VISION 360

A TREASURY OF KEY TAX & REGULATORY DEVELOPMENTS!

JUNE 2022

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TCA TAXCRAFT ADVISORS

GLS GST LEGAL SERVICES

VMGG & ASSOCIATES

tiol ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

EDITORIAL

Vision 360: Judicial Supremacy!

Judiciary is the guardian of the human rights, protector of the constitution and promoter of peace and cordiality in India. Its importance and role in a modern-day country, especially the largest democracy in the world cannot be undermined! Whenever there is a dispute between the citizens of the Country and their Government, it is the Judiciary who is entrusted with the responsibility to decide the matter.

In the past two months the Judiciary, especially the Apex Court has delivered some spectacular judgements in the tax sphere, which had been deliberated upon for a long-long time. Be it the ruling of GST on ocean freight, or the rights to settle the re-assessment controversy in Direct Tax or the applicability of Service Tax on secondment of employees in the erstwhile law, the Apex Court has delivered landmark judgements in a span of few weeks.

Covering the landmark judgement in GST, we have penned down an article in this Newsletter discussing the 153-pager judgement and what lies ahead for the importers. We have also covered authored an article on the need and importance of risk analysis framework in the modern-day corporate world!

On the international front, the OECD had released public comments on Crypto Asset Reporting Framework (CARF) and amendments to Common Reporting Standard (CRS), stakeholders to seek clarification on scope of intermediaries and the inclusion of stable coins in CARF.

Coming back to India, in the Indirect Tax sphere, the DGFT has extended the exemption from IGST and Compensation Cess on imports under various export incentive schemes. Further, the DGFT has also made the requisite amendments in the EPCG Scheme to reduce compliance burden and enhance ease of doing business. Most importantly, the Government has regularized the export duties on various goods to provide a level playing field to the Indian manufacturers.

Also the judiciary and the quasi-judicial bodies in the Indirect Tax sphere have been passing several rulings on key issues, which help set a precedent. The Madras HC has recently ruled that refund cannot be denied merely on account of procedural infractions and in another case, the Ahmedabad HC has quashed a GST notice which was issued beyond its prescribed scope.

On the Direct Tax front, the CBDT has notified new Forms for applying for Advance Rulings. Further, the CBDT has also notified the Faceless Penalty (Amendment) Scheme, 2022, which is another big step on the Digital India objective of the Government.

On the Regulatory front, a system and Network Audit has been implemented in place of System Audit by Market Infrastructure Institutions. Further, the SEBI has issued an 'Standard Operation Procedure' for dispute resolution under the stock exchange arbitration mechanism between a listed company and registrars to an issue and its shareholders.

This move will go a long-way in mitigating unnecessary litigation.

Compiling all such developments, we at **TIOL**, in association with **Taxcraft Advisors LLP, GST Legal Services LLP and VMG & Associates,** are glad to publish the 21st edition of its exclusive monthly magazine 'VISION 360'. We hope that, as always, you will find it an informative and interesting read. We look forward to receiving your inputs, thoughts and feedback, in order to help us improve and serve you better!

Happy Reading!

P.S.: This document is designed to begin with 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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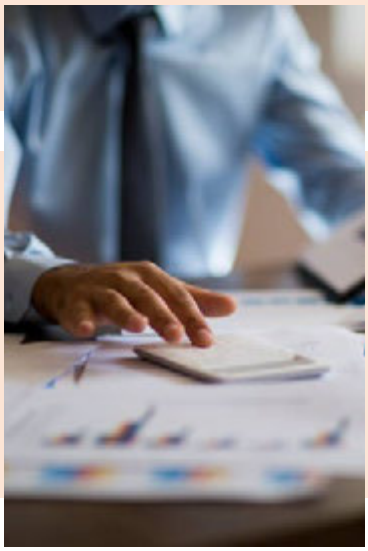

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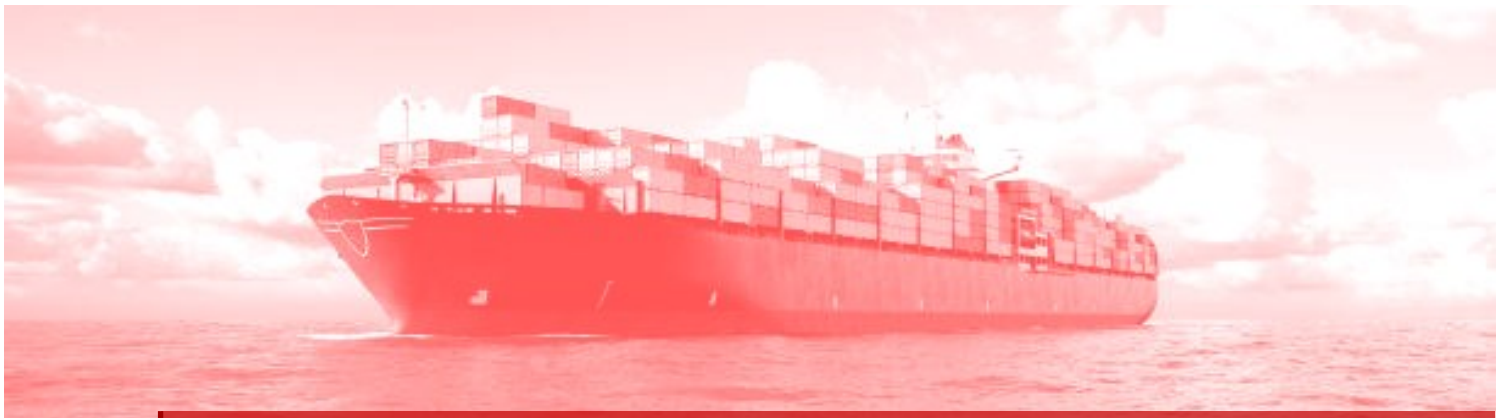


CUSTOMS & FTP

REGULATORY

ARTICLE

GST on Ocean Freight – All's well that ends well!

In an absolute roller-coaster of a judgement, the Apex Court upholds the judgement of the Gujarat HC in RE: **Mohit Minerals [2020-TIOL-164-HC-AHM-GST]**, striking down the levy of GST on ocean freight. However, it shall be borne in mind that this is a not a regular *'Upholding'* judgement. On many fronts, the Apex Court's view differed from that of the HC. Nonetheless, the final verdict of the Court remains to be in favour of the taxpayers. All's well that ends well!

A brief history

Back in April 2017, the Central Government had issued notifications levying Service Tax on ocean freight chargeable on import of goods. These notifications were challenged by a number of Petitioners inter alia on the ground that such notifications were ultra vires to various provisions of the Finance Act 1994.

As a leading matter, in the writ petition filed by **Sal Steel Limited [Special Civil Application No. 20785 of 2018]** before the Hon'ble Gujarat HC, it was held that the notifications levying Service Tax on ocean freight are ultra vires to Sections 64, 66B, 67 and 94 of the Finance Act in as much as they sought to levy tax on transactions being carried out beyond the territories of India. However, the said matter is now pending before the SC for finalization.

Under the GST Law as well, the levy on ocean freight had been challenged before the Gujarat HC in **Mohit Minerals *(supra)***. The HC had *inter alia* observed that Section 5(3) of the IGST Act provides for the collection of tax under RCM basis only from the recipient of supply. However, importer cannot be said to be the recipient of services. Accordingly, the importer cannot be made liable to pay tax on some supposed theory that the importer is directly or indirectly recipient of the service.

It had been further observed that there is no provision under the GST law to determine the place of supply in case where both the supplier and the recipient are located outside India. Ocean freight service is neither covered u/s. 7 nor u/s. 8 of the IGST Act, hence not leviable to tax. Post the ruling of the HC, the same came to be challenged by the Union of India before the Apex Court.

Supreme Court's Ruling

Various arguments were put forth by both the sides before the Apex Court. The Court had dealt with each argument in great detail in a 153-pager judgement and finally came to a reasoned conclusion. Following are the key observations of the SC in RE: **[2022-TIOL-49-SC-GST-LB]**:

GST Council Recommendations not binding

Article 246A of the Constitution provides equal legislative power to the Centre and the States. However, Article 246A is neither subject to Article 279A (pertaining to the GST Council) nor does the latter override the former. Thus, the recommendations of GST Council are not binding on the Centre or the State Legislatures as there is no repugnancy provision under Article 246A of the Constitution of India.

Ocean Freight – A taxable event

It was observed that in terms of Section 13(9) of the IGST Act, the place of supply of service of transportation of goods by sea is destination of goods i.e., in the case of import of goods, it would be in India. It was further observed that as per the definition of 'recipient' u/s. 2(93) of the CGST Act, importer receiving goods through foreign shipping line is recipient of service for levy of GST under RCM as per Section 5(3) of the IGST Act. Accordingly, the importer of goods is liable to pay GST on value of Ocean Freight service under RCM.

As regards the question whether the levy of GST on ocean freight is extra-territorial, it was observed that in RE: **GVK Industries [2015-TIOL-10-SC-IT]**, it had been held that that the Parliament has power to legislate over events occurring extra-territorially provided that such an event has a real connection to India and since the destination of goods and the importer are both in India, such connection is fairly established.

Vires of Notifications levying GST on Ocean Freight

It had been observed that the Legislature did not delegate essential elements of levy of tax viz. taxable event, valuation etc. Thus, the Notifications deeming importer of goods as recipient of service are not *ultra vires*.

Composite Supply

The SC observed that a CIF like contract would constitute a composite contract, where the principal supply is the supply of goods. Further, in terms of Section 8 of the CGST Act, the entire transaction would then be taxed as a goods transaction. Notably, it was observed that the aspect theory does not allow the value of goods to be included in services and vice versa.

It was held that the concept of 'composite supply' was introduced under the GST law to ensure that various elements of a transaction are not dissected and the levy is imposed on the bundle of supplies altogether. Thus, it was held that tax on the supply of a service, which has already been included as a tax on the composite supply of goods, is improper. Thus, it was held that the GST cannot be levied on ocean freight.

Parting thoughts

While the SC differed from the reasoning of the Gujarat HC, it has concurred that the levy of GST on ocean freight is inconsistent with the GST law. However, the main ground of the Apex Court to uphold the judgement of the Gujarat HC was that in CIF contracts, the importer has to anyway pay GST on the entire assessable value. Thus, the levy of GST on ocean freight would lead to double taxation and defeat the very idea of a 'composite supply'.

However, the question as to whether a CIF contract can be considered as a composite supply or not, may require further deliberation. It shall be noted that in such contracts, the exporter has a separate contract with the importer to supply the goods and a separate contract with the foreign Shipping Company to deliver the goods upto the Indian port.

Thus, there is contract between the exporter and importer and a contract between the exporter and the Shipping Company. Accordingly, for the Indian importer, there is a single transaction of import of goods on CIF basis. Identifying such a transaction as 'composite supply' may not stand the test of time.

Nonetheless, as the verdict of the Apex Court is now in public domain, importers who had paid GST on ocean freight and not utilized the ITC thereof, may be eligible to claim refund of such tax paid. However, for such importers who had utilized the credit, the refund may not be granted unless reversal of such utilized ITC. Further, the importers still paying GST on ocean freight may cease to make such payments of GST basis this judgement.

INDUSTRY PERSPECTIVE

Prashant Bora

Founder & CEO

Bora Group of Companies

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

India like most of the progressive economies have realized the importance and need to involve technology in tax compliances. Given the quantum of data and work-load with the Tax Authorities, digitalization was always the next logical step ensure the efforts of Authorities are made in apt areas. The transparency that these procedures will bring about will ultimately lead to reduced tax evasion and smooth economy. There was a big call for digital technology in almost all industries and job functions during the pandemic. We see 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! Government's continuous efforts in digitizing the tax space are a welcome move in the right direction.

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

02 What are the challenges faced by the merchant exporters in mobile industry?

Mobile and Electronics Indian Merchant Exporters Association 'MEIMEA' has around 30% share of Merchant Exporters in total exports from India and a critical industry for 'Make in India' campaign. The merchant exporters dealing in mobile headsets are engaged in export of New Mobile Handsets.

A CBIC Clarification issued in September 2020 treated 'unlocked or activated' mobiles' as 'Taken into Use', thus, the drawback became 'in-applicable' on them. Significant tax/duty costs are built in the

manufacturing process which includes Basic Customs duty and Social Welfare surcharge. In terms of our Foreign Trade Policy, these costs must be reimbursed to exporters so that only services/goods are exported out of the country and not these taxes/duties.

However, denial of drawback by adopting an interpretation contrary to the scheme of the Customs Act, 1961 and the Drawback Rules, 2017 have had an adverse impact on the industry. This had caused shipments to be detained at the port, levying of penalties and interest, delay in clearance of shipments for export along with upfront loss.

We have filed representations before revenue authorities to take cognizance of problems faced by the industry and are hopeful that the Government will assist us granting the duty drawback leading to surviving cut-throat competition faced from as China, Vietnam, Hong Kong, Europe, USA, and numerous others.

03 In lines with the objective of Digital India, as you say, what are your views on Faceless Assessment?

No doubt that Faceless Assessment is a stride towards the Digital India objective. However, the underlying objective of this scheme is understood to be elimination of corruption. The move to have faceless litigation at ITAT level, though commendable, comes with certain underwhelming aspects. Litigations, hearings, arguments, without a physical hearing is just not the same as the litigators find it difficult to explain complex transactions to the Officers and judges. It is no secret that the digitalization and faceless schemes are rather foreign for both the taxpayers and tax collectors in India. Thus, until the trade as a whole become familiar with the faceless system, the opportunity of physical hearings shall be extended. Over a gradual period of time, faceless systems in nearly all aspects of life are inevitable. However, I believe the implementation shall be in a gradual manner. I always go by a saying I heard once that "Slow is smooth and smooth is fast!

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

The tax space of any country evolves over a period of time. In India, we have witnessed times when there were no transfer pricing provisions and a catena of litigations arose as they were introduced in 1990's. It is likely that equalisation levy on global income of techno-giants may lead to a similar situation. The most recent tax revolution in India came with the introduction of GST in 2017. While this law was a subject matter of great discussion in the Parliaments for more than 10 years, it still seemed to be implemented in haphazard manner. Given the number of issues arising on a daily basis, be it credit availment or e-way bill mechanism or applicability on certain transactions, shows that the law still has a long way to go in becoming efficient. However, many of the issues have been resolved in the past 4-5 years

Prashant Bora
Founder & CEO - Bora Group of Companies

and it its contemplated that the same will become more effective in the coming years.

05 With effect of new COVID-19 variant already fading away, it is possible that slowly business will start operating like pre-covid era?

With most of the population being vaccinated and the new Omicron variant not having as adverse impact as its predecessors, the business has started to operate in a hybrid manner where steps taken by the business only to the extent it curbs the spread of virus. Most of the Companies have increased the capacity of employees working from office while the Government has also been very quick in responding to spread of virus to limit lockdowns and restrictions only to the extent extremely required. Further, the problems faced by logistic sector due to pandemic have also been more or less resolved. With the Government's support and joint efforts by the Company and its employees, the business surely on the way to function like pre-covid era. However, considering how deadly and contagious virus has been in past, diligence ought to be practiced to avoid loss of life and livelihood.

Hon'ble SC strikes balance between Revenue's & Assessees' rights to settle reassessment controversy, modifies Hon'ble HC rulings by invoking Article 142 of the Constitution

Ashish Agarwal

2022-TIOL-46-SC-IT

The Revenue had issued approximately 90,000 reassessment notices under Section 148 of the IT Act which were the subject matter of more than 9,000 WRIT petitions before various HCs across the country and by different judgments and orders, the HCs had taken a similar view to set aside the respective reassessment notices on the ground that the same were bad in law in view of the amendment by the Finance Act, 2021 by virtue of which Sections 147 to 151 were introduced under IT Act. Aggrieved, the Revenue preferred an appeal before the SC. Considering the commonality of the issue involved, Hon'ble SC held that its present order would govern all the other judgments and orders passed by various HCs on the similar issue.

