lockdown like situation at various locations, MCA has provided such relaxations. Similar relaxation was provided by MCA last year also vide its Circular dated June 17, 2020 which provided a scheme of exclusion period for counting the period for filing e - forms CHG - 1 & CHG - 9. It excluded the period starting from March 1, 2020 and ending on September 30, 2020. However, unlike the period of seven months provided in the previous relaxation last year as exclusion period, a shorter period of two months has been provided this time.

Relaxation in compliance with regulatory requirements by Debenture Trustees

Volkswagen Finance Pvt. Ltd. Vs. Shree Balaji Printopack Pvt. Ltd. & Anr 2021-TIOLCORP-02-SC-IBC-LB

As per the SEBI regulation, debenture trustees are required to perform periodical monitoring and disclose various reports/documents/certificates on stock exchange as well as their websites within prescribed times.

These prescribed timelines for the quarter/half-year/year ending March 31, 2021, have been relaxed by extending these timelines by SEBI thru the circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2021/561 dated May 03, 2021. These relaxations have been summarized below

S.No.	Regulatory requirement for the Quarter/Half-year/ Year ending March 31, 2021	Original Timeline	Original Timeline
A	**Submission of various reports/certifications to Stock Exchanges**		
(i)	Asset Cover Certificate, Statement of value of pledged securities, value for Debt Service Reserve Account	60 Days from the end of the Quarter i.e. **May 30, 2021**	**July 31, 2021**
	Net Worth Certificate	60 days from the end of half-year i.e. **May 30, 2021**	
	Financials/Value of guarantor prepared on the basis of audited financial statement, Valuation report and title search report for the immovable/movable asset	75 days from the end of financial year i.e. **June 14, 2021**	

S.No.	Regulatory requirement for the Quarter/Half-year/ Year ending March 31, 2021	Original Timeline	Original Timeline
B	**Disclosures on websites**		
	▸ Monitoring of asset cover certificate and quarterly compliance report of the listed entity	60 Days from the end of the Quarter i.e. **May 30, 2021**	**July 31, 2021**
	▸ Status of information regarding breach of covenants/terms of the issue, if any action taken by debenture trustee,	60 days from the end of half-year i.e. **May 30, 2021**	
	▸ Monitoring of utilization certificate, ▸ Status regarding maintenance of accounts maintained under supervision of debenture trustee.	75 days from the end of financial year i.e. **June 14, 2021**	
C	**Disclosures on websites**	30 Days from the end of half-year i.e. **April 30, 2021**	
	Half yearly compliance report		**May 31, 2021**
	Details of other activities carried out by Debenture Trustee(s) including type of activity, description of activity etc.		
	Risk-Based Supervision report		

Authors' Note:

After taking into consideration the representations received from debenture trustees and the challenges arising out of the local restrictions placed by various state governments in wake of CoVID-19 pandemic, SEBI has announced these relaxations. Businesses are already grappling with various operational and financial issues. Amidst these uncertain conditions, this relaxation is a welcome move and would help corporate to keep the compliance momentum going without any burden of statutory non compliances.

Clarification on CSR spending on activities for COVID care

Last year, MCA has clarified that spending of CSR funds for COVID-19 is an eligible CSR activity and in continuation to this clarification made last year, MCA, thru circular no. 09/2021 dated May 05, 2021, has come up with further clarification on spending of CSR funds for COVID-19.

Eligible CSR Spending activities:

Following activities shall be regarded as eligible activities for spending of CSR funds under Schedule VII:

- Creating health infrastructure for COVID care
- Establishment of medical oxygen generation and storage plants
- Manufacturing and supply of oxygen concentrators, ventilators, cylinders and other medical equipment for COVID
- Or similar such activities

These activities shall be covered under the item no. (ix) of Schedule VII which permits to the contribution to specified research and development projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.

Collaboration with other companies:

New Company (CSR Policy) Rules passed recently, permits a company to collaborate with other company to undertake the project eligible for CSR spending.

This circular has also clarified that companies including Government companies may undertake the activities or projects or programmes using CSR funds, either directly by themselves or in collaboration with other companies subject to Companies (CSR Policy) Rules, 2014 and guidelines issued by the MCA.