On perusal of the pre and post amendment reassessment provisions, the SC observed that the new provisions being remedial and benevolent in nature, were substituted with a specific aim and object to protect the rights and interests of the Assessee. The SC agreed with the HCs' view that the benefit of new provisions shall be available even in respect of proceedings relating to past AYs provided Section 148 notice had been issued on or after April 1, 2021. The SC remarked that there was a broad consensus amongst the Revenue and the Assessees on the above aspects, and the present order would strike a balance between the rights of the Revenue as well as the respective Assessees, in view of the Revenue's bonafide belief in issuing approximately 90,000 notices, which would lead the public exchequer to suffer.

The SC further remarked that there appeared to be genuine non-application of the amendments as the Revenue might have been under a bonafide belief that the amendments might not yet be enforced. Accordingly, some leeway should have been shown in that regard, and the HC ought to have passed an order construing the notices issued under unamended provisions as those deemed to have been issued under Section 148A, and permit the Revenue to proceed with reassessment proceedings in accordance with the substituted provisions subject to compliance of all the procedural requirements and the defenses as available to the Assessees thereunder. Accordingly, the SC observed that the impugned notices should have been treated as show-cause notices in terms of Section 148A(b) of the IT Act, and directed the Revenue to provide the Assessees with all the material and information relied upon, so as to enable them to file their reply to the notices within two weeks. The SC further dispensed with the requirement of conducting any enquiry with the prior approval of the specified authority under Section 148A(a) of the IT Act as a one-time measure vis-à-vis the notices which had been issued under Section 148 of the unamended Act from April 01, 2021 till date,

including those which had been quashed by the HCs. The SC directed the Revenue to pass an order in terms of Section 148A(d) of the IT Act, after following the due procedure as required under Section 148A(b) of the IT Act in respect of each of the concerned Assessees.

Thus, partly allowing Revenue's appeal, the SC modified the HC judgments quashing reassessment notices issued under the old reassessment regime. The SC observed that the reassessment notices should be deemed to have been issued under Section 148A of the IT Act as the Revenue could not be left remediless, and the object and purpose of reassessment proceedings not being rendered infructuous.

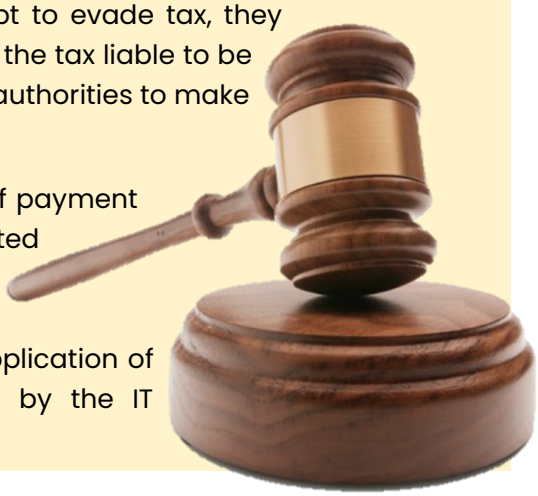
HC holds prosecution under Section 276C of the IT Act 'malicious' where tax paid with delay but prior to sanction

Noorjahan

2022-TIOL-707-HC-MAD-IT

The Assessee furnished their return for AY 2017-18 on July 31, 2017 but made the payment of INR 6.85 Lakhs towards tax and interest after a delay of four and half months. Believing that there was a wilful attempt to evade taxes on Assessee's part, the Revenue initiated prosecution under Section 276C of the IT Act. Aggrieved, the Assessee filed a Petition under Section 482 of Cr.P.C before the HC while perusing the provisions and placing reliance on the SC ruling in **Prem Dass [2002-TIOL-2437-SC-IT]** wherein it was held that there must be concealment of income by the Assessee or the Assessee must have furnished inaccurate particulars of income in order to attract Section 276C of the IT Act. The Assessee contended that there was no concealment of any source of income or taxable item, inclusion of a circumstance aimed to evade tax or furnishing of inaccurate particulars regarding any assessment or payment of tax.

The HC further remarked that there was only a failure on Assessee's part to pay tax in time, which was remitted after a four and half month delay, along with applicable interest and thus, it would not fall within the mischief of Section 276C of the IT Act, which requires a wilful attempt to evade taxes. Moreover, if the Assessee's intention was to evade tax or attempt to evade tax, they would not have filed the returns in time disclosing the income and the tax liable to be paid or remitted the tax along with interest without waiting for the authorities to make demand or notice for prosecution.



The HC further observed that, the PCIT did not consider the fact of payment of tax with interest by the Assessee, whereas it contradictorily stated that self-assessment tax was unpaid. Thus, the petition filed by the Assessee was allowed. The HC observed that the suppression of material facts, intentional suggestion of falsehood and non-application of mind showed that this was a malicious prosecution initiated by the IT authorities by abusing the power.

ITAT holds ESPN India not liable for TDS on payment under Reseller Agreement for ad space on ESPN UK's website

ESPN Digital Media (India) Pvt. Ltd

ITA Nos. 1070, 1071, 1072 & 1073/CHNY/2018

The Assessee had entered into a Reseller Agreement with ESPN Limited, United Kingdom ('ESPN UK') for the

resale of advertisement space on websites owned by it. The Reseller Agreement was for a term of one-year and was automatically renewed as per Clause 5.1 of the agreement. As per the Reseller Agreement, the Assessee purchased advertising space on websites owned and hosted by ESPN UK on servers outside India, which was to be sold to advertisers who wished to advertise their product/services. For purchase of advertising space on the websites owned by ESPN UK which were then resold to advertisers, the Assessee was required to pay to ESPN UK as per Clause 2 of the Reseller Agreement. Based on the cost and revenue projections for the year, the Assessee was required to furnish requisition for website space with ESPN UK as per Clause 4.1 of the agreement.

The AO during the course of assessment of TDS returns noted that the payment made by Assessee should be considered as "royalty" and hence liable for withholding tax. The AO noted that the word "use" in relation to provision of clause (iv)(a) of Explanation 2 to Section 9(1)(vi) of the IT Act had to be understood in a broad sense for availing the benefit of the equipment in the present digital era. The context and combined use of the word "use" and "right to use" followed by the word "equipment" indicated that there must be a positive act of utilization, application and employment of equipment for the desired purpose. The Assessee argued that the Reseller Agreement was merely a sale of advertisement space. However, the AO stated that the Assessee collected the advertisement material from Indian advertisers and uploaded the same in the web server thereby positively utilizing the web server. Further, the AO placing reliance on the HC ruling in **Verizon Communications Singapore v. ITO [361 ITR 575]** observed that in the 'modern era', the geographical location was immaterial and therefore where the server lies was not relevant.

The AO further observed that the consideration was for the provision of comprehensive services rendered and the payment fell within the definition of "royalty" as prescribed in Article 13 of India-UK treaty. This stand was based on the understanding that the payment was made for use of the equipment provided by ESPN UK which enabled the Assessee to upload the advertisements sourced from its Indian customer clearly amounted to royalty. Finally, the AO ultimately observed the payments to be made for consideration for "transfer" of all or any rights property or information to fall under section 9(1)(vi) of the IT Act and held the Assessee to be 'assessee-in-default' under Section 201(1)/(1A) for failure to deduct TDS on the aforesaid payments. Aggrieved, the Assessee filed an appeal before CIT(A) which affirmed the AO's order.

Aggrieved, the Assessee preferred an appeal before the ITAT which observed that the said agreement did not provide any 'right to use' of any industrial, commercial, or scientific equipment nor was the website or the server placed under the control or domain of the Assessee, or a right, property, information or scientific experience been transferred in any manner whatsoever. The ITAT also observed that ESPN UK directly owned or had the rights to exploit numerous digital media websites and no such right had been transferred to the Assessee, Further, ITAT also noted that the Assessee did not in any way control the website / server, nor had it been conferred with a right over any part of the website / server. It was merely a reseller of advertisement space it purchases on ESPN UK's website.

Further, the ITAT rejected the Revenue's reliance on Explanations 5 and 6 to Section 9(1)(vi) of the IT Act and observed the contention of the Revenue to be misplaced in light of SC ruling in **Engineering Analysis [432 ITR 471]** wherein it was held that unilateral amendments expanding the definition of royalty under domestic law could not apply to DTAAs. Moreover, the expanded definition was brought in by Finance Act, 2012, which was not existing at the time of making payments in AY 2010-11 to 2012-13 and thus withholding obligation could not be imposed retrospectively. Thus, allowing Assessee's appeal, the ITAT observed that payment made by the Assessee to ESPN UK for purchase of advertisement space was not taxable as royalty in India.

DIRECT TAX
From the Legislature

NOTIFICATIONS

CBDT notifies new Forms for applying for Advance Rulings

Notification No. 49/2022

May 5, 2022

CBDT notifies new forms for applying for advance ruling under Section 245Q of the IT Act i.e. Form No. 34C, 34D, 34DA, 34E, 34EA.

Further, CBDT amends Rule 44E (2) of the IT Rules to provide for:

- signing of the applications digitally, if the applicant is required to furnish the return of income under digital signature.
- communicating about the application through a registered email address, in any other case.

CBDT notifies rules for compliance, computation of minimum investment & exempt income under Section 10(23FE) of the IT Act

Notification No. 50/2022

May 6, 2022

CBDT notifies Rule 2DCA in the IT Rules for calculating the minimum investment referred to in items (c), (d) and (e) Section 10(23FE) (iii) and for the purpose of computing exempt income referred to in fourth, fifth and sixth proviso of Section 10(23FE).

Rule 2DCA of the IT Rules also provides that every Alternative Investment Fund ('AIF'), domestic company and NBFC [covered under Section 10(23FE) (iii)(c), (d), (e) and in fourth, fifth and sixth proviso to Section 10 (23FE)] receiving funds from any specified person, either directly or through AIF, shall furnish the details of funds in Form 10BBD for each previous year during which the funds or any part thereof remain invested in such Alternative Investment Fund, domestic company and NBFC.

CBDT notifies changes in various Forms applicable to charitable entities, research institutions

Notification No. 51/2022

May 9, 2022

CBDT notifies changes in Forms 3CF, 10A, 10AB, 10BD & 10BE. The changes are notified in exercise of the powers conferred under various Sections under IT Act.

CBDT mandates PAN for depositing/withdrawing INR 20 Lakhs or more in cash, opening current/CC Account

Notification No. 53/2022

May 10, 2022

CBDT amends Rule 114(3) of the IT Rules to make application for PAN mandatory for any person at least seven days before the date of entering into transaction which is notified by virtue of Section 139A(1)(vii) of the IT Act.

Further, CBDT inserts Rule 114BA to the IT Rules to prescribe following transactions under Section 139A(1)(vii):

- Cash deposit(s)/withdrawal(s) aggregating to INR 20 Lakhs or more during one FY, in one or more account of a person with banking companies/co-operative banks/Post Office.
- Opening of a current account or cash credit account.

The above insertions and amendments were made effective after the expiry of fifteen days from the date of publication of Notification which is May 10, 2022.

CBDT notifies Faceless Penalty (Amendment) Scheme, 2022

Notification No. 54 & 55/2022

May 27, 2022

CBDT amends Faceless Penalty Scheme, 2021 *vide* Faceless Penalty (Amendment) Scheme, 2022 to effectuate the amendments made in Section 144B of the IT Act by the Finance Act, 2022.

Further, CBDT provides that where a personal hearing is requested, a virtual hearing shall be allowed by the income-tax authority of relevant unit through National Faceless Penalty Centre. Electronic records shall be authenticated by National Faceless Penalty Centre by way of an electronic communication instead of affixing the digital signature whereas the penalty unit/review unit/technical unit/verification unit is required to affix the digital signature.

CBDT authorises 'ACIT/DCIT (IT), Delhi' as 'Prescribed Authority' for issuing notice under Section 143(2) of the IT Act

Notification No. 56/2022

May 28, 2022

CBDT notifies 'Assistant Commissioner of Income-tax/Deputy Commissioner of Income-tax (International Taxation), Circle - 1(1)(1), Delhi' as Prescribed Income-tax Authority for the purpose of issuing notice under Section 143(2) of the Income Tax Act, 1961.

CBDT notifies jurisdictional HC's procedure for filing appeals against BAR ruling

Notification No. 57/2022

May 31, 2022

CBDT notifies Rule 44FA which prescribes that the form and manner of filing appeal before HC against ruling pronounced by the Board for Advance Rulings shall be same as the procedure laid down by the jurisdictional HC for filing an appeal.

CIRCULARS

CBDT modifies portal functionality for the purpose of Section 206AB/206CCA of the IT Act

Circular No. 10/2022

May 17, 2022

CBDT modifies portal functionality for the purpose of Section 206AB/206CCA of the IT Act.

CBDT emphasises that as per the proviso to the two sections, specified person shall not include a non-resident who does not have a PE in India. Since the functionality does not have the visibility of non-resident having PE in India, there is likelihood that non-resident having PE in India may not get reflected in the list drawn afresh at the start of each financial year.

CBDT further clarifies that tax deductors & collectors are expected to carry out necessary due diligence in respect of non-residents about the applicability of Sections 206AB and 206CCA of the IT Act.

INSTRUCTIONS/ GUIDELINES

CBDT issues Instruction for the implementation of the SC ruling over reassessment proceedings

Instruction No. 1/2022

May 11, 2022

The Hon'ble SC in the case of **Union of India & Others vs. Ashish Agarwal in Civil Appeal No. 3005/2022** dated May 4, 2022 had declared that the reassessment notices issued under the erstwhile unamended Section 148 of the IT Act after April 1, 2021 and within June 30, 2021 were valid in law and were to be treated as notices issued under Section 148A of the IT Act.

Given this backdrop, CBDT issues instruction, for the implementation of the Hon'ble SC ruling clarifying that the ruling applies to all cases where reassessment notices in the extended period were issued, regardless of whether such notices were challenged or not.

Further, CBDT makes it clear that for AYs 2013-14, 2014-15 and 2015-16, no information was required to be provided by AOs where income escaping assessment was less than INR 50 Lakhs. Therefore, as per the CBDT Instruction:

- For AY 2013-14, AY 2014-15 and AY 2015-16: Fresh notice under Section 148 of the IT Act can be issued with the approval of the specified authority under Section 151(ii) of the Act only if the case falls under the amended Section 149(1)(b) of the Act.

- For AY 2016-17 & AY 2017-18: Fresh notice under Section 148 of the Act can be issued with the approval of the specified authority under Section 151(i) of the Act as per Section 149(1)(a) of the Act since they are within the limitation period of three years from the end of the relevant AY.

The notices cannot be issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16 if the income escaping assessment amounts to or is likely to amount to less than INR 50 Lakhs. Hence, to reduce the compliance burden, CBDT clarifies that information and material may not be provided in a case for AY 2013-14, AY 2014-15 and AY 2015-16 if the income escaping assessment amounts to or is likely to amount to less than INR 50 Lakhs.

CBDT lays down the parameters and procedure for compulsory selection of returns for complete scrutiny for FY 2022-23

May 11, 2022

CBDT *vide* Guidelines lay down the parameters and procedure for compulsory selection of returns for complete scrutiny during FY 2022-23 for following categories:

- Cases pertaining to survey under Section 133A of the IT Act;
- Cases pertaining to Search and Seizure;
- Cases in which notices under Section 142(1) of the Act, calling for return, have been issued & no returns have been furnished;
- Cases in which notices under Section 148 of the Act have been issued;
- Cases related to registration/ approval under various sections of the IT Act, such as 12A, 35(1)(ii)/ (iia)/ (iii), 10(23C), etc.;
- Cases involving addition in an earlier AY(s) on a recurring issue of law or fact and/or law and fact; and
- Cases related to specific information regarding tax-evasion.