Authors' Note:

This is indeed a welcome move. Last year, MCA had allowed spending funds for COVID to be considered as CSR expenditure and above clarification is in continuation to that only. On January 22, 2021, MCA has issued an order saying that spending funds on awareness campaigns and public outreach programmes to promote vaccination against the infectious disease would also be considered as an eligible CSR activity. The government is looking for increased involvement of corporates in India to tackle the second wave of the pandemic, which has led to cases reaching record levels.

Clarification on offset of excess CSR spending towards PM CARES fund

Last year, an appeal was made to MDs/CEOs of top 1000 companies in terms of market cap, to contribute to "PM CARES Fund. In said appeal, it was mentioned that contribution may include the unspent CSR amount, if any, and amount spent exceeding the prescribed limit of CSR expenses for the FY 2019-20 can later be offset against next years CSR obligations.

Hence, in this regard, many representations have been received to offset the excess amount spent for FY 2019-20 against the CSR obligation for FY 2020-21. MCA has provided the following clarification:

Contribution to 'PM CARES Fund' on March 31, 2020 which is over and above prescribed limit of CSR obligation for FY 2019-20 can be offset against the CSR obligation for FY 2020-21 but following conditions shall be satisfied:

- Offset amount shall have factored the unspent CSR amount for previous financial years;
- Both CFO and statutory auditor shall certify that contribution to 'PM CARES Fund' was indeed made on March 31, 2020.
- Details of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board's Report for FY 2020-21.

Authors' Note:

With the advent of the second wave, this MCA clarification seems appropriate and is inevitable. In the present difficult times, any CSR related activity or initiative which relates to COVID-19 emergent situation should be welcomed and the corporate compliance ecosystem should facilitate the same.

However, this clarification is significant as defaulting on corporate social responsibility spending obligations is a non compliance as well as a punishable offence.

SEBI relaxes rules for listing start-ups and strengthening the corporate governance

Market regulator SEBI has notified a slew of relaxations to norms with an aim to boost listing of start-ups, strengthen the corporate governance mechanism and others.

In 2015, SEBI introduced the Institutional Trading Platform (ITP) with a view to facilitate listing of new-age start-ups. However, the ITP framework failed to evince interest. Last year, SEBI renamed it as the Innovators Growth Platform. The changes have been approved to the framework for listing on the Innovators Growth Platform (IGP), SEBI said in a statement after the board meeting. Key amendments have been made to SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021, SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2021 and other SEBI regulations.

Amendments brought into the SEBI(LODR) Regulations 2015: Following critical amendments have been made to the SEBI(LODR) Regulations, 2015:

- Provisions of these regulation once applicable to an entity exceeding a specified limit of market capitalization, shall continue to apply even if the market capitalization falls below the prescribed limit.
- Once provisions related to corporate governance become applicable to a listed entity, shall continue to apply till the equity capital or net worth remains below the prescribed limit for a period of 3 years.
- Corporate governance provisions shall be applicable to the listed non-company entities to the extent to which it doesn't contradict with their respective statues.

- Requirement of risk management committee has been extended to top 1000 from 500 based on their market capitalization. Other provisions related to its quorum, constitution, composition have also been prescribed.

- Listed entities are required to ensure the effective vigil mechanism/whistle blower policy enabling stakeholder.

- Other amendments are related to secretarial compliance report, dividend distribution policy, additional disclosures on website etc.

Amendments brought into the SEBI(ICDR) Regulations 2018: Following critical amendments have been made to the SEBI(ICDR) Regulations, 2018:

- Requirement of holding 25% pre-issue capital by eligible investors has been relaxed from two years to one year.

- Requirement of pre-issue shareholding of IGP investors to meet eligibility has been enhanced from 10% to 25%.

- Delisting of shares under IGP framework shall be governed by SEBI (Delisting of Equity Shares) Regulations, 2009 which has been eased by relaxing various conditions.

- Requirement of holding 75% shares by qualified institutional buyers has been reduced to 50% to make a company eligible to trade under the regular category of the main board of the stock exchanges.

- Other requirement relating to the lock-in period of minimum shareholding, discretionary allotment, applicability on company issued shares with superior voting rights etc. has also been prescribed.