Further, CBDT clarifies that where return has been furnished in response to notice under Section 142(1) of the Act and such notice was issued due to the information contained in NMS Cycle/SFT information/ information received from Directorate of I&CI, such return will not be taken up for compulsory scrutiny. Selection of such cases for scrutiny will be done through CASS cycle. Furthermore, CBDT clarifies that the cases shall be selected for compulsory scrutiny by the International Taxation and Central Circle charges following the above prescribed parameters and procedure with prior administrative approval of Principal CIT/Principal DIT/CIT/DIT concerned and the cases which are selected for compulsory scrutiny by the International Taxation and Central Circle charges following the above prescribed parameters and procedure, shall, as earlier, continue to be handled by these charges.

In addition to the above, as the Finance Act, 2021 has reduced the time limit for service of notice under Section 143(2) of the Act to three months from end of the FY in which the return is filed, CBDT clarifies that the selection of cases and transfer of cases wherein assessments have to be completed in faceless manner to NaFAC, shall be completed positively by May 31, 2022 and in cases selected for compulsory scrutiny, service of notice under Section 143(2) of the Act shall be completed by June 30, 2022.

TRANSFER PRICING
From the Judiciary

ITAT upholds RPM as MAM for trading segment and rules on comparable selection in manufacturing segment

Fette Compacting Machinery India Pvt Ltd

ITA No.581/PUN/2021

The Assessee was a wholly owned subsidiary of LMT Group, headquartered in Germany, which was a leading Metalworking technologies group. The products and services of the Assessee included precision tools and cutting materials for the most diverse applications in cutting and non-cutting processing as well as tool reconditioning and tool management packages. The Assessee filed return declaring total income at Nil with current year loss of INR 1.54 Crores. The Assessee had reported certain international transactions in respect of the trading segment and the manufacturing segment. The AO made a reference to the TPO for determining their ALP. Under the trading segment, the Assessee reported international transaction of `Purchase of raw materials. The RPM was adopted as the MAM for demonstrating that the international transaction was at ALP.

The TPO observed that the Assessee had not proved that the goods used in transactions with AE and non-AE were comparable. Further, the Assessee had booked huge employees cost in the Trading segment vis-a-vis the manufacturing segment. In this backdrop of facts, the TPO held that the RPM was not the most appropriate method. Instead, he adopted TNMM and accordingly, recommended a transfer pricing adjustment. Under the manufacturing segment, the Assessee adopted TNMM for showing the manufacturing segment at ALP. The Assessee treated one Electronica Machine Tools Ltd. as one of the comparables. The TPO excluded it on the ground that it incurred extraordinary losses for the year under consideration.

Aggrieved, the Assessee approached the CIT(A). With regard to the trading segment, the CIT(A) observed that the Assessee had correctly applied Internal RPM to determine ALP based on certain additional evidence submitted by the Assessee and a remand report called upon by the CIT(A) from the AO. With regard to the manufacturing segment, the CIT(A), on appreciation of remand report from the AO, approved inclusion of Electronica Machine Tools Ltd. as one of the comparables. Aggrieved, the Revenue approached the ITAT which observed that in the trading segment, goods purchased by the Assessee were sold without fiddling with its inherent value. The ITAT placed reliance on the ruling of the HC in case of **Matrix Cellular International Services Pvt Ltd. [(2017) 100 CCH 0191 (DelHC)]** wherein it was held that when no value addition was made on goods re-sold, RPM was the MAM, accepted CIT (A)'s view in approving internal RPM as MAM against TPO's TNMM.

Further, placing reliance on the HC ruling in **Welspun Zucchi Textiles Ltd. [(2017) 92 CTR 1 (Bom)]** and **Goldman Sachs (India) Securities (P) Ltd. [(2016) 290 CTR 236 (Bom)]**, ITAT remarked that the precedents had held that incurring loss in year under consideration and being into profits in earlier years would not make a company persistent loss-making company and accordingly

upheld CIT(A)'s inclusion of Electronica Machine Tools Ltd in the list of comparables.

Thus, upholding CIT(A)'s adoption of RPM as MAM for trading segment and its inclusion of Electronica Machine Tools Ltd in the list of comparables for manufacturing segment, the ITAT disposed of the Revenue's appeal.

ITAT excludes 2, includes 1 as comparable for investment-advisory service provider, remits risk-adjustment to AO for fresh consideration directing AO to provide reasonable opportunity to be heard to Assessee

Chrys Capital Investment Advisors (India) Pvt Ltd

ITA No.458/Del/2016

The Assessee was a resident company engaged in the business of providing investment advisory services to its overseas AEs. The Assessee had earned revenue of INR 48.50 Crores during the year under consideration for providing such services to the AE. The Assessee had selected TNMM as the MAM for benchmarking the aforesaid transaction with the AE. After conducting a search in databases, the Assessee selected four companies as comparable. By applying PLI of operating profit to operating cost (OP/OC), the mean margin of the comparables was worked out at 6.28%. As the margin shown by the Assessee at 25.84% was much higher to the average margin of the comparables, the Assessee claimed the transaction with the AE to be at arm's length.

The TPO accepted TNMM as the MAM with OP/OC as PLI while rejecting the benchmarking of the Assessee. The TPO opined that the Assessee failed to apply proper qualitative and quantitative filters which resulted in exclusion of various functionally similar comparables and inclusion of some companies which were not comparable. Accordingly, he selected fresh comparables independently. In the process, he shortlisted 13 companies as comparables with average margin of 43.01% and out of the 4 comparables selected by the Assessee, the TPO retained 3 comparables while rejecting 1. While computing the margin, the TPO did not provide for any adjustment on account of risk undertaken by the comparables vis-à-vis the Assessee as well as working capital. Thus, based on the average margin of the selected comparables, the TPO proposed upward adjustment to the ALP of provision of investment advisory services to the AE.

The adjustment proposed by the TPO was incorporated in the draft assessment order. Against the draft assessment order so passed, the Assessee raised objections before learned DRP. However, the Assessee did not get the desired relief. Aggrieved, the Assessee approached the ITAT which following coordinate bench ruling in Assessee's own case for previous years excluded 2 comparables selected by the TPO citing functional dissimilarity and abnormally volatile nature of profit margin. However, dismissing Assessee's plea, the ITAT included 1 comparable selected by the TPO by placing reliance on coordinate bench ruling in Assessee's own case for AY 2009-10 wherein pursuant to HC's remand, the company was included on grounds of passing RPT filter and being functionally similar.

With regards to risk adjustment, the ITAT affirming Assessee's submissions observed that considering the nature of risk undertaken by the Assessee as well as the comparables, adjustment in specific cases had to be made to the margin of the comparables on account of risk profile. However, the ITAT clarified that the burden was entirely on the Assessee to furnish required details regarding the risk profile of the comparables to ascertain the nature of risk being undertaken by the Assessee and the comparables. Further, noting that the required details regarding risk profile of the comparables were not properly gone into either due to lack of details furnished by the Assessee or otherwise, the ITAT remitted the issue back to the AO for considering Assessee's claim of risk adjustment after examining the material on record and in accordance with settled legal principles, directing the AO to provide reasonable opportunity of being heard to the Assessee.

ITAT rules on comparables in SWD and ITeS segment, follows precedent and disposes cross appeals of the Assessee and Revenue

Micro Focus Software India Pvt Ltd

IT(TP)A No. 280/Bang/2016

The Assessee was a wholly owned subsidiary of Novell Inv., USA engaged in providing software development and support services to Novell US. The Assessee also provided telephonic support services to its AE. It also purchased software products from Novell USA, for direct sale to its customers in India, as well as, duplicates and marketed software products purchased from Novell USA, for the year under consideration. The Assessee filed its return of income which was processed under Section 143(1) of the IT Act and was selected for scrutiny. The AO observed that the Assessee had entered into international transactions with AEs for more than INR 15 Crores and therefore, reference was made to the TPO for determining ALP of the international transactions and economic details of international transactions were called for in Form 3CEB. The TPO noted that for software development service segment (SWD segment), the Assessee used TNMM as MAM and computed its margin by using OP/TC as PLI and computed its margin at 10% by selecting 14 comparables with an average margin of 13%. Further, in respect of IT service segment (ITes segment), the Assessee used TNMM as MAM and OP/TC as the PLI, thereby computing its margin at 10.01%. by selecting 8 comparables having average margin of 15.1%.

The TPO dissatisfied with comparables selected by the Assessee, applied various filters and excluded certain comparables from assessee's list. The TPO thereby retained some of the comparables selected by the

Assessee and added a few new comparables selecting in total 13 comparables for SWD segment and 10 comparables for ITes segment and proposed a TP adjustment for the two segments. On receipt of the transfer pricing order under Section 92CA of the IT Act, the AO passed the draft assessment order incorporating the transfer pricing adjustment. Aggrieved, the Assessee raised objections before the DRP which with regards to the SWD segment and the ITes segment gave certain directions to the AO. On giving effect to the DRP directions, the final lists of comparable to the SWD segment and the ITes segment were reduced to 7 comparables each.

The AO thereby passed the final assessment order aggrieved by which both the Assessee as well as the Revenue preferred an appeal before the ITAT. With regards to the Assessee's appeal, the ITAT following coordinate bench ruling in **Aspect Technology Centre(I) Pvt Ltd [IT(TP)A No.187/Bang/2016]**, directed the exclusion of 4 comparables and remitted 2 comparables to TPO to consider their comparability in SWD segment and in the ITeS segment, directed exclusion of 4 comparables from the list of comparables. With regards to the Revenue's appeal, the ITAT following coordinate bench rulings in plethora of cases excluded 5 companies from the list of comparables in SWD segment and 3 comparables in ITeS segment.

Thus, ITAT ruling on the comparables in SWD and ITeS segments disposes of the cross appeals of the Assessee and the Revenue.

ARTICLE

Risk Analysis - Whether it can lead to Risk Management...

In present era, RISK is the word that dominates various board room discussions, risk mitigation strategies are discussed at length in audit committees and board meetings. Companies buy multiple tools to record, manage and report risk and compliances. Risk and compliance always have inverse relationship such as the higher the level of compliance, the lower the level or risk and vice versa.

Today there is major focus on risk management area both from good governance perspective and regulatory aspect. Some of the illustrations that clearly depict the importance of risk management in today's corporate world are as below:

RISK MANAGEMENT

RISK MANAGEMENT FRAMEWORK | **NEED FOR COMPLIANCE TOOLS** | **REGULATORY ASPECT**

- **Risk Management Framework:** The Risk Management Framework is a template and guideline used by companies to identify, eliminate and minimize risks. It was originally developed by the National Institute of Standards and Technology to help protect the information systems of the United States government. Businesses cannot exist without exposing themselves to risks such as IT problems, litigation and loss of capital. While it is impossible to eliminate all risks involved in running a business, they can be minimized.
- **Need for Compliance tools:** The Companies Act, 2013, SEBI Listing Regulations and now The Code of Ethics by ICAI; all have re-emphasised the significance of adopting industry's best Governance practices by implementing a robust Statutory Compliance Management framework. It's the responsibility of Key Managerial Personnel (KMPs), Board of Directors, CFOs, Chartered Accountants, Company Secretaries, General Counsels, Auditors to devise an effective system to ensure adherence

with all provisions of applicable laws and clearly established responsibility matrix.

- **Regulatory aspect :** As per various provisions under Companies Act 2013 (some are mentioned below), major focus has been placed on risk managements and related controls to minimize the risks :

Relevant provisions	Applicability	Statutory requirement
Section 143	All entities (listed/ unlisted)	The auditor's report shall state whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such IFC.
Schedule IV	All entities having independent directors	The independent directors should satisfy themselves on the integrity of financial information and ensure that financial controls and systems of risk management are robust and defensible.
Rule 8 (5) of Companies Accounts Rules	All entities (listed /unlisted)	The **board report** shall state the details in respect of adequacy of internal financial controls with reference to the financial statements.

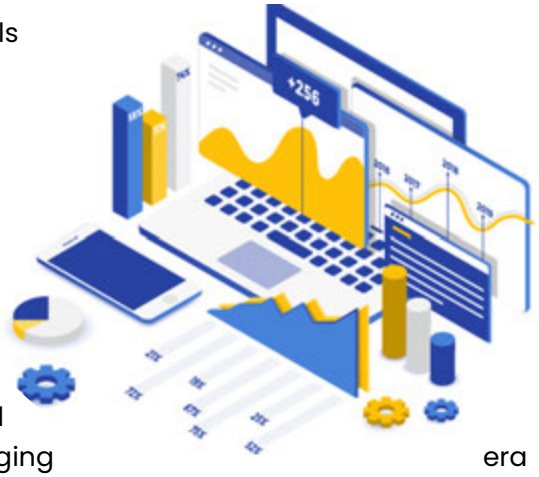
- **Sarbanes-Oxley Act (SOX) :** The United States Congress passed the Sarbanes-Oxley Act (SOX) to protect shareholders and the general public from accounting errors and fraudulent practices in enterprises, and to improve the accuracy of corporate disclosures.

Basically, risk is the chance of outcome not satisfying the objectives. Risk is an inherent factor in any process which may arise due to any element of internal or external environment, but in competitive and evolving business environment some risks become very complex to be palliated. Risk is the essence of 'The Strategic Management' in business environment, which is the core function for any organization. This function basically consists of four aspects namely Setting up Objectives, Planning, Risk Analysis and Control. Risk analysis being a vital aspect in strategic management facilitates identifying and accessing the risks in business environment. Risk Analysis as a function in any business organization not only safeguards the business from existing threats but also from future threats. A good set of risk analysis tools also help in identifying opportunities either currently present or emerging in future. Risk Analysis gives organization the advantage of being proactive and use preventive approach to minimize sudden shocks to the business. It is basically based on data selected which is analyzed for the purpose of identifying exposure to the business.

Traditionally, risk analysis was limited to identifying and analyzing existing threats on the basis of information available and management's understanding with least technological analytical tools. Not only there were very limited techniques and technologies to do so but also the knowledge and interest of management for this function was also very minimal. Due to the emergence of internet resulting in various impact on business environment including Big Data Problem, Competitive Landscape Evolution, Highly Versatile Market Trends, Rapidly Changing Environment, Technology, and Management's Judgments such analytical tools becomes inefficient to serve the purpose for the managements doing risk analysis.

In present era, risk analysis has not been limited to few functions or existing threats but it has become a vital function performing the different complex data analysis for risk assessment. This is done in

integration with other functions of business environment. The tools has evolved to use real time data, multiple form of data, data from different resources, and even data from other industries to autonomously prepare the risk assessment reports which further facilitate the management's to undertake better decision making. With the help of technology, risk analysis tools are not only facilitating proactive approach but also support in reactive strategies with factor like real time data and reporting.



Yet it has many limitations in respect of data analysis and reporting as all such tools are still under development. The emerging era of Risk Analysis involves the use of Artificial intelligence and machine learning in the process of such data analysis. In all over the world, corporate houses, financial institutions and governing bodies are highly utilizing their deep pockets to develop such tools for data analysis. Though all such tools are available for risk analysis and regulators across the world has come up with risk management and risk reporting framework, still there is a lot which depends on organization structure, behavior pattern and tone at the top management level.

Thus it is extremely important that organizations adopt risk management and compliance an integral part of business objective which will not only ensure compliance with regulatory framework and ease of business but would also support the overall growth objective in a longer run.

GOODS & SERVICES TAX
From the Judiciary

HC allows rectification of Form GSTR-1

Screenotex Engineers Private Limited [2022-TIOL-452-HC-AHM-GST]

During the filing of Form GSTR-1 for the month of June 2019, the Petitioner had inadvertently missed out to tick mark on the column of 'Deemed Export' in respect of 9 invoices. Upon realization, the Petitioner had sought permission for rectification of Form GSTR-1, which had been granted to them. However, the Petitioner successfully amended only 4 out of the 9 invoices. Thereafter, the Respondent refused to grant another permission to rectify the balance 5 invoices. Aggrieved, the Petitioner preferred a Writ before the Gujarat HC.

The HC observed that Section 37(3) of the CGST allows rectification of returns for unmatched invoices. However, without going into the merits, the HC allowed the Writ, directing the Respondents to process the request of the Petitioner for carrying out amendment in its GSTR -1 returns pertaining to June 2019 with respect to ticking of the 'Deemed Export' column in regard to the balance 5 invoices, which the writ applicant did not amend in the first request.