Amendments brought into other SEBI regulations: various other amendments have also been made into the other SEBI regulations.

- Limit for triggering open offer in case of acquisition of securities under Takeover Regulations has been increased from existing 25% to 49%.

- Angel funds which were required to invest in venture capital undertakings, can now invest in start-ups.

- Other amendments related to new code of conduct for Alternative Investment Fund (AIF), responsibilities of manager of AIF, payment of fees by intermediaries thru payment gateway etc has been introduced.

Authors' Note:

India is gradually building a robust startup ecosystem. In order to promote and support entrepreneurs, the Government has created a ministry (department) dedicated to helping new businesses. The Government has introduced many schemes to bolster entrepreneurship in India and to assist emerging startups financially.

The board has approved the proposals with respect to framework of Innovators Growth Platform (IGP) under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, with an objective to make the platform more accessible to companies in view of the evolving start-up ecosystem.

Hence, these relaxations will serve for Government's motive to make the startup ecosystem healthier and provide them with the opportunity to do smooth and efficient stock listing.

DTAA with the Netherlands terminated by Russia

On May 26, 2021, Russia announced the denunciation of the Agreement on the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and property between the Governments of the Russian Federation and the Kingdom of the Netherlands.

Reference:

http://publication.pravo.gov.ru/Document/View/0001202105260033

Draft Guidelines clarifying tax-compliance approach and associated risks for intangible arrangements published by ATO

On May 19, 2021, a Draft Guideline clarifying tax compliances for intangible arrangements (PCG 2021/D4) was published by the ATO. The Draft Guideline highlights the compliance approach to international arrangements connected with the development, enhancement, maintenance, protection and exploitation of intangible assets and/or involving a migration of intangible assets, applying to Intangibles Arrangements focusing on tax risks associated with the potential application of the transfer pricing provisions and tax risks that may be associated with Intangibles Arrangements, specifically the withholding tax provisions, capital gains tax, capital allowances, GAAR and the diverted profits tax.

The primary intention of the Draft Guideline is to assist taxpayers in understanding arrangements which according to the ATO represent a higher risk from a compliance perspective thereby serving as a point of reference.

The Draft Guideline also establishes a framework to understand the compliance risks that may be presented by taxpayer's Intangibles Arrangements, type of analysis the ATO undertakes to assess compliance risks, and the documents and evidence the ATO expects taxpayers to have and maintain to substantiate the Intangibles Arrangements, the level of engagement ATO would generally expect from a taxpayer based on ATO's assessment of the compliance risks of the Intangibles Arrangements, and how taxpayers can work with the ATO to mitigate any compliance risks in relation to the Intangibles Arrangements.

The Draft Guideline is structured in two parts (i) Part One - Our Compliance Approach – highlights ATO's compliance approach for Intangibles Arrangements, (ii) Part Two - Our Risk Assessment Framework – highlights ATO's risk assessment framework, explaining how the ATO assesses the compliance risks of Intangibles Arrangements.
The Draft Guideline when finalized is proposed to be retrospective in its operation.

Reference:

https://www.ato.gov.au/law/view/view.htm?docid=%22DPC%2FPCG2021D4%2FNAT%2FATO%2F00001%22

Budget 2021-22 presented by Aussie Government; Expansion of individual, corporate tax residency rules proposed

The Australian Government has released Budget 2021-22 Factsheet on tax incentives for supporting households, driving business investments, and creating jobs.

In the Factsheet released, the Aussie Government has proposed a new framework that is easy to understand, provides certainty and reduces compliance costs for globally mobile individuals and their employers as a replacement to the existing individual tax residency rules.

The new framework calls for a simple 'bright line' test as the primary test to determine tax residency where individuals physically present in Australia for 183 days or more in any income year will be considered an Australian tax resident and Individuals who do not meet the primary test will be subject to secondary tests depending on a combination of physical presence and measurable, objective criteria.

The Aussie Government has announced with regards to corporate residency, that it will consult on broadening the amendment introduced in Budget 2020-21 (clarified corporate residency test to address uncertainty for foreign incorporated entities) to trusts and corporate limited partnerships and will seek industry's views as part of the consultation on the original corporate residency amendment.