Author's Notes:

*It would be pertinent to note that the Apex Court in RE: **Bharti Airtel Limited [2021-TIOL-251-SC-GST]**, had denied rectification in Form GSTR-3B, stating the same to be impermissible under the law. However, the Gujarat HC in the instant case has exercised its discretionary power to allow rectification. Such liberal approach of the Courts are welcome.*

AAAR disallows ITC on canteen facility services and promotional schemes

Muasashi Auto Parts India Private Limited [HAAAR/2020-21/06 dated 25 September 2020]

The Applicant had sought an advance ruling before the Haryana AAR to ascertain whether the ITC can be availed on third party canteen services and gift distribution. The Applicant further sought clarification in regarding GST liability on coupons distributed to employees.

The AAR held that the Applicant was neither eligible to avail ITC in respect of canteen services availed by it

for its employees nor on business promotion activities. The AAR further held that the distribution of coupons among employees will attract GST. Aggrieved, the Applicant had preferred an appeal before the Haryana AAAR.

The Applicant argued that the restriction of ITC in respect of canteen services is not applicable when the said services are mandatory by law and not optional on the Applicant to its employees. It was argued that since the provision of canteen facility is mandatory to be provided under the Factories Act, such provision is covered under the exception of Section 17(5) of the CGST Act. The Applicant further argued that ITC in respect of promotional schemes shall be allowed to avoid the cascading effect.

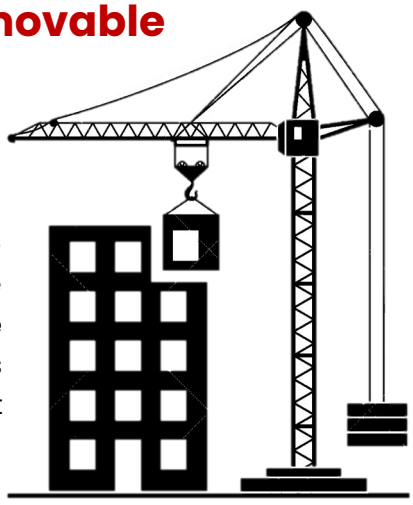
The AAAR observed that Section 17(5)(b)(i) sub-clause ending with a colon and followed by a proviso which ends with a semi colon is to be read as independent sub-clause, independent of sub clause Section 17(5)(b)(iii) and its proviso [of sub-clause iii]. Thereby, the proviso to section 17(5)(b)(iii) is not connected to the sub-clause of Section 17(5)(b)(i) and cannot be read into it. Accordingly, it was ruled that ITC on GST paid on canteen facility is blocked credit u/s. 17(5) of the CGST Act and therefore would not be admissible.

As regards the second issue in relation to distribution of coupons among employees attracts GST liability, the AAAR ruled that distribution of coupons among employees does not attract GST. As regards the issues relation to ITC on promotional schemes, the AAAR observed that sub section 17(5), clause (g) clearly forbids ITC admissibility on the items of personal consumption. Thus the items mentioned by the Applicant viz. sweets; dry fruits; electronic items and Gold and Silver Coins etc. are essentially being given to the relevant persons as items of personal use/ consumption. Thus, it was ruled that the Applicant was not eligible to take ITC on such business promotion expenses.

Authors' Notes:

*As the saying goes "The law is what is read, not what is written." It seems that the Haryana AAR in the instant matter has followed the footsteps of Gujarat AAR in RE: **Tata Motors [TS-437-AAR(GUJ)-2021-GST]**, who had interpreted Section 17(5) of the CGST Act in a similar fashion. In this regard, it shall be noted that Delhi HC in RE: **Rodhee vs. Govt. of Delhi and Ors. [(2003) IILLJ 5 Del]** had held that the intention of a semi-colon is to segregate two substantially similar topics from each other. If the said punctuation mark is not employed, a part of the foregoing words would have to be repeated once again or in the same context would have to be reiterated. It was further observed that if the proviso was not to operate on the first sub-section it should have ended with a full stop and not a semi-colon. Basis the same it was concluded that a statutory provision should not be interpreted only on the basis of the punctuation marks found therein.*

ITC disallowed on construction of immovable property for lease of land



Dhingra Trucking Private Limited [HAAAR/2020-21/03 dated 30 September 2020]

The Applicant had sought an advance ruling before the Haryana AAR to ascertain the availability of ITC of GST paid on construction of immovable property and further leasing out the premises. The AAR had held that the Applicant was not eligible to avail ITC in respect of inputs / capital goods used for creating warehouse for renting purpose. Aggrieved, the Applicant had preferred an Appeal before the Haryana AAAR.

The Appellant argued that Section 17(5)(d) of the CGST Act disallows ITC

on construction of immovable property by a taxpayer on his own account. However, in the instant case as the construction of the immovable property is being done for further letting-out of the property, the said provision would not be applicable. The Appellant further relied upon the judgement of the Orissa HC in RE: **Safari Retreats Private Limited [2019 (025) GSTL 0341]**, wherein the Court had allowed ITC on construction of immovable property for letting it out.

The AAAR observed that the construction of the immovable property had been done by the Appellant for itself i.e., with all the intentions to retain the ownership rights. Thus, the construction of the immovable property was construed to be done by the Appellant on his own account. The AAAR further observed that in terms of CBIC instruction vide F. No. 276/114/2015-CX.8A dated 09.02.2019, the judgement of the Orissa HC had not attained finality as it is pending before the Apex Court. Accordingly, the AAAR upheld the AAR order holding that the Appellant was not eligible to avail ITC as the construction of the immovable property was for his own account.

Authors' Notes:

The entire issue in the instant matter can be filtered down to the interpretation of the phrase 'on his own account.' The GST law nowhere defines the phrase. Accordingly, such situation calls for reference to the general rules of interpretation, which provides that there should be no additional inclusion of words and the provision must be construed strictly as per the plain language used by the Legislature. It is opined that the said term seeks to block ITC when the construction is being done for one's own purpose. It cannot be said to block ITC in respect of immovable property intended for the purpose of leasing out. Such a situation blocking ITC for the purpose of re-sale, leasing-out, etc. would defeat the very objective of seamless flow of credit, especially for taxpayers engaged in real estate transaction.

*However, the entire issue is very much interpretative in nature. Accordingly, it is contemplated that the issue of correct interpretation of Section 17(5)(d) of the CGST Act will have to be resolved by the Apex Court. It would be interesting to see the result in RE: **Safari Retreats (supra)**, which would provide more perspective into the issue.*

HC: GST refund cannot be denied on account of procedural infractions

Abi Technolgies [2022-TIOL-746-HC-MAD-GST]

The Petitioner had inadvertently and due to oversight, cleared and exported its finished goods (manufactured using material imported under the advance license) upon payment of IGST instead of exporting it under the LOU. As the exports were made upon the payment of IGST, the Petitioner periodically received refund of the IGST paid at the time of exports. Upon realizing this inadvertent mistake, the Petitioner voluntarily paid the requisite IGST along with the interest. Thereafter, the Petitioner sought re-credit of IGST which was inadvertently utilized for payment of tax at the time of exports of the goods.

The HC observed that the output tax refund was erroneously sanctioned to the Petitioner in violation of Rule 96(10) of the CGST Rules. This was because the Petitioner procured inputs duty free under Advance Authorization and exported goods on payment of IGST to claim refund. It was observed that such refund was voluntarily repaid along with interest through DRC-03 but order for re-credit of refund was not issued. Accordingly, the HC directed the Respondent to re-credit ITC and held that once the Department accepted repayment of erroneous refund along with interest, ITC utilized for discharging IGST liability must be re-credited / restored else same would tantamount to double taxation.

HC condones expiry of E-Way Bill

Podder & Podder Industries Private Limited [2022-TIOL-534-HC-TRIPURA-GST]

The Petitioner claimed that despite the transporter of the goods carrying all the valid documents, the E-Way Bill, during transit of the materials had expired. Accordingly, the vehicle had been detained and the driver of the vehicle had been informed with a direction for seizure of vehicle and goods. Aggrieved, the Petitioner preferred a writ before the Tripura HC.

The HC stated observed that bona fide movement of goods should be encouraged as free flow of goods promotes nation development. It was further held that since transaction between two registered persons in this case was accompanied by all statutory documents, vehicle should not be detained even if E-way bill got expired just prior to date of entry in State. In view of the above, the HC allowed the Writ and recommended that Government should reconsider appropriateness of timelines provided for expiry of E-way bills.

HC quashes Notice in Form DRC-01A, being issued beyond its scope

Agrometal Vendibles Private Limited [2022-TIOL-517-HC-AHM-GST]

The Petitioner had been subjected to Form DRC-01A u/s. 74(1) and (5) of the CGST Act. The said Form DRC-01A, although in the form of an intimation, is as good as a final order in as much as it demands the Petitioner to pay the demand within 15 days vide Form DRC-03. Aggrieved, the Petitioner preferred a Writ before the Gujarat HC.

The HC held that intimation notice issued under DRC-01A is an intimation of tax ascertained by officer and cannot propose recovery of tax on failure to comply with the same. It was further held that as per the CGST Act, DRC-01A is followed by DRC-01 i.e., Show Cause Notice and then Order confirming demand therein and demand can be recovered only subsequent to issuance of such Order. In view of the above, the HC quashed the Form DRC-01A.

Interest cannot be given at rate beyond that prescribed by the statute

Willowood Chemicals Private Limited [2022-TIOL-42-SC-GST]

The Petitioner had filed a Special Civil Application before the Apex Court praying for appropriate compensation i.e., interest, upon delayed receipt of refund ranging from 94 to 290 days. It was submitted that inaction leading to inordinate delay in granting refunds was per se arbitrary and that the inordinate delay impacted the working capacity of the Petitioner thereby reducing their ability to conduct business and as such appropriate compensation ought to be awarded along with interest for delay.

It was observed by the SC that wherever a statute specifies or regulates an interest rate, it will be payable in terms of such statute only. It was further observed that the Courts can allow payment of interest as per reasonable rates on equitable grounds only when statute is silent on interest rate and there is no express bar on payment of interest. The Apex Court further relied on its judgment in RE:

Sandvik Asia Limited v. CIT, 2006-VIL-65-SC and held that allowing interest over and above rate prescribed by statute can only be done only in case of inordinate delay in grant of refund. It was held that the delay of 94-290 days is not inordinate. Accordingly, in view of the above, it was held that interest should be allowed only as per statutory provisions i.e., 6% u/s. 56 of the CGST Act.

AAAR disallowed ITC on gifts/ rewards to retails for sales promotion

GRB Dairy Foods Private Limited [2022-TIOL-12-AAAR-GST]

The Appellant inter alia engaged in the business of manufacturing and supply of ghee and other products had launched a sales promotional offer 'Buy n Fly' based on quantity and value of products purchased by the retailers were awarded certain rewards as per scheme. The Appellant had sought an advance ruling before the Tamil Nadu AAR to ascertain applicability of ITC on GST paid on inputs/input services procured to implement the promotional scheme. The AAR Tamil Nadu held that the GST paid on services procured to implement the promotional scheme was not eligible to claim ITC as the promotional materials was in the nature of gifts and given voluntarily. Aggrieved with the decision, the Appellant had preferred a ruling before the Tamil Nadu AAAR.

The Appellant had argued that goods procured were in the course of business and it had direct nexus with the business as marketing and business expansion are two sides of the same coin and ITC should be allowed. The AAAR observed that the promotional gifts/rewards were used by the retailers of the Appellant under the said scheme which was covered u/s. 17(5)(g) wherein the goods were used for personal consumption by the Appellant or its retailers. It was further observed that Section 16 conveys that ITC available on inputs/input services charged on the supply of goods used in the course or furtherance of business whereby the Appellant, giving away goods/services under the scheme was not considered as 'supply'.

In view of the above observations, the Tamil Nadu AAAR held that the goods given away as gifts/rewards under the scheme was not considered as supply and the same was covered u/s. 17(5)(g) blocking the credit making the Appellant ineligible to avail ITC.

GST on optional Transportation Facility to employees on value exceeding INR 50,000/-

Beumer India Private Limited [HAAAR/2020-21/11]

The Appellant had hired vehicles on contract to provide transport facilities to its employees either at nominal cost where the vehicles are air conditioned or free of cost. The Appellant had sought an advance ruling before the Haryana AAR to ascertain *inter alia* whether GST would be payable on the services provided free of cost to its employees and whether GST would be payable on recovery of nominal amount on account of air-conditioning transport facility to its employees. The Haryana AAR held that the Appellant was liable to pay GST in both cases as the facility provided to employees was in the furtherance of business. Aggrieved, the Appellant had preferred a ruling before the Haryana AAAR.

The Haryana AAAR observed that CBIC Press Release dated 10.07.2017 clarified that the transactions executed in the course of contractual obligation of an agreement of employment are beyond the scope of GST. It was further observed that optional transportation facility for employees with no equivalent

provisioning for non-opting employees was contractual obligation and was in furtherance of Appellant's business.

In view of the above observations, the Haryana AAAR held that provisioning of transport facility provided by the Appellant was exclusive of the contractual obligation of the employer in the course of the employment. Accordingly, the same was held to be liable to GST, on a value that exceeds the total value upto INR 50,000/- given by the Appellant.

Penalty cannot be demanded for mere technical breach

Smart Roofing Private Limited [2022-TIOL-444-HC-MAD-GST]

The Applicant had filed a writ petition before the Madras HC, challenging an order in Form GST MOV-09 imposing penalty u/s 129(3) of the CGST Act. The Applicant had consigned the goods from its main place of business at Chennai to its additional place of business which was not the additional place of business, as per the original registration certificate obtained by the Applicant. However, in the E-way bill and the delivery challan, the Applicant had declared the consignee address as different, though the consignment was meant for being discharged at its new place of business. The Revenue had detained the consignment and issued an SCN which was culminated in an order imposing penalty. It was further submitted that ex post facto on the date, the Applicant had taken steps for amending the registration by including the consignee address also as the additional place of business.

The HC observed that that that the Respondent were justified in detaining the goods in as much as there was a wrong declaration in the E-way Bill. However, it was observed that the facts indicate that the consignor and the consignee are one and the same entity, namely, Head Office and the Branch Office. It was further observed that as steps were taken by the Applicant, to ex post facto include the new place of business altering the GST registration, there was only a technical breach committed by the Applicant and no intention to evade tax. Accordingly, the HC quashed the order and directed the Respondent to release the vehicle and the consignment.

Authors' Notes:

As a settled principle of law, mere technical breach should not lead to imposition of penalty. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief. Thus, in cases, mens rea is pre-requisite for imposition of penalty, as was held by the Delhi CESTAT in RE: ***Federal Mogul Goetze India Private Limited [2013-TIOL-1171-CESTAT-DEL]****.*

HC sets aside order issued in violation of natural justice and directed de-freezing of bank account

Shree Murliwala Textile [Patna HC CWJC No.6697/2022 dated 09 May 2022]

The Petitioner filed a Writ before the Patna HC challenging the demand order and the appellate order

issued by the Revenue in violation of principles of natural justice. The Petitioner submitted that their Appeal against the demand order had been rejected on the sole ground of non-submission of certified copy of the original order.

The HC observed that such an order is bad in law for two reasons i.e. (a) Violation of principles of natural justice-fair opportunity of hearing, (b) Order passed ex parte in nature, does not assign any sufficient reasons from the record, also the authorities not have adjudicated the matter on attending facts and circumstances. Accordingly, the HC set aside the demand order and the appellate order.

Further, the HC direct the Revenue to de-freeze/ de-attach the bank account of the Petitioner immediately. Furthermore, the HC direct the Revenue to decide the case on merit expeditiously and to pass a speaking order.