Further, the Aussie Government has proposed to allow taxpayers to self-assess the effective life of certain depreciating intangible assets for tax purposes, rather than being required to use the effective life currently prescribed by statute, which will result in reduction in the cost of investment for business, and align the tax treatment of these intangible assets with the treatment of tangible assets as part of their digital economy strategy.

Reference:

https://budget.gov.au/2021-22/content/factsheets/download/factsheet_tax.pdf

OECD's report titled 'Inheritance Taxation in OECD Countries' released

The OECD has explored the role that inheritance, estate, and gift taxation could play in raising revenues, addressing inequalities, and improving efficiency in OECD countries, in its report titled 'Inheritance Taxation in OECD Countries' According to the report, the wealthiest 10% of households own half of all household wealth on average across OECD countries, while the top 1% of the wealth distribution own 18% of household wealth. Moreover, wealthy households are more likely to receive gifts and inheritances and additionally, wealth transfer is higher in wealthier households.

The report finds that wealth transfer taxes are levied in 24 OECD countries, while majority levy recipient-based inheritance taxes, Denmark, UK, and USA levy estate taxes on donors. Findings of the report show that there are strong arguments in favour of a recipient-based inheritance tax with an exemption for low-value inheritances.

On the types of wealth transfer taxes, the report finds estate tax to be the simplest, yet less equitable, inheritance tax to be more equitable, but difficult to administer and tax on life time wealth transfers to be the most progressive albeit involving additional compliance and administrative cost.

It is the finding of the report that progressive tax rates increase the vertical equity by ensuring that those who receive more wealth are taxed more, strengthening the redistributive function of inheritance, estate, and gift tax. Further, analyzing tax instruments, the report states that an appropriate choice of tax instrument would depend on country-specific circumstances, level of wealth inequality, and level of administrative capacity.
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Reference:

https://www.oecd.org/tax/inheritance-taxation-in-oecd-countries-e2879a7d-en.htm

New TDS/TCS provision: Is Government cascading the Tax payer with more compliances ?

The Finance Act, 2021 has proposed new TDS and TCS provisions with an aim to widen the scope of TDS/TCS applicability. If we do a quick scan of contents of a profit and loss account, we can say a major portion of the Profit & Loss was already covered under the purview of TDS. However, purchase of goods and sales of goods were not covered under the ambit of TDS/TCS which have now been brought into the purview of either TDS or TCS thru introduction of new TDS/TCS provisions.

Although from October 1, 2020, Ministry of Finance introduced the TCS provisions under sub-section 1H of Section 206C wherein it was stated that every taxpayer with turnover of more than INR 10 crores in previous FY would be liable to deduct TCS on receipt against sale of goods exceeding INR 50 lacs to a person during a financial year.

It is pertinent to note that liability of Payment of TCS is based on receipt, therefore it does not badly impede the cash flows of the company. However, it creates a practical as well as technological challenge in implementing this process in ERP systems used by companies. Therefore to avoid such issues, many corporates are opting to collect TCS on billing milestone rather than on receipt basis. Though collection on billing solves practical and technical problems but creates new challenges in E-Invoicing Era. If TCS is reflected as component of invoice, the same will be auto populated in GSTR-1 and requires reconciliation with sale as reported in financial statements.

By the time large corporates completed modification in their system to adapt it with TCS provisions, Finance Minister decided to completely revamp the provisions and introduced new provision of TDS deduction under Section 194Q in Union Budget 2021. As per these provisions, TDS is required to be deducted on purchase of goods exceeding 50 lacs from a single supplier during a financial year. Interplay of Section 194Q with TCS provisions have been a new headache for large corporates. If in case, TDS provision does not apply, the provision of TCS would kick in!

The issue would arise in case where seller has collected / levied TCS on a particular transaction and buyer also wants to deduct TDS to avoid disallowances at time of audit. This would lead to the double taxation on the same transaction. The probable solution to this issue may be that supplier may contemplate taking a declaration from the buyer that he would be deducting TDS and thus supplier may not deduct TDS as according to income tax provisions, in a given situation where provisions of TDS and TCS both are applicable on a particular transaction, the TDS provisions would prevail. However, this would increase manual tracking and compliance for the businesses.