Erstwhile Regime

SC holds Service Tax to be leviable on secondment of employees

Northern Operating Systems Private Limited [2022-TIOL-48-SC-ST-LB]

The dispute in this matter pertained to the levy of Service Tax on secondment of employees by foreign entity to Indian entity. While the Tribunal had held that Service Tax is not payable, the Apex Court has held that Service Tax is payable. The larger bench SC had observed that the Respondent had 'operational or functional' control over seconded employees. Further, the Respondent assigned work to employees. Despite this, employees did not qualify as employees of the Respondent inter alia for following reasons:

- Multiple agreements entered between the Respondent and foreign entity;
- Nature of work of foreign entity involved secondment of employees;
- Employees possessed specialized skills and expertise;
- Salary to employees was fixed in foreign currency;
- Respondent remitted salary of employees to foreign entity which in turn remitted to respective employees;

It was further observed that the Respondent received manpower supply service from foreign entity and accordingly, is liable to pay Service Tax thereon on RCM basis. However, the Apex Court held that extended period of limitation is not invokable as the non-levy of service tax on secondment of employees was on account of a bona fide belief.

Service tax cannot be demand basis Income Tax investigation

J.P. Iscon Private Limited [FINAL ORDER NO. A/10270-10275 / 2022 dated 17 March 2021]

The Respondent had raised service tax demand on the basis of the finding of Income Tax Department in their proceedings. It was contended by the Appellant that the findings / documents relied upon by the Income Tax Department, itself had been disputed. Accordingly, no demand shall be made out of such disputed findings / documents.

The Tribunal held that demand of service tax only on basis of document/information/data provided by Income Tax authorities where revenue itself did not conduct independent enquiry, is not tenable. Accordingly, the Tribunal quashed the order of the Respondent.

Author's Notes:

The Revenue authorities often issue notices in GST / Service Tax on the basis of Income Tax data such as Form 26-AS, etc. It would be pertinent to note that the Allahabad CESTAT in RE: ***Kush Constructions [2019-TIOL-1757-CESTAT-ALL]*** *had held that the data of Form 26AS cannot be used for determining the Service Tax liability unless there is some evidence showing it was a taxable income. Similar view was taken by the Kolkata CESTAT in RE:* ***Luit Developers [2022-TIOL-180-CESTAT-KOL]****.*

CESTAT allows refund of service tax paid on the upfront amount on long term lease of industrial lands

Metrolite Roofing Private Limited [2022-TIOL-289-CESTAT-BANG]

The appellant had taken industrial lands on long term lease from Kerala Industrial Infrastructure Development Corporation ('KINFRA') by paying an upfront amount on long term lease, along with service tax. The Appellant had requested refund of service tax paid on the upfront amount on long term lease of industrial lands after the insertion of Section 104 into the ST Act. However, the said request was rejected. Aggrieved, the Appellant had preferred an appeal before the CESTAT Bangalore.

The Bangalore CESTAT observed that Notification No.41/2016 dated 22.09.2016 had exempted taxable service provided by the State Government Industrial Development Corporation/Undertakings to industrial units by way of granting long term lease on industrial plot. It was further observed that the Appellant filed the refund claims within time and the only ground for which the refunds were rejected that the Appellants did not produce sufficient documents in the form of invoices/bills service tax paid to KINFRA.

The CESTAT Bangalore held that the said bills/invoices issued by KINFRA clearly showed the payment of service tax by the appellant to KINFRA and KINFRA in turn had paid the same to the Government. Accordingly, the Tribunal set aside refund rejection of service tax paid on the upfront amount on long term lease of industrial lands.

GOODS & SERVICES TAX
From the Legislature

Sr No	Notification/ Circular	Summary
1	GSTN Functionality	**New Functionalities in GSTN Portal** The GSTN has made available new functions for taxpayers on GST Portal. Following are the highlights of the said new functions: **GST Portal** • The State Tax Websites link provided on the footer of the home page of the GST Portal has been updated with the refurbished hyperlink for the State of Manipur; • Additional Help link has been provided on the GST Portal for searching taxpayers assigned with Temporary ID. **Registration** • Taxpayers who have undergone Aadhar authentication / Aadhar enrolment ID will now be able to file an application for revocation of cancellation of registration in Form GST Reg-21; • The application for opting-in composition scheme for the F.Y. 2022-23 has been made available on GST Portal. Eligible taxpayers can file Form GST CMP – 02 by March 31, 2022; • Taxpayers engaged in supply of restaurant services can now file quarterly statement in Form CMP – 08 if their AATO exceeds INR 50 Lakhs and are eligible of composition levy for AATO upto INR 1.5 Crore; • The Geo coded addresses given by Map My India ('MMI') have been integrated with the GST System for existing taxpayers and persons applying for registration as taxpayers in Form REG – 01 as well as enabled while registration for core / non-core amendment involving change in address. **Returns** • As per Notification No. 40/2021 – CT dated December 29, 2021 taxpayers are allowed to avail ITC available in GSTR – 2B. Accordingly, the system-based validation on the threshold of the excess ITC that can be availed by the taxpayers has been reduced to 0% from the earlier 5%. The system will be giving warning messages on increase of auto-populated ITC; • Display of liability payment ratio and its computation details to taxpayers. The taxpayers are also provided with a linkage to Form GST DRC – 03 to make any liability payment;

Sr No	Notification/ Circular	Summary
1	GSTN Functionality	• A link has been provided in the File Returns Page, where MSME taxpayers can give their consent for availing Mudra Loan upto INR 10 Lakhs or MSME Loan upto INR 5 Crore; • Table for reporting inward supplies attracting reverse charge has been provided in Form GSTR – 5; • An excel based TDS and TCS Credit Received offline utility has been made available on the portal for download.
2	Press Release No. 537	**AATO Computation for F.Y. 2021-22** The functionality of AATO for the FY 2021-22 has now been made live on taxpayers' dashboards with the following features: • The taxpayers can view the exact Annual Aggregate Turnover (AATO) for the previous FY; • The taxpayers can also view the Aggregate Turnover of the current FY based on the returns filed till date; • The taxpayers have also been provided with the facility of turnover updation in case taxpayers feel that the system calculated turnover displayed on their dashboard varies from the turnover as per their records; • This facility of turnover update shall be provided to all the GSTINs registered on a common PAN. All the changes by any of the GSTINs in their turnover shall be summed up for computation of Annual Aggregate Turnover for each of the GSTINs; • The taxpayer can amend the turnover twice within the month of May, 2022. Thereafter, the figures will be sent for review of the Jurisdictional Tax Officer who can amend the values furnished by the taxpayer wherever required.
3	Notification No. 05/2022 - GST (Central Tax) dated 17 May 2022	**GSTR-3B due date extension for the month of April 2022** On account of the non-availability of Form GSTR-2B for the month of April 2022 on time i.e. by May 14, 2022, the CBIC had extended the due date for furnishing return in Form GSTR-3B for the month of April 2022 till May 24, 2022.
4	Notification No. 06/2022 - GST (Central Tax) dated 17 May 2022	**Extension in Due Date for depositing in PMT-06 tax for April 2022** The due date for depositing tax for the month of April 2022 had been extended to May 27, 2022.
5	Notification No. 07/2022 - GST (Central Tax) dated 26 May 2022	**Late Fee waiver for late filing of Form GSTR-4** The late fee for the delay in filing of Form GSTR-4 for the period 2021-22 has been waived off for the period May 01, 2022 to June 30, 2022.

CESTAT allows conversion of Shipping Bills to Advance License Shipping Bills

Louverline Blinds [2022-TIOL-300-CESTAT-BANG]

The Appellant engaged in manufacturing had imported certain goods to manufacture final product under Advance License. The Appellant had filled SBs for export of final product intended to avail benefit under MEIS but failed to mention that exports were made against the obligation under the Advance License. After noticing the inadvertent mistake, the Appellant had requested the CESTAT Bangalore for amendment of SBs to Advance License SBs.

The CESTAT observed that the exported goods were manufactured by using the goods importewas asided under the Advance License and that the exports had been made in fulfilment of export obligation under the Advance License. Further, observed that exports made under EPCG/DEEC schemes covering advance licenses implied that the request for conversion was to the schemes involving same level of examination and hence, the conversion SBs was to be permitted as per **Circular No. 36/2010**. Basis the above observations, the CESTAT Bangalore held that denial of benefit was unacceptable and the same was set aside.

Authors' Notes:

It is trite law that Circulars, being a subordinate law, cannot override the statutory provisions under law. The Madras HC in RE: ***Precot Meridian Limited [2019 ACR 813]*** *had held that Circulars were issued only to clarify the statutory provision and it could not alter or prevail over the statutory provision . It shall be further noted that the Courts have time and again allowed rectification of Shipping Bills where the assesses have inadvertently entered the incorrect scheme code. In RE:* ***Visoka Engineering Private Limited [TS-61-CESTAT-2022-CUST]*** *had held that rejection of request for conversion of free shipping bills to Advance Authorization Shipping Bills are not justified.*

Royalty provided and reversed subsequently not includible in Transaction Value

Doosan Bobcat India Private Limited [2022-TIOL-362-CESTAT-MAD]

The issue before the Tribunal was whether the amount in the nature of payment of royalty can be included in the transaction value and whether it is a condition of sale. There had been no agreement between the Appellant or the foreign supplier. The appellant contended that they have made provision for royalty but they have not actually paid any amount and that the amount was reversed in the year 2014 – 15.

The Tribunal observed that the entries in the ledger/books of accounts are required to be examined to verify royalty payment. Accordingly, the Tribunal remanded to the adjudicating authority to look into the aspect whether the Appellant had paid royalty to the foreign supplier or not . It was further held that in case, the Appellant had not paid such amount, there was no question of including the same in the transaction value.

CUSTOMS & FTP
From the Legislature

<table>
<tr><th>Sr No</th><th>Notification/ Circular</th><th>Summary</th></tr>
<tr><td>1</td><td>DGFT Notification No. 66/2015-2020 dated April 01, 2022</td><td>Extension in exemption from IGST and Compensation Cess on imports under various export incentive schemes

The DGFT has extended exemption from IGST and Compensation Cess on imports under Advance Authorization, EPCG and EOU Schemes from March 31, 2022 to June 30, 2022.</td></tr>
<tr><td>2</td><td>Notification No. 20/2022-Customs (NT) dated March 30, 2022</td><td>Customs (Electronic Cash Ledger) Regulations, 2022

• Vide the Finance Act, 2018, Section 51A was introduced under the Customs Act for payment of duty, interest, penalty, fee or any other amount through ECL. Section 51A will be effective from June 01, 2022;

• CBIC has now issued the Customs (Electronic Cash Ledger) Regulations, 2022, laying down complete mechanism for effecting payment through ECL.</td></tr>
<tr><td>3</td><td>Public Notice No. 3/2015-20 dated April 13, 2022</td><td>Amendments in EPCG Scheme to reduce compliance burden and enhance ease of doing business

The following amendments are proposed in Chapter 5 of Handbook of Procedures, 2015-20 (HBP) related to procedural aspects of EPCG Scheme:

◊ Earlier, Taxpayer could apply for extension of Export Obligation ('EO') period for First Block1 without any limitation period. As per revised HBP, the Regional Authority ('RA') may extend EO period subject to following:

<table>
<tr><th>Timelines for extension of First Block</th><th>Composition fee payable</th><th>Late fee payable</th></tr>
<tr><td>Within 6 months from expiry of First Block</td><td rowspan="3">2% of duty saved proportionate to unfulfilled portion</td><td>-</td></tr>
<tr><td>After 6 months from expiry of first Block and up to 6 years from date of Authorization</td><td>INR 10,000 per authorization</td></tr>
<tr><td>After 6 years of date of Authorization for regularization</td><td>INR 10,000 per authorization, additional INR 5,000 per year per authorization</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><th>Sr No</th><th>Notification/ Circular</th><th>Summary</th></tr>
<tr><td>3</td><td>Public Notice No. 3/2015-20 dated April 13, 2022</td><td>

Taxpayer shall to pay custom duties along with applicable interest within 6 months of expiry of First Block if RA does not extend period.

◊ Extension of time limit for submitting Annual Report for fulfillment of EO, will be allowed as under:

Time limit for reporting fulfillment of EO is extended from April 30 to June 30 of succeeding financial year;
Report needs to contain details like Shipping Bill / GST Invoice Number, date of export / supply, description of product exported / supplied and FOB / FOR value of export / supply for both specific as well as average EO (no specific content was prescribed earlier);
Delay in filing Annual Report will be regularized on payment of late fee of INR 5,000 per authorization for each financial year (no specific fee was prescribed earlier).

◊ Extension in time limit for payment of additional fee for automatic reduction / enhancement in EO up to 10% of duty saved amount, will be allowed as under:

Earlier authorization holder had to pay additional fee to RA within one month of excess imports. Further, application could have been filed after one month but within two years of excess imports subject to payment of composition fee of INR 5, 000/- per authorization;
Authorization holder can now furnish additional fee at time of applying Export Obligation Discharge Certificate. EO will be automatically proportionately enhanced.

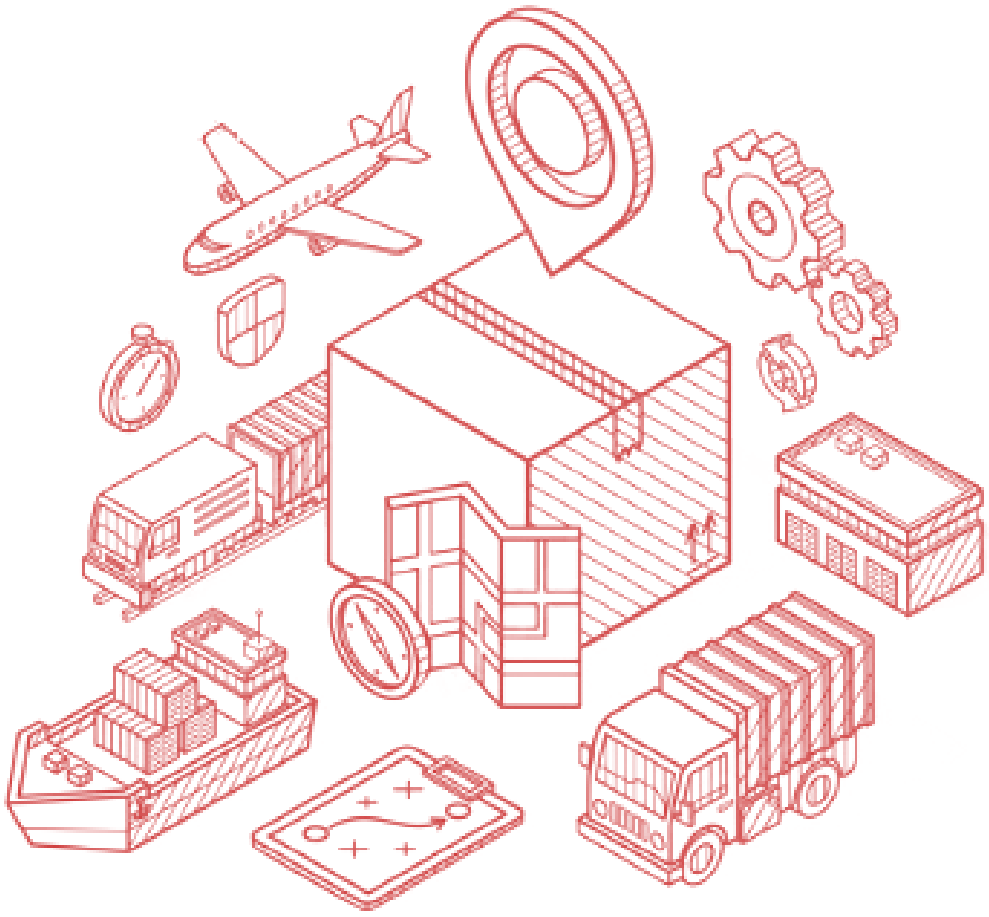
◊ Extension in application for overall EO period (6 years from authorization date) will be allowed as under:

Earlier, time limit for applying for extension of EO period was 90 days from date of expiry of original EO period. Additionally, request for extension could have been accepted within 180 days from expiry of original EO period on payment of additional composition fee of INR 5,000/-;
The timelines for application for extension of EO period are now revised as under:

<table>
<tr><th>Timeline for extension</th><th>Late fee payable</th></tr>
<tr><td>Within 6 months from expiry of EO period</td><td>-</td></tr>
<tr><td>After 6 months of expiry of EO and up to 8 years from authorization date</td><td>INR 10,000 per authorization</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><th>Sr No</th><th>Notification/ Circular</th><th>Summary</th></tr>
<tr><td>3</td><td>Public Notice No. 3/2015-20 dated April 13, 2022</td><td>
<table>
<tr><th>Timeline for extension</th><th>Late fee payable</th></tr>
<tr><td>After 8 years (for extension of EO period from 6 years to 8 years)*</td><td>In addition to fee of INR 10,000 per authorization, additional fee of INR 5,000 per year per authorization</td></tr>
</table>
◊ Excess exports done towards average EO fulfilment of an EPCG authorization during a year, can be offset against any shortfall in other years provided average EO is maintained on an overall basis.
</td></tr>
<tr><td>4</td><td>Notification No. 25/2022 dated May 21, 2022</td><td>Excise Duty on Petrol and Diesel
The Central Excise Duty reduced on Petrol by INR 8 per liter;
The Central Excise Duty reduced on Diesel by Rs 6 per liter</td></tr>
<tr><td>5</td><td>Notification No. 26/2022 dated May 21, 2022</td><td>Amendment in Jumbo Notification No. 50/2017 – Customs dated June 30, 2017
The import duty heading '2701' on ferronickel, anthracite coal, coking coal, PCI coal has been cut from 2.5% to Nil;
The import duty heading '2704'on coke and semi-coke of coal has been cut from 5% to 'nil';
The import duty heading '2710' on Naphtha has been cut to 1% from 2.5%;
The import duty heading '2910 20 00' on propylene oxide has been halved to 2.5%;
The import duty heading '7202 60 00' on Ferro-nickel has been cut from 2.5% to Nil</td></tr>
<tr><td>6</td><td>Notification No. 28/2022 dated 21 May 2022</td><td>Regularization of Export Duties
The export duty heading '2601 11' on Iron ore and concentrates Non-agglomerated has been increased to 50% from 30%;
The export duty heading '2601 12' on Iron ore and concentrates Agglomerated has been increased to 50% from 30%;
The Goods description “Flat rolled products of iron or non-alloy steel, clad, plated or coated shall be substituted</td></tr>
<tr><td>7</td><td>Notification No. 29/2022 dated 21 May 2022</td><td>Regularization of Export Duties
The export duty heading '26011210' on Iron ore pellets has been increased from Nil to 45%;
The export duty heading '7210' on Pig iron and spiegeleisen in pigs, blocks, or other primary forms has been increased from Nil to 15%;</td></tr>
</table>

Sr No	Notification/ Circular	Summary
7	Notification No. 29/2022 dated May 21, 2022	• The export duty heading '7208' on Flat rolled products of iron or non-alloy steel, hot rolled, not clad, plated, or coated has been increased from Nil to 15%; • The export duty heading '7209' on Flat rolled products of iron or non-alloy steel, cold rolled (cold-reduced), not clad, plated, or coated has been increased from Nil to 15%; • The export duty heading '7210' on Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated has been increased from Nil to 15%; • The export duty heading '7213' on Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel has been increased from Nil to 15%; • The export duty heading '7214' on Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling has been increased from Nil to 15%



NCLT holds withdrawal of CIRP cannot be allowed basis settlement by merely one creditor

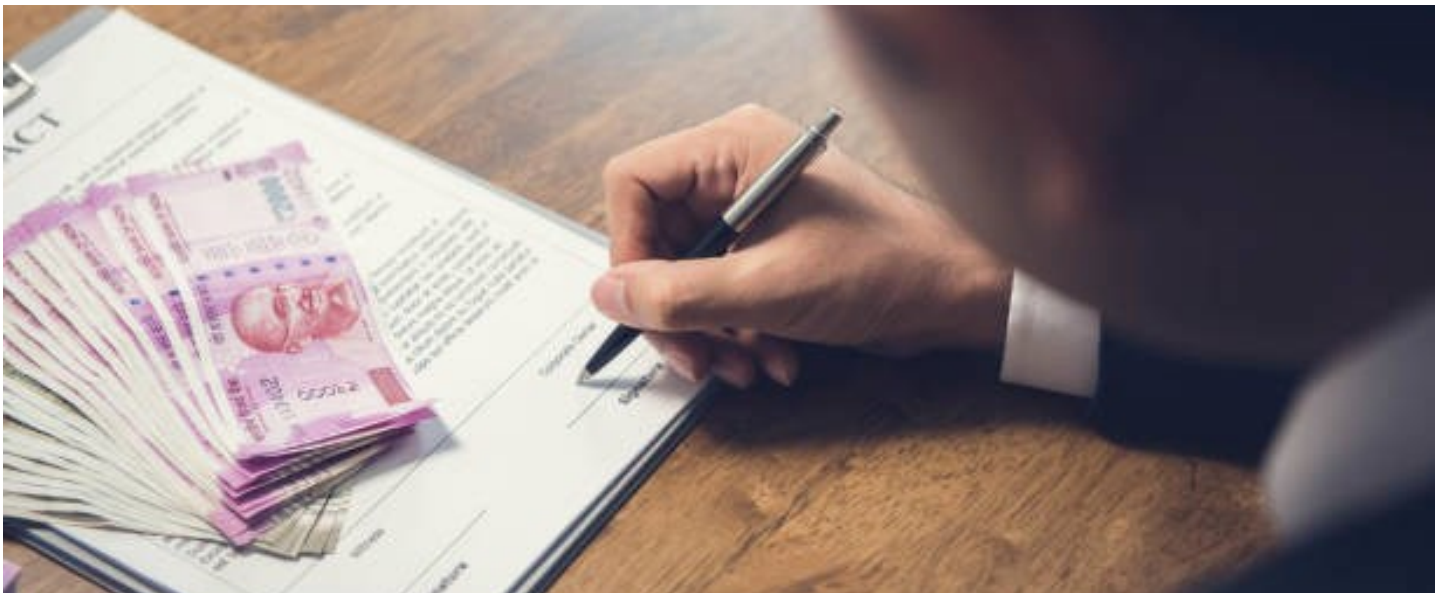
In the matter of Piramal Housing and Finance Ltd.

CP (IB) NO. 380 (MB) OF 2021

The Corporate Debtor was admitted into CIRP through order of admission dated September 6, 2021. By virtue of which an IRP was appointed. The IRP received intimation of CIRP and immediately issued public announcement on September 14, 2021 in two newspapers having circulation at the place of business of the Corporate Debtor. Pursuant to the Public Announcement, the IRP received 134 claims aggregating to INR 5326.66 Crores out of which the IRP admitted claims of INR 2632.86 Crores. Further, the claims for INR 398.56 crores were not admitted and claims of INR 2305.36 crores were kept for verification by the IRP. Before the constitution of CoC, one Mr. Anil Chhabria (Creditor) preferred an Appeal before the NCLAT challenging the admission order dated September 6, 2021.

During the course of hearing, the Creditor expressed his desire to settle with the debenture holder and requested for grant of sometime. The NCLAT through its order was pleased to direct the IRP to not constitute the CoC of the Corporate Debtor till the next date. The appeal came to be listed before the NCLAT, and the Creditor paid INR 1 Crore in respect of first settlement proposed and accordingly sought 20 days' time to settle the matter. The NCLAT was pleased to grant 30 days' time to the parties to settle the matter and in the event the parties fail to arrive at a settlement, the IRP was granted liberty to constitute the Committee of Creditors and to proceed further in accordance with law. The settlement agreement was executed between the Creditor and the Corporate Debtor. Accordingly, the Appeal before NCLAT came to be dismissed as withdrawn.

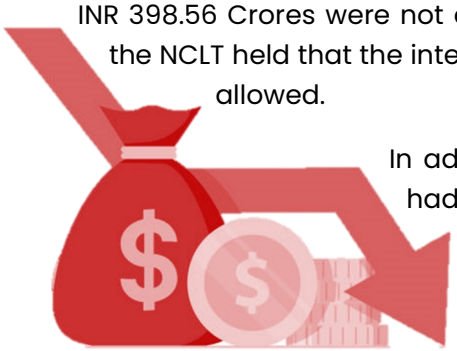
Subsequently, one of the other creditors of the Corporate Debtor namely Piramal Capital & Housing Finance Limited (The Applicant) called upon the IRP to inform them as to why CoC was not constituted, despite the fact that the NCLAT had granted a stay on constitution of CoC, only for a period 30 days. The Applicant further stated that in the event that any withdrawal application was filed without convening a meeting of CoC and seeking requisite percentage of votes from the members of the CoC, the same would



tantamount to misconduct and violations of the provisions of IBC and CIRP Regulations.

The IRP replied to the email of the Applicant and intimated that the settlement agreement was executed as required under the order of the NCLAT and as the conditions stipulated under the said order were duly complied with by the party, the question of constitution of CoC did not arise, further informing the Applicant of the withdrawal of the said appeal to the NCLAT. In pursuance of the withdrawal order of the NCLAT, the parties therein were granted to file the said settlement terms before the NCLT and seek appropriate remedy in accordance with law. The Applicant again addressed an email to the IRP calling upon the IRP to immediately constitute the CoC. The IRP on January 1, 2022 intimated the Applicant that they had approached the NCLT.

Objecting to the withdrawal of CIRP against the Corporate Debtor and seeking intervention, the Applicant preferred an application before the NCLT contending that despite the order of admission on September 6, 2021, the IRP till date failed to constitute CoC in accordance with the Code and CIRP Regulations. The NCLT placing reliance on SC ruling in **Swiss Ribbons [(2019) 4 SCC 2017]** noted that once the Code got triggered by admission of creditors' petition under Section 7 and 9 of the IBC, the proceedings before the Adjudicating Authority were collective proceedings in rem, and at any stage where the CoC was not yet constituted, a party could approach NCLT directly which could under Rule 11 of NCLT Rules, allow or disallow any application for withdrawal of settlement. However, further noting that the IRP had received 134 claims aggregating to INR 5326.66 Crores, out of which claims of INR 2632.86 Crores had been admitted, claims of INR 398.56 Crores were not admitted and claims of INR 2305.36 Crores were kept under verification, the NCLT held that the interest of the creditors would not be protected if the withdrawal of CIRP was allowed.



In addition to the above, noting that the Creditor and the Corporate Debtor had entered into a settlement agreement, and hence the Creditor sought withdrawal of CIRP, the NCLT observed that the substantial claims of the financial creditors could not be disregarded in view of part settlement of a single creditor, thereby allowing the application filed by the Applicant.

Authors' Note:

It would be interesting to note that in the instant case, the NCLT also observed that the withdrawal of the CIRP was of serious concern as if it would have been permitted, it would have led to multiplicity of proceedings.

HC rejects plea to quash cheque-dishonor proceedings, given legal notices not time-barred

Rayapati Power Generation Pvt. Ltd. & Anr. vs. Indian Renewable Energy Agency Ltd.

CRL.M.C. 2445/2021, CRL.M.A. 16082/2021 (Stay) and CRL.M.A. 16083/2021 (exemption), CRL.M.C. 2446/2021, CRL.M.A. 16084/2021 (Stay) and CRL.M.A. 16085/2021 (exemption) and CRL.M.C. 2438/2021 and CRL.M.A. 16048/2021 (Stay)

The Respondent was a Company engaged in the business of lending of financial assistance for renewable energy projects. Pursuant to the Petitioner approaching it for a loan facility, a transaction was entered into between the Respondent and the Petitioner, whereof, three cheques dated March 31, 2015, September 30, 2015 and June 30, 2016 were issued by the Petitioner in favor of the Respondent towards partial discharge of its liability. However, the cheques in question got dishonored upon presentation and were returned vide return memos with the remarks "drawer sign differ" and "no funds". The Respondent received return

statements from its Bank in respect of the aforesaid cheques, indicating that the same had got dishonored.

Consequently, the Respondent posted legal demand notices calling upon the petitioner Company to repay the debt owed within 15 days of receipt of the notices. When the due amount was not repaid within the statutory period, the Respondent filed criminal complaints against the Petitioner and its MD before the Metropolitan Magistrate which caused the Petitioner and its MD to approach the HC seeking an order quashing the criminal complaints filed by the Respondent. Before the HC, The Petitioner and its MD contended that the criminal complaints were not maintainable qua the Petitioners, as the relevant legal demand notices were issued after the expiry of statutory period of 30 days set out under the Act and therefore the said notices being invalid, the necessary ingredients of Section 138(b) of the NI Act were not satisfied and thus, the criminal complaints ought to be quashed.

The HC placing reliance on a plethora of its own judgments and that of the SC in this regard, noted that the legal position was that while computing the limitation period of 30 days prescribed under Section 138(b) of the NI Act for issuance of a valid legal notice, the day on which intimation was received by the Respondent from the bank that the cheque in question had been returned unpaid had to be excluded. The HC further noted that the Petitioner relied on the dates of return memos, i.e. dates of return of cheques in question, to compute the 30 days period and contended that the legal demands notices were not issued in time, on the other hand, the Respondent relied on the dates of receipt of return statements from its Bank, i.e., the dates on which intimation was received regarding dishonor of the cheques in question, to submit that the legal demand notices were issued within the statutory period.

Accordingly, on finding that the information regarding dishonor of cheques in question came to the notice of the Respondent through the return statements, the HC observed that the legal notices were posted by the Respondent within 30 days of the receipt of information from its Bank regarding dishonor of the cheques in question and were not time-barred. Thus, rejecting the contentions of the Petitioner and its MD, the HC dismissed the petition.

Authors' Note:

Section 138 of the NI Act provides punishment for commission of an offence relating to dishonor of cheques, subject to the conditions set out in the proviso thereto. Clause (b), in particular, of the proviso prescribes that in order to establish commission of an offence under Section 138 of the NI Act, a legal demand notice ought to have been issued to the accused within 30 days of the receipt of information by the complainant that the cheque was returned as unpaid.

HC rejects L&T's retired employees association's plea seeking MCA-investigation against L&T, cites lacking locus

Loyal Tigers Welfare Association vs. Union of India & Ors.

Writ Petition No. 8870 of 2017

The Petitioners were an association of retired employees or workmen of Larsen and Toubro Limited (L&T) that alleged that from 2003 to 2008, L&T deducted certain amounts from the wages and salaries of its

workers and employees and transferred these to another entity called the L&T Employees Welfare Foundation without the consent of the workers and employees. The Petitioners alleged that this deduction was obtained through coercion, duress, undue influence and definitely not out of free will and volition.

The Petitioners further alleged that in 2006, the L&T Employees Welfare Foundation Limited issued a certificate that the company held on behalf of these employees 5% redeemable preferential shares of INR 10 each fully paid up of L&T Welfare Company Limited (yet another entity). About 4 crores preferential shares of INR 10 each were said to have been issued by L&T Welfare Company Ltd to L&T Employees Welfare Foundation. In 2009, however the L&T Employees Welfare Foundation cancelled the beneficial interest arising out of these redeemable preferential shares causing wrongful loss to the Petitioners which caused the Petitioners to file a writ petition before the HC praying that the HC holds that the Ministry of Corporate Affairs(MCA) was trying to cover up the wrongs and illegalities of L&T Limited and its welfare entities and pleading that action should be taken under Section 206 of the Companies Act which deals with power to call for information, inspect books and conduct enquiries, against L&T.

The HC rejecting the Petitioner's plea seeking MCA-investigation against L&T remarked that it was unable to see how the Petitioners had any locus whatsoever on the basis of the baseless allegations levelled against L&T to conduct any such enquiry as it was entirely unclear what nexus there was between the Petitioners, their financial interests, the so-called welfare scheme or the preference shares and this disclosure.

Thus, holding the Petitioners to be misconceived, the HC dismissed the petition.

Authors' Note:

It would be interesting to note that in the instant case, the HC also observed that the Petitioners were at the liberty, if they were so advised to file an appropriate civil proceeding in regard to the alleged loss, they claim to have suffered with sufficient evidence which will be decided on its own merits uninfluenced by this order.

SC holds Arbitration proceedings not barred by limitation under special Arbitration Tribunal Act if sufficient cause for condonation of delay

Bihar Industrial Area Development Authority & Ors. vs. Rama Kant Singh

Civil Appeal No. 2030 Of 2022

The Appellant was constituted under the provisions of the Bihar Industrial Area Development Act, 1974. A

tender was invited by the executive engineer of the Appellant to carry out the drainage work in an industrial area. The Respondent offered a bid which the Appellant accepted. Accordingly, an agreement was executed on December 15, 2007 by and between the Appellant and the Respondent. After issuing a notice, the Appellant terminated the agreement and forfeited the security deposit of the Respondent. Aggrieved, the Respondent filed a reference to the Arbitral Tribunal regarding the termination of the agreement. One of the contentions raised by the Appellant before the Arbitral Tribunal was that the Respondent did not refer the dispute to the Arbitral Tribunal within one year from the date on which the dispute had arisen as provided under subsection (1) of Section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 Act. (2008 Act)

The Arbitral Tribunal held that Article 137 of the Limitation Act, 1963 (Limitation Act) was applicable. Hence, it was held that the reference made to the Arbitral Tribunal was not barred by limitation. The Arbitral Tribunal held that the Respondent was entitled to a refund of the earnest money and the security deposit. Further, the Arbitral Tribunal granted simple interest at the rate of 10% per annum on the above. Being Aggrieved by the award, the Appellant filed a revision petition before the HC by invoking Section 13 of the 2008 Act which observing that the Limitation Act was applicable, held that the dispute raised by the Respondent was not barred by limitation.

Aggrieved, the Appellant approached the SC which observed that as the 2008 Act provided for a specific period of limitation, Article 137 of the Schedule in the Limitation Act would not apply, to that extent, the Arbitral Tribunal had committed an error, however under the 2008 Act, the Arbitral Tribunal had the power to condone the delay and as the representation made by the Respondent against the order of termination of the contract was kept pending for an inordinately long time and was not at all decided, sufficient cause was made out by the Respondent for the delay.

Thus, partly allowing the appeal filed by the Appellant, the SC modified the award only to the extent to which interest at the rate of 10% was allowed on the claims and directed the Appellants to pay only principal amount as per the award.

NCLT rejects dissenting creditor's plea seeking payment under approved resolution plan

Union Bank of India vs. Rajender Kumar Jain & Ors

IA No.333 of 2021 in CP(IB) No.277/Chd/Pb/2018 (Admitted)

An application had been filed before the NCLT by the Applicant-Union Bank of India, a financial creditor of the Kudos Chemie Ltd. (Corporate Debtor) under Section 60(5) of the IBC seeking the following directions:-

- To direct the Respondent to distribute an amount of INR 17.26 Crores under the Resolution Plan Amount to the applicant as if Corporate Debt Restructuring ('CDR') was never implemented and in accordance with Section 53 of the IBC.
- To pass any other order(s) as this Tribunal may deem fit in the given facts of the present case.

Before the NCLT the Applicant contended that –

- the RP be directed to distribute an amount of INR 17.26 Crores under the resolution plan to Applicant,

if CDR was never implemented instead of amount given in the resolution plan.

- The distribution should be done as per Section 30(2)(b) of the IBC based upon security interest under Section 53 of the IBC prior to CDR implementation and not as per voting share of claimed amount.

Rejecting Applicant's submission, the NCLT observed that the contentions of the Applicant were not tenable because the distribution of the amount was made by CoC resting on total of voting share of individual creditors which was neither whimsical nor arbitrary in any manner.

Further, noting that although the Applicant gave a dissenting vote for approval of the Plan, based on the reason that distribution of resolution fund was discriminatory against it and despite the plea that it was entitled to the equal share in regard to the distribution of the resolution fund on the value of the assets of the Corporate Debtor as security. The NCLT noted that the CoC, had approved the resolution plan by 97.61% votes, observed that if at all the commercial wisdom of the Committee of Creditors was challenged and if a secured creditor was allowed his share basing upon the value of security interest, then it would lead to 'unjust enrichment' of such secured creditors and disadvantageous to the interest of other secured creditors i.e., the same class of creditors who required just and equal treatment.

Thus, dismissing the application filed by dissenting Financial Creditor- the NCLT remarked that if the present application was allowed then it would open flood gate resulting into more liquidations rather than insolvency resolutions and maximization of value of assets of the corporate debtor, which was not otherwise the objective of the IBC.

SC holds NBFCs' life from 'womb to tomb' regulated by RBI, State enactments would not apply

Nedumpilli Finance Company Ltd. vs. State of Kerala & Ors

Civil Appeal No. 5233 of 2012

In the present appeals, the question as to whether Non-Banking Financial Companies ('NBFCs') regulated by the RBI, in terms of the provisions of Chapter IIIB of the Reserve Bank of India Act, 1934 ('RBI Act') could also be regulated by State enactments such as Kerala Money Lenders Act, 1958 ('Kerala Act') and Gujarat Money Lenders Act, 2011 ('Gujarat Act') arose for SC's consideration, with the Kerala and Gujarat High Courts taking opposite views. The Kerala HC had dismissed a batch of writ petitions filed by various NBFCs operating in the State of Kerala seeking a declaration that NBFCs registered under the RBI Act will not come

within the purview of the Kerala Act. Whereas, on identical issues, Gujarat HC allowed the special civil applications filed by certain NBFCs and held that Gujarat Act is ultra vires the Constitution for legislative incompetence, to the extent that it seeks to have control over NBFCs registered under the RBI Act.

The SC observed that State enactments relating to money lending, namely the Kerala Act and the Gujarat Act would not apply to NBFCs registered under the RBI Act and regulated by RBI in terms of the provisions of Chapter IIIB of RBI Act, as the entire life of a NBFC from the womb to the tomb was regulated and monitored by RBI and once it was found that Chapter IIIB of the RBI Act provided a supervisory role for the RBI to oversee the functioning of NBFCs, from the time of their birth (by way of registration) till the time of their commercial death (by way of winding up), all activities of NBFCs automatically came under the scanner of RBI. As a consequence, the single aspect of taking care of the interest of the borrowers which was sought to be achieved by the State enactments got subsumed in the provisions of Chapter IIIB of the RBI Act. Against State of Kerala's submission that RBI did not control the rate of interest charged by NBFCs on the loans advanced by them and that, therefore, a State enactment which sought to control this aspect could not be said to be repugnant, the SC observed that NBFCs which played a very vital role in contributing to the financial health of the country and whose operations were controlled by RBI with the avowed object of operating the currency and credit system of the country to its advantage, have as their life line, the income received by way of interest on the loans advanced. Therefore, to say that RBI had no say in such a matter of vital interest, would strike at the very root of the statutory control vested in RBI.

Moreover, stating that even if it was assumed that the Kerala Act was valid in its application to NBFCs when it was made, it had to give way for the parliamentary enactment, the SC observed that the moment the Parliament stepped in to codify the law relating to registration and regulation of NBFCs, by inserting certain provisions in Chapter IIIB of the RBI Act, the same would cast a shadow on the applicability (even assuming it is applicable) of the provisions of the Kerala Act to NBFCs registered under the RBI Act and regulated by RBI. Further, referring to Section 45Q of the RBI Act which conferred overriding effect upon Chapter IIIB, over other laws, SC held that the States of Gujarat and Kerala could not contend that the laws made by them were in addition to the provisions of Chapter IIIB of the RBI Act.

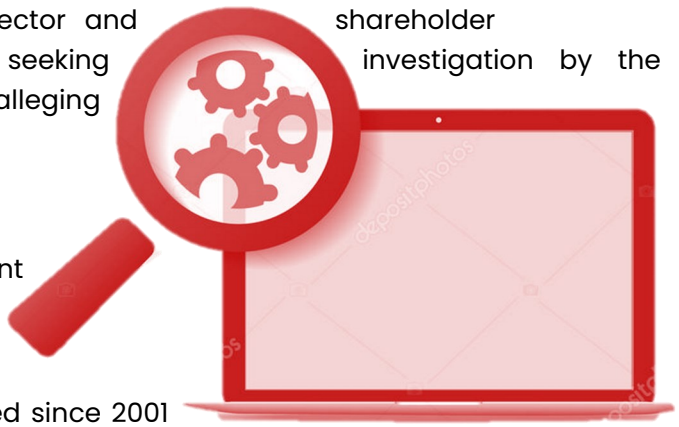
Accordingly, allowing all the appeals filed by NBFCs against the Kerala HC judgment and dismissing the appeals filed by the State of Gujarat against the Gujarat HC judgment, SC ruled that the Kerala Act and the Gujarat Act would have no application to NBFCs registered under the RBI Act and regulated by RBI.

NCLT directs MCA to investigate into Company's affair for alleged fraudulent conduct

Sibi Joseph vs. Jose J. Palathingal & Ors.,

TCP No.38/KOB/2019

In the instant case, a petition was filed by the Director and shareholder ('Petitioner') of a Company before the NCLT inter alia seeking investigation by the Central Government into the affairs of the Company, alleging fraudulent conduct.



Before the NCLT, the Petitioner also contended that:

- the Chairman of the Company was making fraudulent attempts to defraud Company's creditors, investors and members.
- no income/expenditure of the Company were audited since 2001

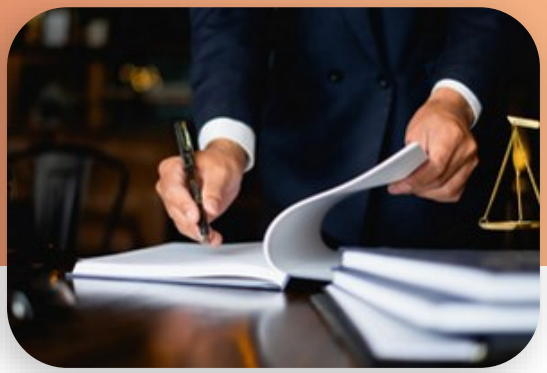
and the minutes of the meeting were not recorded.

- Chairman was legally bound to give all information to its shareholders with reference to the Company's affairs, but he was not supplying same.

The NCLT perusing Section 213 of the Companies Act with respect to the investigation into company's affairs, stated that the business of the company was being conducted with the intent to defraud its creditors, members as alleged by the Petitioner, and that persons concerned in the formation of the company or the management of its affairs had in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its member etc. Moreover, observing that the Petitioner had brought out some malpractices in the Company such as in the plantation owned by the Company measuring 281.91 acres lying in Megamala Village of Andipatti Taluk in Tamil Nadu which was the only property owned by the company that derived income from company accounts and that this only property of the Company was sold to the Chairman's benami under-valuation, the NCLT observed that this was done totally to defraud its creditors and investors.

Thus, allowing the petition and remarking that the entirety of things was dealt with in a fraudulent and unlawful manner, the NCLT observed that this was a fit case to direct MCA to take steps to investigate into the affairs of the Company, and accordingly, directed the Registry to communicate the instant order immediately to MCA.

REGULATORY
From the Legislature



Extension of time period for holding Annual General Meeting (AGM) and Extraordinary General Meeting (EGM) through video conferencing or other audio-visual means

Ministry of Corporate Affairs (MCA) vide General Circular No. 2/2022 dated May 05, 2022 extended the time period for holding AGM through video conferencing or other audio-visual means upto December 31, 2022. Further, it is clarified that this circular shall in no way be considered as extension of time limit for holding AGM. In the similar way, Ministry of Corporate Affairs (MCA) vide General Circular No. 3/2022 dated May 05, 2022 extended the time period for holding EGM through video conferencing or other audio-visual means or transact the item through postal ballot up to December 31, 2022.

Authors' Note:

This extension is very much expected due to ongoing spread of covid-19 in India. The move will protect the stakeholders from getting infected if they attend AGM or EGM in person.

Relaxation of Additional Fees in respect of delay in Filing of Annual Return by Limited Liability Partnership (LLP)

Every LLPs registered under the Limited Liability Partnership Act, 2008 is required to file their Annual Return within a period of 60 days from the end of financial year (Due date is May 30). Ministry of Corporate Affairs (MCA) vide General Circular No. 04/2022 dated May 27, 2022 provides relaxation for paying additional fees up to June 30, 2022. This relaxation is provided keeping in view the transition of MCA Website from version 2 to version 3.

Amendments Made in Several Form of Company Incorporation by MCA

Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 requires the approval from Government for issuance of securities where the shares are issued to an entity of a country which shares land border with India or the beneficial owner of an investment in India who is situated in or is a citizen of any such country. In MCA forms, earlier there was no provision of any disclosures that the investor was required to obtain Govt. approval and the same had been taken or not. Accordingly, MCA has amended

Form No.	Changes In Form
INC – 9 (Declaration by Subscribers and First Director)	Following Checkboxes are included in Form INC-09 • I am required to obtain the Govt. Approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 prior to subscription of shares and the same has been obtained, and is enclosed herewith or • I am not required to obtain the Govt. Approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 prior to subscription of shares This amendment is applicable from June 01, 2022.

the following:

Form No.	Changes In Form
PAS – 4 (Private Placement Offer Letter)	Following Checkboxes are included in Form PAS – 4 • The applicant is not required to obtain the Govt. Approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 prior to subscription of shares or • The applicant is required to obtain the Govt. Approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 prior to subscription of shares and the same has been obtained, and is enclosed herewith.
SH – 4 (Securities Transfer Form)	Following Checkboxes are included in Form SH – 4 • Transferee is not required to obtain the Govt. Approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 prior to transfer of shares • Transferee is required to obtain the Govt. Approval under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 prior to transfer of shares and the same has been obtained, and is enclosed herewith
Declaration in case of Compromise, Arrangement, Merger or Demerger	In Case of compromise, arrangement, merger or demerger between an Indian company and a company or a body corporate which has been incorporated in a country which shares land border with India, a declaration in Form CAA-16 shall be required at the time of submission of application.

Authors' Note:

This move will help the Govt. to get data about number and value of shares which are issued to the citizens or entities of countries which shares land border with India and it will also ensure the harmonization and alignment of FEMA and Companies Act provisions. This move will strengthen the economy of India as it will create a good impression of Indian Securities Market in the mind of foreign investors.

Implementation of System and Network Audit in place of System Audit by Market Infrastructure Institutions

Market Infrastructure Institutions (MIIs) include stock exchanges, clearing corporations and depositories. Earlier, MIIs are required to conduct system audit by a reputed independent auditor.

Particulars	Amendments
Auditor Selection Norms	• Auditor shall have experience in working on Network Audit. • Auditor shall certify that whether the network architecture, connectivity and its linkage to trading infrastructure are in conformity with SEBI regulatory framework.
Scope of Work	Network Audit Scope covers: • Entire network infrastructure which includes physical verification, tracing of connectivity path, server configuration, configuration of computer networking device.

Particulars	Amendments
Scope of Work	• Entire network that is used to connect members to the MIIs. • Network Performance and design • Network Security implementation • Network health monitoring and alert system

SEBI vide circular no. SEBI/HO/MRD1/MRD1_DTCS/P/CIR/2022/58 dated May 02,2022 provides that MIIs are required to conduct system and network audit in place of system audit. Following are the guidelines for selection of auditor and defining their scope of work:

Authors' Note:

Inclusion of Network Audit with System Audit will make the MIIs to be more vigilant and careful while implementing their Networking system. This move will also help in reducing the network failures and boosting investor's confidence to rely on networking system.

SEBI Provides Relaxation from certain norms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Ministry of Corporate Affairs vide General Circular No. 2/2022 dated May 05, 2022 extended the time period for holding AGM through video conferencing or other audio-visual means upto December 31, 2022 and provides the relaxation for sending hard copies of Annual Report to its members.