Rate of TDS/TCS is kept at 0.1% which is applicable on amount over and above specified limit of INR 50 lacs. This corroborates the fact that principle idea behind introducing such provisions was not only to improve liquidity for exchequer but also to create transaction trail for later use of revenue authorities. Businesses

are already grappling with financial and operational issues due to lockdown imposed in various parts of the country owing to pandemic conditions. However this lower rate of 0.1% has been of some relief from a cash flow standpoint.

Looking at the threshold limit of INR 10 crores, it is apparent that government has kept the Micro enterprises (with turnover is < INR 5 Crores as per revised limit in MSME Act) out of the purview of these provisions.

Apart from TDS/TCS provisions, the Union Budget 2021 has burdened businesses with couple of more compliance requirements. It includes deduction of TDS/TCS at a higher rate in case of specified person (defined as a person who has defaulted in filing of returns) and in cases where PAN is not linked to Aadhar. Previously, the higher TDS rates were applicable only in cases where supplier was not holding valid PAN. However, now these provisions will not only penalize non-return filers with higher tax rates but yet again would help revenue authorities to build database for non filers. These provisions states that a transaction shall be subjected to the higher TDS/TCS rate if following conditions are satisfied:

- TDS dedcutee or TCS collectee has not filed the returns for last two years,
- Original due date of filing return has been expired (July 31 in case of individual and October 31 in case of companies or audited assessee)
- Aggregate TDS/TCS in case of TDS deducter, in each of two years is more than INR 50,000.

ANOTHER QUESTION WHICH ARISES IS THAT IF FILING OF ITR WAS NOT MANDATORY IN CASE OF ANY DEDUCTEE FOR THOSE PREVIOUS TWO YEARS, WOULD THESE PROVISIONS STILL BE APPLICABLE?

Rate of TDS/TCS in this case, would be higher of twice of applicable TDS rate on transaction or 5%.

The Sparkle...

The Government should come up with relevant clarifications on the said provisions as they seem to have been notified in a hurried manner.

Where higher rate of TDS/TCS has been notified, more clarity is required on umpteen aspects including how deductor would trace whether the deductee has filed ITR for two years and would keep a track on TDS amount in respective years. Another question which arises is that if filing of ITR was not mandatory to be filed in case of any deductee for those previous two years, would these provisions still be applicable?

Recently, a notification has been issued by the CBDT for inactiveness of Income Tax Portal for June 1, 2021 to June 7, 2021 to launch a new portal. Industry and professional are expecting that this new portal would come up with additional functions and auto populated database which would help in aforesaid compliances.

As such, where TDS/TCS provisions are applicable on purchase/sale of goods, various practical and technological challenges remain a roadblock in effective implementation and achieving the very purpose.

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 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

PUBLISHER & AUTHORS

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

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

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With a team of dedicated professionals and multiple offices across India, it aspires to develop and nurture long term professional relationship with its clients/business partners by providing the most optimal solutions in practical, qualitative and cost-efficient manner. With extensive client base of national and multinational corporates in diverse sectors, GLS has fortified its place as unique tax and regulatory advisory firm with in-depth domain expertise, immediate availability, transparent approach and geographical reach across India.

VMG & Associates ('VMG') is a multi-disciplinary consulting and tax firm. It brings unique experience amongst consulting firms with its partners having experience of Big 4 environment, big accounting, tax and law firms as coupled with significant industry experience. VMG offers comprehensive services across the entire spectrum of transaction support, business and risk advisory, financial reporting, corporate & allied laws, Direct & Indirect tax and trade related matters.

VMG has worked with a range of companies and have provided services in the field of business advisory such as corporate structuring, contract negotiation and setting up of special purpose vehicles to achieve business objectives. VMG is uniquely positioned to provide end to end solutions to start-ups companies where we offer a blend of services which includes compliances, planning as well as leadership support.

VMG team brings to the table a comprehensive and practical approach which helps clients to implement solutions in most efficient manner. With a team of experienced professionals and multiple offices, we offer long standing professional relationship through value advice and timely solutions to corporate sectors across varied Industry segments.

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