On the same ground, SEBI vide circular no. SEBI/HO/CFD/CMD2/CIR/P/2022/62 dated May 13, 2022 provides the following relaxations to listed entities upto December 31, 2022:

- To send hard copy of annual report to the members who have not registered their email addresses. Further, it is provided that the notice of AGM published by advertisement shall contain a link to annual report so to enable shareholders to have access to full annual report.
- It is provided that Listed entities shall send hard copies of annual report to shareholders who request for the same.
- Requirement of sending proxy form is dispensed with upto December 31, 2022.

In the similar way SEBI vide circular no. SEBI/HO/DDHS/P/CIR/2022/0063 dated May 13, 2022 provides relaxation from dispatching hard copies of statements to the holders of listed non-convertible securities who have not registered their email addresses with the listed entity or depository.

Authors' Note:

Insertion of link to annual report in advertisement in place of physical copy is indeed very necessary as the companies are facing challenges in sending physical copies to investors. This move will also help in saving environment as it will lead to saving of printing papers.

Standard Operation Procedure (SOP) for dispute resolution under the stock exchange arbitration mechanism between a listed company and registrars to an issue and its shareholders

SEBI vide Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/76 dated May 30, 2022 prescribes the standard operating procedure for resolution of disputes among shareholders and listed entities. Key highlights of standard operating procedures are as follows:

Applicability	**The Provisions of SOP shall be applicable to Listed Companies/RTAs offering services on behalf of listed companies. In all disputes, listed company shall necessarily be added as a party.**
Arbitration Mechanism	• Arbitration matter involving a claim of upto 25 lakhs, a single arbitrator shall be appointed and matter involving a claim of more than 25 lakhs, a panel of three arbitrators shall be appointed. • Arbitrator shall be appointed within 30 days from date of receipt of complete application form. • Fees per arbitrator shall be INR 18,000 plus stamp duty, service charges. Fees shall be collected from RTAs/Listed Companies and Shareholder separately. If the value of claim is upto INR 10 lakhs, then the cost of arbitration shall be borne by exchange. • On passing the arbitral reward, fees paid by party in whose favor award has been passed would be refunded and fees paid by other party will be utilized towards the payment of arbitration fees. • Any party aggrieved by the order of arbitrator may file an appeal to appellate arbitration. Fees shall be INR 54,000 plus stamp duty which shall be paid by applicant only and will be non-refundable. • Appeal shall be conducted at regional center of stock exchange nearest to the investor.
Time Limit for passing of Arbitral Award	• Arbitration proceedings shall be conducted by issue of arbitral award within 4 months from the date of appointment of arbitrator. • The Stock exchange may extend the time for arbitral award but not more than two months after recording the reasons. • The appeal against an arbitral award shall be disposed-off within three months from the date of appointment of appellate panel.

Authors' Note:

Formulation of SOP by SEBI for Dispute Resolution is indeed a boon step as it will help the investors to get appropriate compensation and it will also lead to timely and speedy resolution of disputes. It will further strengthen the economy of our country. It will also help to bring foreign investments in India as the investor feel that their investments are safe in Indian economy.

Reserve Bank of India (RBI) issued guidelines for establishment of Digital Banking Units (DBU)

The Finance Minister while announcing Union Budget 2022, made an announcement that 75 Digital Banking Units will be set up in 75 Districts. To cater this, Reserve Bank of India vide notification no. RBI/2022-23/19 dated April 07, 2022 has issued guidelines for establishment of Digital Banking Units. Following are the

key highlights of the issued guidelines:

Particulars	Guidelines issued by RBI
Meaning of Digital Banking Units	DBU is a business unit for providing digital banking products and services in both self -service and assisted mode. This will enable customers to have cost effective, convenient access and enhanced digital experience of such products and services being available at any time, all year round. Digital Banking product and services means product and services which have end to end digital life cycle from customer acquisition to delivery.
Permission for opening of DBU	All Scheduled Commercial Bank (other than Regional Rural Bank, Payment Bank, Local Area Bank) with past digital experience are permitted to open DBUs in Tier 1 to Tier 6 centers, unless otherwise specifically restricted, without having the need to take permission from Reserve Bank of India in each case.
Products and Services to be offered by DBU	• Account Opening: Saving A/c under various schemes, Current A/c, Fixed and Recurring Deposits. • Digital Kit for Customers and Merchants: Mobile Banking, Internet Banking, Debit Card, Credit Card, UPI QR code, POS etc. • Making Applications for Loans. • Cash withdrawals and cash deposits only through Machines. • Passbook Printing/ Statement Generation. • Transfer of Funds.
Digital Banking Customer Education	In addition to onboarding of customers in a fully digital environment, various tools and methods shall be used by DBUs to offer hands-on customer education on safe digital banking practices for inducting customers to self-service digital banking services.
Reporting Requirements	Banks shall report the Digital Banking Segment as a sub-segment within the existing "Retail Banking Segment", Performance update with respect to DBU shall also be furnished to Reserve Bank of India on monthly basis and in a consolidated form in Annual Report of the bank.

Authors' Note:

Establishment of Digital Banking Units is the need of the present technological era. However, it will be a challenging task for banks to establish Digital Banking Units on a large scale and to create awareness among users. Establishment of Digital Banking units will take the banking system to a new era of technological advancement.

OECD announces public consultation on 'Regulated Financial Services Exclusion' under Pillar One, invites comments by May 20, 2022

Public consultation document on Regulated Financial Services Exclusion under Amount A of Pillar One has been released by the OECD. The public consultation document excludes revenues and profits from Regulated Financial Institutions from the scope of Amount A and highlights that the defining character of the sector is being subjected to capital adequacy requirements which reflects the risks taken on and borne by the firm. It further states that it is the regulatory driver that generally helps to align the location of profits with the market and the scope of the exclusion derives from that requirement, meaning that entities that are subject to risk-based capital measures (and only those) have been excluded from Amount A.

Further, defining six types of Regulated Financial Institutions: Depositary Institution, Mortgage Institution, Investment Institution, Insurance Institution, Asset Manager, and a Mixed Financial Institution and a seventh category for a limited type of service entity that exclusively performs functions for a Regulated Financial Institution (RFI Service Entity), OECD specifies in the public consultation document, that each definition contains three mandatory elements to be wholly excluded from Amount A:

- a licensing requirement.
- a regulatory capital requirement.
- an activities requirement.

In addition to the above, OECD states in the public consultation document, that input will be most helpful for explaining the following:

- Where the definitions of Regulated Financial Institutions are unclear or insufficient (including the reasonableness of the thresholds proposed).
- The practical challenges in applying the rules for identifying excluded and in-scope revenues and profits.
- The additional guidance or compliance simplifications that would be needed to effectively apply the Regulated Financial Services Exclusion.

Comments had been invited by the OECD on the public consultation document by May 20, 2022.

Click for Reference

OECD releases public comments on Crypto Asset Reporting Framework (CARF) and amendments to Common Reporting Standard (CRS), stakeholders seek clarification on scope of intermediaries, inclusion of stable coins in CARF

Public comments on CARF have been released by the OECD along with amendments to CRS. With regards to the above comments and amendments, stakeholders express concern over scope of intermediaries and suggested to diminish the threshold of USD 1,000 to capture high value transactions.

Further, stakeholders suggest aligning the approach under CARF with CRS with respect to due-diligence and also clear demarcation of reporting requirements under CARF and CRS, calling for clarity as regards what is considered as a reasonable effort to obtain missing TIN information and also recommending strengthening of self-certification rules. In addition to the above, the stakeholders also seek clarification on inclusion of stable coins in scope of CARF and emphasise on the need for calculation of FMV in case of crypto-to-crypto transaction.

With regards to CRS, stakeholders disapprove the collection of TINs for pre-existing accounts and concur with proposal to add capital contribution accounts to the Excluded Accounts and suggest introducing an exception for capital contribution accounts and the exception for capital increase accounts as a non-mandatory option on a national level within the implementation. Adding to the above, the stakeholders also suggest that with respect to dual resident account holders it should be clarified that the proposals apply prospectively.

Click for Reference

UAE's Federal Tax Authority conducts 3,780 inspections resulting non-compliance amounting AED 15.7 million

In order to ascertain compliance with the local tax regulations and procedures, the Authorities had ramped up its inspection campaigns of such shops during the month of Ramadan. Accordingly, 3,780 inspections were carried out and non-compliance amounting to AED 15.7 million was found.

Through the years, such inspection campaigns were carried with the aim to safeguard consumers and tackle the issue of tax evasion. Such check- also augment the authority of the Federal Tax Authorities in markets and through that it aids the body to recognize violators and undertake the required legal measures.

The major contraventions observed includes the following:

- Tax invoice issued by vendors not complied to; and
- Penalties for tobacco products that were not registered and did not have the Digital Tax Stamp (DTS) along with various other excise goods that include carbonated beverages, energy drinks and sweetened drinks.

Author's Note:

It is very pertinent that the taxpayers adhere to UAE VAT Laws and ensure that they are well prepared for the FTA surprise check-ups and audits.

SPARKLE ZONE

Taxing Crypto Currencies: A Block-chain of interpretations

Crypto has globally been a buzzword for a while and gaining informal recognition in various transactions. USA treats Crypto as an asset, Japan treats it as commodity, UK treats as 'Private Currency' and Singapore recognizes it as a valid currency. EL Salvador even became first country to accept Bitcoin as a legal tender alongside US dollar! It however came at a cost of protest – mainly fuelled by uncertainties, and obscurity around it.

India have had its own share of protests and uncertainty. Despite having highest number of crypto owners across the globe (10.07 Crore), the Country in 2018 had banned crypto trading by instructing banks to not to service customers exchanging digital currencies. This was later overturned by Supreme Court. From then to Country's Finance Minister proposal to launch country's own crypto currency, India has certainly come a long way.

With more and more recognition, it was only a matter of time that Governments would start taxing Crypto. India Budget – 2022 had already made income gained from crypto taxable at a heavy rate of 30% and levy of GST is just on the cards.

In December 2020, the Central Economic Intelligence Bureau ('CEIB') nodal agency under Ministry of Finance ('MoF') had proposed the CBIC to charge 18% rate of tax on Crypto transactions. The CEIB had suggested Crypto might be categorized as an intangible assets class. The CBIC is yet to put forth this issue in front of GST council for consideration. The suggestions are broadly listed below:

- Cryptocurrency 'mining' will be taxed at the rate of 18% GST because it generates cryptocurrency, invoices and transaction fees;
- Wallets and aggregator storing data on crypto should be registered under GST;
- Cryptocurrency exchanges need to register and pay tax to their earning;
- Crypto trading may attract 18% GST;

- Buying and selling of crypto currencies would be classified under the category of supply of good. Other facilitating services will be counted under supply of services;
- In cases where the buyer and seller are registered as Indian residents and operators, the transaction should be treated as a supply of software; and
- International cryptocurrency transactions by companies registered in India will be treated as import or export of goods and the same will be liable to IGST.

Taxability of Crypto is at a very nascent stage and even a bare perusal of the aforesaid proposals would raise questions as to what would be the 'taxable event' given that transaction in crypto is unlikely to qualify as a 'Security' or 'actionable claim'. It can neither be categorised as 'consideration' given that it lacks RBI's approval as a form of 'currency'. This besides, uniform valuation of 'cryptocurrency' is not only a statutory ambiguity but a mammoth technological challenge in itself.

Given the be, the CEIB has proposed to tax the crypto transactions contemplating it to be covered under the category of financial service. But there are so many if's and but's on this until a Notification/Circular by the CBIC.

The given CEIB proposal needs to be escalated to the GST council for better implementation and clarity of taxing GST on crypto transaction. The potential benefit of taxing cryptocurrencies will provide an exponential rise in revenue of the Government. Looking at the GST regime, it may be complicated for the authorities to determine the place of supply, the valuation of such transaction due to trading across the globe, the medium of exchange. The proposed GST on crypto may bring a large chunk of revenue to the Government, however the implementation of GST crypto would be a tedious task for the GST council.

GLOSSARY

Abbreviation	Meaning
AA	Adjudicating Authority
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
ADD	Anti-Dumping Duty
AE	Associated Enterprise
AGM	Annual General Meeting
AICD	Agriculture Infrastructure and Development Cess
AIF	Alternative investment Fund
AIFs	Alternative Investment Funds
ALP	Arm's length price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Persons
APA	Advanced Pricing Agreement
ARE	Alternate Reporting Entity
AU	Assessment Unit
AY	Assessment Year
B2B	Business to Business
B2C	Business to Customer
BBT	Buy-Back Tax
BCD	Basic Customs Duty
BED	Basic Excise Duty
BEPS	Base Erosion and Profit Shift
BOI	Body of Individuals
CAG	Comptroller and Auditor General of India
CAT	Common Aptitude Test
CBCR	Country By Country Reporting
CBDT	Central Board of Direct Taxes
CBI	Central Board of Indirect Tax
CBIC	The Central Board of Indirect Taxes and Customs
CG	Central Government
CGST Act	Central Goods and Services Act, 2017
CIT	Commissioners of Income Tax
Cus	Customs Act, 1962
CVD	Countervailing Duty
DDT	Dividend Distribution Tax
DRC	Dispute Resolution Committee
DRI	Directorate of Revenue Intelligence
DTAA	Double Taxation Avoidance Agreement
FDI	Foreign Direct Investment
Fin	Finance Bill Finance Bill, 2022
FM	Finance Minister
FMV	Fair Market Value
FPI	Foreign Portfolio Investors
FTP	Foreign Trade Policy
G2B	Government to Business
GST	Goods and Services Tax
H&EC	Health and Education Cess
HFC	Housing Finance Company
HNI	High Net Worth Individual
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code
IFSC	International Financial System Code
IFSCA	International Financial Services Centres Authority Act, 2019

Abbreviation	Meaning
IGST	Integrated Goods and Services Tax
IIM	Indian Institute of Management
IMC	Indian Medical Council Act, 1956
Ind AS	Indian Accounting Standards
InvITs	Infrastructure Investment Trusts
IT Act/ Act	The Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income-tax Officer
KYC	Know Your Customers
LIC	Life Insurance Corporation
LLP	Limited Liability Partnership
LTC	Long-Term Capital Gains
MAT	Minimum Alternate Tax
MoF	Ministry of Finance
MSME	Micro Small and Medium Enterprises
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Finance Company
NCCD	National Calamity Contingent Duty
NCLT	National Company Law Tribunal
NFT	Non-Fuungible Tokens
NELP	New Exploration Licensing Policy
NHB	National Housing Bank
NPA	Non-Performing Assets
NPS	National Pension System
OBU	Offshore Banking Unit
OEC	Organization for Economic Co-operation and Development
OPC	One Person Company
PAN	Permanent Account Number
PBPT	Prohibition of Benami Property Act, 1988
PCIT	Principal Commissioners of Income Tax
PIV	Pooled Investment Vehicle
PMLA	Prevention of Money Laundering Act, 2002
PSU	Public Sector Undertaking
PY	Previous Year
RBI	Reserve Bank of India
REITs	Real Estate Investment Trusts
RIC	Road and Infrastructure Cess
RTGS	Real Time Gross Settlement
RU	Review Unit
SAD	Special Additional Duty
SAED	Special Additional Excise Duty

GLOSSARY

Abbreviation	Meaning
SCGT	State Goods and Services Tax
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
SFT	Statement of Financial Transaction
SIAC	Singapore International Arbitration Centre
SPF	Specific Pathogen Free
SWS	Social Welfare Surcharge
TAN	Tax Deduction Account Number
TCS	Tax Collected at Source
TDS	Taxes Deducted at Source
TPO	Transfer Pricing Officer

Abbreviation	Meaning
TOL Act	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020
UCB	Urban Co-operative Bank
UK	United Kingdom
USA	United States of America
UTGST	Union Territory Goods and Services Tax
VsV	Vivad se Vishwas
VU	Verification Unit
WTO	World trade Organization
HC	High Court
SC	Supreme Court
FY	Financial Year
NFT	Non-Fuungible Tokens

FIRM INTRODUCTION

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

Website: **www.taxcraftadvisors.com**

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

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